

**Companies and Intellectual Property Commission  
Republic of South Africa**

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**Memorandum of Incorporation of  
Cornwall Hill Home Owners Association  
Registration Number: 1997/020738/08**

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***which is referred to in the rest of this Memorandum of Incorporation as “the Company” and which is incorporated in terms of the provisions of the Companies Act, 2008, hereinafter referred to as “the Act”.***

The Company is a Non Profit company with members, with the following objects:

The main object of the Company is to promote and maintain the common interests of the members of the Company, owners, occupants and other users of erven in the Cornwall Hill Estate, situated on portions of portion 338 of the farm Doornkloof, Registration Division JR Gauteng, as well as the townships Irene Extension 9 and Irene Extension 10, by maintaining the common areas and controlling the aesthetic appearance of the land and buildings in accordance with specific guidelines as may be determined by the Directors from time to time, as well as enforcing said guidelines and rules which govern the Company, and which are referred to in this Memorandum of Incorporation.

The main business which the Company is to carry on is the ownership, maintenance and upkeep of the common areas, essential services and security services of a residential Estate with specific reference to:

- The ownership of portions of portion 338 of the farm Doornkloof 391, Registration Division J R Gauteng as well as the townships Irene Extension 9 and Irene Extension 10, inclusive of essential erven situated on the said erven; and
- The proper maintenance and upkeep of, portions of portion 338 of the farm Doornkloof 391, Registration Division J R Gauteng as well as the townships Irene Extension 9 and Irene Extension 10 inclusive of the essential erven situated on the said erf and which will include the levying of charges as from date of transfer of any erven in the development to enable the Company to fulfill its obligations in terms of its various duties as described hereunder, including but not limited to its obligation to the local authority.
- To control the character and architectural standards of buildings and other structures to be erected on the Estate.
- To administer the security in and relating to the said townships.

**Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13(1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity Number	Signature	Date
Marius Neal Carstens	670708 5122 087		
Sebastian Jakobus Johannes Smit	381020 5008 088		
Helmuth Christoffel Bothma	710823 5327 081		
Berner Jacobus Duvenage	610303 5014 089		
Riaan Rhind	670314 5116 086		

In this Memorandum of Incorporation –

- (a) a reference to a section by number refers to the corresponding section of the Act;
- (b) words that are defined in the Act bear the same meaning in this Memorandum as in that Act; and
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.

The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.

## 1. DEFINITIONS

1.1 The headings contained in the articles are intended for reference purposes only and shall not be taken into account in the interpretation thereof. In the interpretation of the articles the words contained in the first column of the table set out below shall bear the meaning set out opposite each of them in the second column thereof, unless the contents or context otherwise requires.

	<b>Words</b>	<b>Meanings</b>
1.1.1	“the Act”	The Companies Act, 2008, including any amendment, consolidation or re-enactment thereof;
1.1.2	“the articles”	The provisions contained in this Memorandum of Incorporation or as from time to time amended by special resolution; Cornwall Hill Home Owners Association;
1.1.3	“the Association”	
1.1.4	“the Chairman” or “the Deputy Chairman”	The Chairman or the Deputy Chairman of the Directors;
1.1.5	“common facilities”	Recreational facilities, security facilities, parking facilities, gardens, terraces and other common areas and facilities forming

		part of the property and which are intended for the shared use of members and their respective invitees;
1.1.6	“the Company”	The Company as constituted by this Memorandum of Incorporation;
1.1.7	“the Directors”	The Directors, for the time being, of the Association and the alternate Directors thereof or, as the case may be, the Directors assembled at a meeting of Directors at which a quorum is present;
1.1.8	“electronic communication”	Means a communication by means of data messages in terms of the Electronic Communications and Transactions Act No. 25 of 2002;
1.1.9	“e-mail”	Means electronic mail, a data message used or intended to be used as a mail message between the originator and addressee in an electronic format;
1.1.10	“erf”	Any subdivided portion of the Estate transferred or transferable into the name of a person and precludes a plot;
1.1.11	“Estate”	Portions of Portion 338 of the farm Doornkloof 391, Registration Division J.R., Gauteng;
1.1.12	“Gazette”	The Government Gazette of South Africa;
1.1.13	“general meeting”	An annual general meeting or a general meeting of the Association;
1.1.14	“in writing”	Includes the reproduction of a signature by printing, typewriting or lithography, or any kind of stamp or any other mechanical process, or partly one and partly another, and “signature” has a corresponding meaning;
1.1.15	“the Estate Manager”	The Estate Manager (if any) appointed in terms of Rule 9, from time to time;
1.1.16	“member”	A Member of the Association;
1.1.17	“Memorandum”	The Memorandum of Incorporation of the Company in force for the time being;
1.1.18	“the office”	The registered office of the Association;
1.1.19	“owner”	A registered owner of an erf or a plot;
1.1.20	“Person”	Includes any company incorporated or registered under law and any body of persons corporated or incorporated;
1.1.21	“plot”	An erf exceeding 5000m <sup>2</sup> in extent;
1.1.22	“property”	An erf or plot within the Estate registered in the name of a Member;
1.1.23	“the register”	The register of Members of the Association;
1.1.24	“the Rules”	The rules made by the Directors from time to time in terms of this Memorandum;
1.1.25	“the secretary”	The secretary of the Association for the time being;

- 1.1.26 “South Africa” The Republic of South Africa or the territory comprised therein from time to time;
- 1.1.27 “works” Construction work of any sort in relation to any improvements, alterations or maintenance within the estate or any portion thereof which shall include construction of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts, walls, fences, paving and landscape architectural features.
- 1.2 Unless the context otherwise requires:
- 1.2.1 Words importing the single number shall include the plural number and *vice versa*;
- 1.2.2 Words importing the masculine gender shall include the feminine gender;
- 1.2.3 Words importing natural persons shall include firms and corporate bodies;
- 1.2.4 The word “meeting” shall include an adjourned meeting;
- 1.2.5 Any reference to any provision of the Act, shall include such provision as it may be modified from time to time.
- 1.3 Subject to Article 1.1, any word or expressions defined in the Deeds Registry Act, 1937 or in the Act shall, unless the context otherwise requires, bear corresponding meanings in this Memorandum of Incorporation.

## ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

### Incorporation

- (1) The Company is incorporated as a Non Profit company, as defined in the Act.
- (2) The Company is incorporated in accordance with, and governed by-
  - (a) the unalterable provisions of the Act that is applicable to Non Profit companies;
  - (b) the alterable provisions of the Act that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum ; and
  - (c) the provisions of this Memorandum.

### Objects and Powers of the Company

The objects of the Company are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company –

**are subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act, as set out in Part A of Schedule 1 of this Memorandum.**

### Part A

#### 1.

The specific powers of the Company are as set out in Schedule 1 of the Act, and are as follows:

The Company :-

- (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation.
- (b) may, subject to (a) above, acquire and hold securities issued by a profit company; or directly or indirectly alone or with another person, carry on business, trade or undertaking consistent with or ancillary to its stated objects.
- (c) may not amalgamate or merge with, or convert to, a profit company; or dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, *except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company and such an action is submitted to the members for approval and voting.*
- (d) must not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of the manner in which the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a member or Director of the Company, except as reasonable –
  - (i) remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

- (ii) as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
  - (iii) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
  - (iv) in respect of any legal obligation binding on the Company.
- (1) The Company –  
**is not subject to any provision contemplated in section 15(2)(b) or (c) of the Act, therefore Part B is not applicable.**
- (2) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with –
- (a) Item 1(4)(b) of the Schedule 2 of the Act; and
  - (b) the provisions, if any, set out in **Part C** of Schedule 1 of this Memorandum.

### **Part C**

#### **2.**

- 2.1 Upon its winding-up, deregistration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main object, to be determined by the members of the company at or before the time of its dissolution or, failing such determination, by the court provided that in any event such other association or institutions shall be charitable, educational or ecclesiastical organizations or bodies of a public character within the Republic of South Africa which are themselves exempt from tax.
- 2.2 The liability of members is limited as follows:
- Each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year thereafter, for payment of the debts and liabilities of the Company contracted before he ceases to be a member, and of the costs, charges and expenses of the winding up, and for adjustment of the rights of the contributories among themselves of an amount of R1,00 ( One Rand).

### **Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company-  
**may be altered or amended in the manner set out in section 16,17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) of the Act, and set out in Part D of Schedule 1 of this Memorandum.**
- (2) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15(3) to (5) of the Act –  
**is limited or restricted to the extent set out in Part D of Schedule 1 of this Memorandum.**
- (3) The Board must publish any rules made in terms of section 15(3) to (5) of the Act –

**in accordance with the requirements set out in Part D of Schedule 1 of this Memorandum.**

- (4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) of the Act –

**in accordance with the requirements set out in Part D of Schedule 1 of this Memorandum.**

## **Part D**

### **3.**

#### **Company Rules and Amendment of Memorandum of Incorporation:**

##### **3.1. RULES**

- 3.1 Subject to any restriction imposed or direction given at a general meeting of the Association, the Directors may from time to time make, amend and revoke rules in regard to the use and enjoyment of common facilities including in particular and without limiting the generality of the foregoing with regard to:

- 3.1.1 architectural guidelines and aesthetic standards;
- 3.1.2 contractor's procedures;
- 3.1.3 the conservation of the natural environment, including the right to control fauna and flora;
- 3.1.4 the purchase, selling, reselling and letting of property and the conditions of title;
- 3.1.5 conditions incorporated in a deed of sale and lease agreement;
- 3.1.6 the right to determine and control all security measures on the Estate;
- 3.1.7 the traffic on roadways, sidewalks, bridle paths and access to and egress from any of the erfs or plots on the Estate;
- 3.1.8 the maintenance, repair and replacement of any roadway which vests in or is controlled by the Association and of any service, connections and equipment under or over such roadway;
- 3.1.9 the right to prohibit and/or control the erection of walls, fences and hedges, whether upon or within the boundaries of any land or erf or plot of the Estate;
- 3.1.10 the use of erven, plots and open areas;
- 3.1.11 the right to prohibit, restrict or control the keeping of any animal on the Estate;
- 3.1.12 the conduct of any person within the Estate for the prevention of nuisance of any nature to any member to promote good neighbourliness;
- 3.1.13 the placing or fixing of ornamentation, embellishments or name boards upon the outside of the buildings including the power to remove any such objects;
- 3.1.14 the control and collection of refuse;

- 3.1.15 the determination of levies payable by the members monthly, the collection of levies in arrears and interest thereon;
  - 3.1.16 the imposition of fines and other penalties that may be payable by and enforced against members of the Association;
  - 3.1.17 Generally, such other matters as may be necessary for the harmonious and beneficial use and enjoyment of the members and residents.
- 3.2 All rules made by the Directors in accordance with the provisions of Article 3.1 of this Memorandum shall be reasonable and apply equally to all owners of erven and plots, residents, tenants and visitors.
- 3.3 For the enforcement of any of the rules made by the Directors in terms hereof, the Directors may:
- 3.3.1 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member or resident may be guilty, or recover the debt, and debit the cost of so doing to the member or resident concerned, which amount shall be deemed to be a debt owing by the member or resident concerned to the Association;
  - 3.3.2 take such other action, including proceedings in Court, as they may deem fit.
- 3.4 In the event of any breach of the rules by the members of any members resident's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without derogating from the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 3.4.1 In the event of any member or resident disputing the fact that he has committed a breach of any of the rules, a committee of 3 (three) Directors appointed by the Chairman for the purpose shall determine whether the matter should be adjudicated according to the procedures prescribed in 3.3 or 3.4.
  - 3.4.2 Notwithstanding the foregoing, the Directors may in the name of the Association enforce the provisions of any rules by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 3.5 It shall be the duty of the Estate Manager, or such other person or body as may be empowered by the Directors, to ensure compliance by the members with the rules, and to this end, to issue such notices or do such things as may be necessary or requisite.
- 3.6 Each member undertakes to the Association that he shall comply with all rules made in terms of Article 3.1 of this Memorandum as well as tenants and visitors.
- 3.7 Rules and Regulations pertaining to the owners shall be set out in the "Code of Conduct and Estate Rules" a copy of which shall be provided to each owner on request. The rules may vary from time to time as decided by the Directors of the Association. Rules, or amendments thereto made in terms of this Memorandum of Incorporation, may be published by email or on the Cornwall Hill Estate website. Hard copies or CD's are also available from the Estate Manager at a nominal charge.

### **3.8 DISPUTES AND DISPUTE RESOLUTION**

- 3.8.1 If the necessary quorum and/or majority for the passing of any resolution of the Directors cannot be obtained the matter forming the subject matter of the proposed resolution must be referred to the members for resolution.
- 3.8.2 If the necessary quorum and/or majority for the passing of any resolution of members cannot be obtained a dispute is deemed to exist which dispute must be determined by an expert or mediator in terms of this clause.
- 3.8.3 The expert or mediator shall be, if the matter in dispute is principally –
- 3.8.3.1 a legal matter, a practicing advocate or attorney of good standing; or
  - 3.8.3.2 an accounting matter, a practicing chartered accountant of good standing; or
  - 3.8.3.3 any other matter, an independent and suitably qualified person, agreed upon between the parties to the dispute.
- 3.8.4 Should the parties to the dispute fail to agree on an expert or mediator within 14 (fourteen) days after the dispute has arisen, the expert or mediator shall be appointed at the request of any party to the dispute by the president for the time being of the Law Society of the Northern Provinces (or such other body as may then govern the attorneys profession in the Gauteng Province) or an advocate being a member of the Society of Advocates according to the guidelines set out in Article 3.8 of this Memorandum.
- 3.8.5 The expert or mediator shall be entitled to determine how, when and by whom submissions are to be made to him.
- 3.8.6 The expert or mediator shall act as an expert or as a mediator and not as an arbitrator.
- 3.8.7 Any determination of the expert or mediator shall be deemed (insofar as necessary) to be a resolution of the members and to be agreed between the parties to the dispute.
- 3.8.8 The expert or mediator shall be entitled to make an award for payment of costs.
- 3.8.9 In the event of a dispute between the Association and a member or between members regarding the meaning or effect of any rule or the question whether any rule has been breached or whether any sanction (including a fine) imposed by the Association in respect of the breach of a rule is reasonable, the dispute will be submitted to a mediator or arbitrator.
- 3.8.10 The dispute resolution procedure mentioned in Article 3.8 and 3.16 of this Memorandum does not apply in the case of a member being in arrears with a member's financial obligations to the Association. The Association is under all circumstances entitled to sue in any competent Court of law for amounts due by a member to the Association.
- 3.8.11 All other disputes, complaints, grievances, quarrels and matters of discontent or any alleged breach of the provisions of this Memorandum or the Rules set out therein must be mediated in accordance with the provisions and procedures set out in the then valid Rules issued by the Directors and as amended from time to time.

### **4. MAINTENANCE AND FACILITIES**

The Directors shall have the power, without prejudice to any other rights of the Association, to:

- 4.1 provide recreational facilities for use by members;

- 4.2 provide and maintain security facilities and services on and about the Estate;
- 4.3 engage the services of a security company or other personnel to patrol the Estate and generally to provide security services to the Estate;
- 4.4 control access to the Estate;
- 4.5 provide and maintain an entrance gate and guardhouse to control access to the Estate;
- 4.6 control parking and introduce traffic calming measures;
- 4.7 perform such other acts and functions as may be reasonably necessary to give effect to the main object of the Association;
- 4.8 employing any person to give effect.

## **5. LEVIES AND CHARGES**

- 5.1 The Directors shall from time to time, impose levies upon the members for the purpose of meeting all the expenses which the Association has incurred, or which the Directors reasonably anticipate the Association will incur, in the furtherance of its objects.
- 5.2 The Directors are entitled in their sole discretion to determine levies provided that any member who is the owner of more than one erf or plot shall be liable to make payment in respect of each erf or plot owned by him.
- 5.3 If in the sole discretion of the Directors:
  - 5.3.1 any expense which is directly attributable to or increased by the specific use to which an erf or plot is put, the member who is the owner of the relevant erf or plot will be liable for such expense or additional expense as the case may be; and
  - 5.3.2 any facility or service is utilized by any member to such an extent as to reasonably justify a greater contribution to the relevant expense than a contribution calculated strictly in accordance with Article 5.2 of this Memorandum, the Directors shall be entitled to make such special levy upon the relevant member as may be reasonable in the circumstances.
- 5.4 The Directors will, prior to the end of each financial year, prepare an itemized estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies) of the Association during the ensuing financial year, estimate the amount required to be levied upon the members during such ensuing financial year and make a levy upon the members in such estimated amount.
  - 5.4.1 The Directors will, as soon as possible after the imposition of the levy, determine the amount payable by each member and will forthwith advise each member in writing of the amount payable.
  - 5.4.2 Such amount shall be payable in equal monthly (or such other intervals as the Directors may from time to time determine) installments payable in advance on the first day of each month.
- 5.5 The Directors may from time to time make special levies upon the members or call upon them to make special contributions in respect of all such expenses which are not included in any estimates made in terms of Article 5.4 of this Memorandum. Such levies and contributions may be payable in one or by such installments and at such time or times as the Directors shall deem fit.

- 5.6 Interest will be payable on arrear levies at such rate as may from time to time be determined by the Directors.
- 5.7 Any amount due by a member by way of levy or interest thereon will be a debt due by him to the Association.
- 5.8 The obligation of a member to pay levies will cease upon his ceasing to be a member, without prejudice to the Association's rights to recover arrear levies and interest thereon.
- 5.9 No levies or interest paid by a member will under any circumstances be repayable by the Association upon such member ceasing to be a member.
- 5.10 A member's successor in title to an erf or plot shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf or plot, to pay the levy and interest thereon, attributable to that erf or plot.
- 5.11 A member will be liable for and pay all legal costs, including costs as between attorney and client and collection commission, expenses, tracing fees and charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts and owing by such member to the Association.
- 5.12 No member will be entitled to any of the privileges of membership unless and until he has paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that member to the Association.
- 5.13 The Directors will not be entitled to undertake on behalf of the Association any works of a capital nature to a value of more than R500 000, without the sanction of a resolution of the Association in a general meeting.
- 5.14 The Directors will for the period from the date of commencement of business of the Association to the last day of the turnover year of the Association in which such commencement date occur, raise levies in accordance with the principles set out above, *mutatis mutandis*.
- 5.15 The Association will be entitled to charge a reasonable fee for the use of recreational amenities and other facilities.

## **6. ESTATE MANAGER**

- 6.1 The Directors may from time to time, and shall if required by the members of the Association at a general meeting, appoint in terms of a written contract an Estate Manager to control, manage and administer the Association and to exercise such powers and duties as may be entrusted to the Estate Manager, including the power to collect contributions levies.
- 6.2 The Estate Manager must keep full records of his administration and shall report to the Directors on all matters which in his opinion detrimentally affect the value of the property.
- 6.3 The Directors must give reasonable prior notice to the Estate Manager of all meetings of the Directors and the Estate Manager shall be entitled to be present thereat.
- 6.4 The Directors must from time to time furnish to the Estate Manager copies of the minutes of all meetings of the Directors and of the Association.
- 6.5 Should an Estate Manager not be appointed in terms of this Article 6 then all references in this Memorandum of Incorporation to the Estate Manager must be deemed to be a reference to the Directors.

## 7. RESTRICTION AGAINST ALIENATION OF PROPERTY

- 7.1 No erf or plot may be sold, transferred, leased, donated or otherwise alienated or disposed of to any person without the prior written approval of the Association which approval shall not be unreasonably withheld, and unless:
- 7.1.1 the person to whom the erf or plot is to be alienated has agreed in writing to be and remain a member of the Association for so long as he is and remains the registered owner of the erf or plot; and
- 7.1.2 the Association has certified in writing that:
- 7.1.2.1 provision of Article 7.1 has been complied with; and
- 7.1.2.2 levies for a period of not less than 3 (three) months after the date of the certificate in question have been paid or secured to the satisfaction of the Association; and
- 7.1.3 transfer is effected before the expiry of the period referred to in Article 7.1.2.2 of this Memorandum.
- 7.2 No erf or plot may be marketed or offered for sale or to let through an estate agent or other agent other than an estate agent approved in writing by the Association.
- 7.3 Notwithstanding the provisions of Article 7.1 and Article 7.2 of this Memorandum, registration of transfer of an erf or plot to any person shall *ipso facto* constitute that person as a member of the Association.
- 7.4 The Association may claim from any member any arrear levies or interest or the amount due by him to the Association at the time of his ceasing to be a member notwithstanding that the erf or plot may have been transferred to a third party.
- 7.5 In addition to all other conditions of title, a seller or lessor must ensure that all the conditions determined in Rule 20 and 21 of the "Code of Conduct and Estate Rules" must be inserted in a Deed of Sale or a Lease Agreement, which conditions must thereafter be incorporated in a Deed of Transfer or concluded Lease Agreement.

## 8. BUILDING REQUIREMENTS

- 8.1 In order to maintain high standards and to ensure an attractive and harmonious appearance within the Estate, the external appearance (including the colour) of any building or structure that may be erected on any erf or plot, or any existing or future building or structure, may not be changed unless the architectural design, plans and specifications (including materials) of such building or structure have been approved in writing by the Association or an architect nominated by it.
- 8.2 The Association is entitled to charge a reasonable fee for the inspection of any plans and/or specifications submitted to it for approval, whether or not approval is granted.
- 8.3 For purposes of Articles 8.1 and 8.2 of this Memorandum the Directors are entitled, but not obliged, to establish an aesthetics committee which will comprise such persons as may be appointed by the Directors in their sole discretion.
- 8.4 All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with Article 3.1.1 of this Memorandum.

- 8.5 Such erf and all improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the Association.
- 8.6 Until such time as the Association has certified that the conditions stipulated in Article 8 of this Memorandum have been complied with, the transferee or its successors in title are not entitled to sell, donate, exchange or otherwise alienate or transfer the property without the prior written consent of the Association.
- 8.7 In the event that a successor in title bought an unimproved erf or plot, such successor in title is obligated to commence with the erection of buildings on the property to the reasonable satisfaction of the Association within 4 (four) months of the date of transfer of the erf or plot, or such extended period as the Association in its sole discretion may allow in writing. The building must be completed within 12 (twelve) months after the date of transfer of the property. Failing this the Association is entitled to claim that the erf or plot be transferred to the Association at the cost of the original transferee against payment to the original transferee of the original purchase price without interest to be paid by the Association to such successor in title.
- 8.8 The condition stipulated in Article 8.6 of this Memorandum applies *mutatis mutandis* to any successor in title thereafter.
- 8.9 In addition to the abovementioned right of the Association to have the erf or plot transferred to it, the Association may impose a reasonable fine on the member. A monthly fine in addition to the normal levy and equal to double the monthly levy will be deemed to be reasonable and not in excess of the damage suffered by the Association due to the member's breach.

## 9. AMENITIES

- 9.1 The Directors shall have control of all recreational facilities, security facilities, traffic calming measures, gates and guardhouses, parking and other common facilities and amenities (if any).

### Optional provisions of the Act apply

The Company –

**elects, in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act as set out below:**

### ACCOUNTING RECORDS

- (a) The Directors must keep or cause accounting records to be kept as are prescribed by the Act.
- (b) The accounting records must be kept at the office or (subject to the provisions of the Act) at such other place as the Directors think fit, and must at all times be open to inspection by any of the Directors.
- (b)(i) A copy of all financial statements (including every document required by law to be annexed thereto) which are to be laid before the Association in annual general meeting, together with copies of the Directors' and auditors' reports, must be delivered or sent by post to the registered

- address or by electronic mail (e-mail) of each member and to every person entitled to a notice of the general meeting.
- (b)(ii) The documents referred to in Article (b)(i) of this Memorandum must be sent at least 21 (twenty one) days before such annual general meeting.
  - (b)(iii) The documents referred to in Article (b)(i) of this Memorandum need not be sent to any person who is not entitled to receive notice of general meetings of the Association or whose address is not known to the Association.
  - (b)(iv) The documents referred to in Article (b)(i) of this Memorandum must lie open at the office of the Association for not less than 21 (twenty one) days for inspection by any member and to every person entitled to a notice prior to the annual general meeting.
- (c) Auditors must be appointed and their duties are regulated in accordance with the provisions of the Act.

### **Members of the Company**

- (1) As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has members, who-  
**are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.**
- (2) The terms and conditions of membership in the Company are as set out in **Part E** of Schedule 1 to this Memorandum.

## **Part E**

### **10. MEMBERSHIP**

- 10.1 Membership of the Association is limited to owners of an erf or plot on the Estate. No person other than these persons is entitled to membership of the Association.
- 10.2 Every person who receives transfer of an erf or plot within the Estate will upon registration of transfer automatically become a member and shall be bound by the rules and regulations promulgated by the Association.
- 10.3 Where two or more persons are joint owners of an erf or plot, all owners shall be deemed to be one member of the Association, provided however that all co-owners of any erf or plot shall be jointly and severally liable for the due performance of any obligations to the Association.
- 10.4 If the party taking transfer is not a natural person, it will be obliged prior to transfer, to nominate a natural person to represent it and to notify the Association of the full names, street address and postal address of the said representative, failing which the Company may choose the identity of the representative from amongst the Directors, members, trustees, partners or other similar office bearers of the owner.

- 10.5 When a member (or in the case of a nominee, the nominating member) ceases to be the registered owner of an erf or plot, he shall *ipso facto* cease to be a member of the Association.
- 10.6 The rights, obligations and duties of a member shall not be transferable, provided that nothing shall prevent a member from ceding his rights in terms of this Memorandum of Incorporation as security to the mortgagee of that member's erf.
- 10.7 No member in his personal capacity shall have any right, title or interest in the property of the company, its funds or assets.
- 10.8 A member must obtain a clearance certificate for any monies due to the company before the transfer of any property can take place.
- 10.9 A member is not entitled to sell or transfer an erf or plot unless it is a condition of the deed of sale that the purchaser automatically becomes a member of the Association.

#### **11. RESTRICTION AGAINST RESIGNATION**

A member may not resign as a member of the Association for so long as he is the owner of an erf or plot on the Estate.

#### **12. REGISTER OF MEMBERS**

The Association must keep a register of members at the place and in the manner specified in the Act.

## ARTICLE 2 – RIGHTS OF MEMBERS

### Members' authority to act

If, at any time, every member of the Company is also a Director of the Company, as contemplated in section 57(4) of the Act, the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section –

**is limited or restricted to the extent set out in Part A of Schedule 2 of this Memorandum.**

### Part A

- 13.** Members and Directors of the Company are obliged to act in accordance with the provisions of the relevant clauses contained herein below relating to their respective powers and duties, and cannot act without meeting the formal requirements contained in the aforementioned clauses.

### Members' right to information

In addition to the rights to access information set out in section 26(1) of the Act, a member of the Company has the further rights to information, if any, set out in **Part B** of Schedule 2 of this Memorandum. **Part B is not applicable.**

### Representation by proxy

The right of a member of the Company to appoint persons to act as proxies, as set out in section 58(3)(a) of the Act –

**is limited, restricted or varied to the extent set out in Part C of Schedule 2 of this Memorandum.**

### Part C

#### **14. PROXIES**

- 14.1** The appointment of a proxy must be in writing under the hand of the person making such appointment or his agent, duly authorized in writing.
- 14.2** If the appointee be a corporate body, the power of attorney must be signed in the manner which and by the person or persons who binds that corporate body.
- 14.3** The agent under a power of attorney or a member is entitled, if so authorized by the power of attorney, to vote on behalf of and represent such member at any meeting of the Association.
- 14.4** A proxy need not be a member of the Association.
- 14.5** A member may appoint more than 1 (one) proxy to act on his behalf on the same occasion, but only one proxy is entitled to vote.

- 14.6 The Directors may, if they deem it fit, send out with the notice of any meeting, forms of proxy for use at the meeting.
- 14.7 Every instrument of proxy, whether for a specified meeting or otherwise, must be in the form or to the effect of the example below, or in such other form as the Directors may approve, in either case under the heading of or referring to the Association's name.
- 14.7.1 Any power of attorney and any instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power of attorney must be deposited at the office or at such other place within South Africa as is specified for that purpose in the notice convening the meeting, not less than 48 (forty eight) hours (excluding Saturdays, Sundays and public holidays) before the time appointed for holding –
- 14.7.1.1 The meeting or adjourned meeting at which the person named in such instrument proposes to vote;
- 14.7.1.2 A poll, where a poll is to be held after a meeting or adjourned meeting.
- 14.7.2 If the power of attorney or other instrument of proxy is not deposited timeously, it shall not be valid.
- 14.7.3 Unless specifically otherwise stated in the proxy, no instrument of proxy will be valid after the expiration of 6 (six) months from the date thereof except at a poll demanded at a meeting originally held, or at an adjourned meeting of a meeting held within such period.
- 14.8 A vote by virtue of a power of attorney or an instrument of proxy is valid notwithstanding the previous legal incapacity of the principal or revocation of the power of attorney or instrument of proxy, unless an intimation in writing of such legal incapacity is received by the Association at the office not less than 24 (twenty four) hours before the commencement of the meeting or the taking of the poll at which the instrument of proxy is used.

**PROXY FORM**

I/We,.....of.....  
 .....being a member(s) of  
 ..... (Non Profit Company), hereby  
 appoint ..... of .....  
 or failing him ..... of .....  
 or failing him the chairman of the meeting as my / our proxy to vote for me / us  
 and on my / our behalf at the annual general or general meeting (as the case  
 may be) of the Association to be held on the ..... day of  
 ..... and at any adjournment thereof as follows:

<b>Resolution</b>	<b>In favour</b>	<b>Against</b>	<b>Abstain</b>
Resolution No ...			

(Indicate instruction to proxy by way of a cross in the space provided above).

Unless otherwise instructed, my / our proxy may vote as he thinks fit.

Signed this ..... day of .....

\_\_\_\_\_  
 Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a member of the Association)

**Record date for exercise of member rights**

The Company's Board of Directors shall determine a record date for the filing of documents, serving of notices, convening of meetings:

**as determined in accordance with section 59(3) of the Act.**

## ARTICLE 3 – MEMBERS MEETINGS

### Requirement to hold meetings

The Company –

**is required to hold members meetings, in addition to those specifically required by the Act, as set out in Part A of Schedule 3 of this Memorandum.**

### Notice of members' meetings

The minimum number of days for the Company to deliver a notice of members' meeting to the members, as required by section 62 of the Act –

**is as set out in article 16 of Part A in Schedule 3 of this Memorandum.**

### Part A

#### 15. GENERAL MEETINGS

- 15.1 The Association must from time to time hold annual general meetings as provided in the Act.
- 15.2 Save as may be provided in the Act, members may not convene a general meeting of the Association, except where all Directors have become incapacitated or have ceased to be Directors, in which event 2 (two) or more members may convene a general meeting on due notice to all members entitled thereto, and may recover the cost of so doing from the Company.
- 15.3 The Directors:
- 15.3.1 may, whenever they deem fit, convene a general meeting of the Association;
  - 15.3.2 shall convene a general meeting if requisitioned in terms of the Act;
- 15.4 Subject to the provisions of the Act:
- 15.4.1 all general meetings whether annual or otherwise;
  - 15.4.2 all adjourned meetings,
- shall be held at such time and place as the Directors shall determine.

#### 16. NOTICE OF GENERAL MEETINGS

- 16.1 Not less than 21 (twenty one) clear days notice shall be given of all annual general meetings or meetings called for the passing of a special resolution and not less than 15 (fifteen) clear days notice must be given of any other general meeting –
- 16.1.1 in the manner hereinafter determined;
  - 16.1.2 to such persons as are, in accordance with the provisions of the Memorandum of Incorporation, entitled to receive notice of all meetings from the company.

- 16.2 The notice must specify the place, day and time of the meeting and the nature of the business to be transacted thereat.
- 16.3 Whenever notice of a meeting is given pursuant to this Article, the Association must forward a copy thereof to the auditors of the Association and to the Estate Manager.
- 16.4 The accidental omission to give notice of a meeting or, where applicable, omission to send an instrument of proxy therewith, or the failure to receive a notice or proxy by any person entitled thereto, or the late receipt thereof, shall not invalidate the proceedings at that meeting.

## 17. SERVICES OF NOTICES

- 17.1 Any notice or other document may be served by the Association upon any member by –
- 17.1.1 delivering it to him personally; or
  - 17.1.2 sending it by post in a prepaid letter, envelope or wrapper, addressed to such member at his registered address; or
  - 17.1.3 sending it by means of a data message by electronic mail to a member's e-mail address in terms of the Electronic Communications and Transactions Act No. 25 of 2002.
- 17.2 Any member described in the register of members by an address not within South Africa, must furnish the Association with a chosen *domicilium citandi et executandi* an address within South Africa and an e-mail address at which notices can be served upon him. The Association is entitled to have notices served upon him at such address.
- 17.3 Save as determined in the Memorandum of Incorporation or in the Act, no member other than a registered member whose address appears in the register of members as in South Africa, are entitled to receive any notice from the Association.
- 17.4 Save as otherwise expressly provided, where a given number of days notice, or notice extending over any period is required to be given, the day of service shall not be counted in the number of days or other period.
- 17.5 For all purposes arising out of these Articles including the giving of notices and the serving of legal process, each member chooses as his *domicilium citandi et executandi* the property registered in his name.
- 17.6 Any notice or other document which may be required to be given in terms of these Articles may be given by the dispatch of such notice or document in terms of Article 17.1 in this Memorandum, in which event, such notice or document shall be deemed to have been received 5 (five) business days after the dispatch thereof by the Association.
- 17.7 **Data Messages sent by Electronic Communication**
- 17.7.1 The Association may generate, communicate, produce, process send, receive, record, store or display any information, document or signature by electronic form in terms of the Electronic Communications and Transaction Act No. 25 of 2002;
  - 17.7.2 Any notice or other document sent by means of a data message and addressed to a member or resident by electronic mail to such person's electronic address is deemed to be received by such addressee at the time when the complete data message was sent and entered on an

information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee.

## **18. PROCEEDINGS AT GENERAL MEETINGS**

- 18.1 The annual general meeting must deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors and the appointment and remuneration of an auditor.
- 18.2 The quorum for a general meeting is 25% of the members of the Association present in person and entitled to vote.
- 18.3 No business may be transacted at any general meeting unless a quorum is present.
- 18.4 Any business to be discussed which does not appear on the agenda of a meeting, must be brought to the attention of the Board in writing at least seven days prior to the meeting, to be discussed at their discretion.
- 18.5 If –
- 18.5.1 within 10 (ten) minutes from the time appointed for the meeting; or
- 18.5.2 at any time during the course of the meeting, a quorum is not present, the meeting, if convened upon the requisition of the members, must be dissolved.
- 18.6 If a meeting is dissolved as in Article 18.5.1 above, it will stand adjourned for a period of 5 minutes or such time as the Chairman may determine, and shall be reconvened to the same place as the original meeting, or, if not possible, at such other place as the Chairman of the meeting may appoint.
- 18.7 If at such adjourned meeting a quorum is not present within 10 (ten) minutes from the time appointed for holding the meeting then at least any three members who are present in person or by proxy and are entitled to vote, is a quorum and may transact the business for which the meeting was called.
- 18.8 The Chairman, or, in his absence, the Deputy Chairman (if any), must preside as chairman at every general meeting of the Association.
- 18.8.1 If –
- 18.8.1.1 there be no such Chairman or Deputy Chairman; or
- 18.8.1.2 at any meeting neither the Chairman nor the Deputy Chairman is present within 10 (ten) minutes after the time appointed for the meeting, or if neither of them be willing to act as Chairman, the Directors present must choose one of their number to act as such, but if 1 (one) Director only be present, he shall preside as Chairman if he is willing so to act.
- 18.9 In the absence of a chairman in terms of 18.8.1.2 of this Memorandum, the members present must elect one of their number to act as Chairman.
- 18.10 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting, except such business as may lawfully be transacted at the meeting which was adjourned.
- 18.11 At a general meeting a resolution put to the vote of the meeting must be decided on the basis set out in Article 19 of this Memorandum.

- 18.12 A declaration by the chairman of the meeting that a resolution has not been passed by a particular majority or rejected (and an entry to that effect in the minute book) is conclusive evidence of that fact.
- 18.13 In the case of an equality of votes, the chairman of the meeting does not have a second or casting vote.
- 18.14 The chairman of a meeting may –
- 18.14.1 appoint any firm or persons to act as scrutineers for the purpose of checking the powers of attorney received and for counting the votes at the meeting;
  - 18.14.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.
- 18.15 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error will not vitiate the resolution unless
- 18.15.1 it be brought to the attention of the chairman at the meeting; and
  - 18.15.2 in the opinion of the chairman of the meeting, it be of sufficient magnitude to vitiate the resolution.
- 18.16 Any objection to the admissibility of any vote must be raised:
- 18.16.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or
  - 18.16.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed is valid for all purposes. Any objection made timeously must be referred to the chairman of the meeting, whose decision will be final and conclusive.

## **19. VOTES OF MEMBERS**

- 19.1 At every general meeting every owner present in person or by proxy or, if the member is a body corporate, represented, has 1 (one) vote in respect of each erf or plot of which it is the registered owner.
- 19.2 Any body corporate which is a member may, by resolution of its Directors or other governing body, appoint a person to act as its representative at any general meeting of the Association.
- 19.3 Such representative is entitled to exercise the same rights on behalf of the corporate body which he represents as that corporate body could exercise if it were an individual who was a member of the Association.
- 19.4 The Directors may, but are not be obliged to require proof to their satisfaction of the appointment or authority of such representative.

### **Members' right to requisition a meeting**

The right of members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised –

**by at least 10% of the voting members, as provided for in that section.**

### **Location of members' meetings**

The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act –

**is limited or restricted to the extent set out in Part B of Schedule 3 of this Memorandum.**

### **Part B**

20. Such annual general meeting shall be held at such time and place as the Directors shall decide from time to time subject to the provisions of Article 15 above.

### **Electronic participation in members' meetings**

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act -

**is limited or restricted to the extent set out in Part C of Schedule 3 of this Memorandum.**

### **Part C**

21. Electronic media will be a valid form of notice as per 17.7 above.

### **Quorum for members' meetings**

- (1) The quorum requirements for a members' meeting to begin, or for a matter to be considered are –  
**as set out in section 64(1) subject to a minimum of 25% as required by that section.**
- (2) The time periods allowed in section 64(4) and (5) of the Act –  
**apply to the Company, subject to the variations set out in Part D of Schedule 3 of this Memorandum.**
- (3) The authority of a meeting to continue to consider a matter, as set out in section 64(9) of the Act -

is limited or restricted to the extent set out in Part D of Schedule 3 of this Memorandum.

## Part D

### 22. QUORUM FOR MEMBERS' MEETINGS AND TIME PERIODS

See provision 18 above.

#### **Adjournment of members' meetings**

The maximum period allowable for an adjournment of a members' meeting is –

**as set out in section 64(13) of the Act, subject to the variations set out in Part E of Schedule 3 of this Memorandum.**

## Part E

### 23. ADJOURNMENT

See provision 18 above.

#### **Members' resolutions**

- (1) For an ordinary resolution to be adopted at a members' meeting, including a resolution for the removal of a Director, it must be supported by at least –  
**51% of the members who voted on the resolution, as provided in section 65(7).**
- (2) For a special resolution to be adopted at a members' meeting, it must be supported by at least –  
**75% of the members who voted on the resolution, as provided in section 65(7).**
- (3) A special resolution adopted at a members' meeting is –  
**required for the matters set out in section 65(11) of the Act.**

## ARTICLE 4 – DIRECTORS AND OFFICERS

### 24. Composition of the Board of Directors

- 24.1 The Association shall (unless the members otherwise determine at a general meeting) have no less than 4 (four) directors and not more than 8 (eight) directors each of whom each
- (a) is to be appointed in the manner set out in **Part A** of Schedule 4; and
  - (b) serves for a term extending from one AGM to the next
- 24.2 In addition to the appointed Directors –
- there are no appointed or *ex officio* Directors of the Company, as contemplated in section 66(4) of the Act.**
- 24.3 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a Director of the Company, a person –
- must be a Member of the Association but need not satisfy any further eligibility requirements or qualifications.**

### Part A

### 25. COMPOSITION OF THE BOARD OF DIRECTORS

- 25.1 The Association shall (unless the members otherwise determine at a general meeting) have not less than 4 (four) Directors and not more than 8 (eight) Directors.

### 26. REMOVAL AND ROTATION OF DIRECTORS

- 26.1 Without prejudice to any contrary provisions in the articles, the office of a Director must be vacated in any of the following events –
- 26.1.1 if his estate is sequestrated or he assigns his estate or enters into a general compromise with his creditors;
  - 26.1.2 if he is found to be or becomes of unsound mind;
  - 26.1.3 if a majority of his co-Directors sign and deposit at the office a written notice wherein he is requested to vacate his office (which shall become operative on deposit at the office);
  - 26.1.4 if he is, pursuant to the provisions of the Act or any order made there under, prohibited from acting as a Director;
  - 26.1.5 if he resigns his office by notice in writing to the Association;
  - 26.1.6 if –
    - 26.1.6.1 he is absent from meetings of the Directors for 6 (six) consecutive months without leave of the Directors otherwise than on the business of the Association; and
    - 26.1.6.2 the Directors resolve that his office be, by reason of such absence, vacated, provided that the Directors have the

power to grant to any Director leave of absence for a definite or indefinite period.

- 26.2 A Director may hold any other office or place of profit under the Association (except that of auditor) or any subsidiary of the Association in conjunction with his office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) as the Directors may determine.
- 26.3 A Director of the Association may be or become a Director or other officer of, or otherwise interested in, any company promoted by the Association or in which the Association may be interested as shareholder or otherwise and (except in so far as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a Director or officer of or from his interest in such other company.
- 26.4 Any Director may act by himself or through his firm in a professional capacity for the Association (otherwise than as auditor) and he or his firm are entitled to remuneration for professional services as if he were not a Director.
- 26.5 A Director who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Association, must declare the nature of his interest in accordance with the Act.
- 26.6.1 No Director or intended Director is disqualified by his office from contracting with the Association with regard to –
- 26.6.1.1 his tenure of any other office or place of profit under the Association or in any company promoted by the Association or in which the Association is interested;
  - 26.6.1.2 professional services rendered or to be rendered by such Director;
  - 26.6.1.3 any sale or other transaction.
- 26.6.2 No such contract or arrangement entered into by or on behalf of the Association in which any Director is in any way interested is voidable.
- 26.6.3 No Director so contracting or being so interested shall be liable to account to the Association for any profit realised by any such appointment, contract or arrangement by reason of such Director holding office or of the fiduciary relationship thereby established.
- 26.7 A Director may not vote nor be counted in the quorum and if he does so his vote shall not be counted on any resolution for his own appointment to any other office or place of profit under the Association or in respect of any contract or arrangement in which he is interested, but this prohibition shall not apply to –
- 26.7.1 any arrangement for giving to any Director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the Association; or
  - 26.7.2 any arrangement for the giving by the Association of any security to a third party in respect of a debt or obligation of the Association which the Director has himself guaranteed or secured; or
  - 26.7.3 any contract or arrangement with a corporation in which he is interested by reason only of being a Director, officer creditor or member of such corporation, and these prohibitions may at any time be suspended or relaxed either generally, or in respect of any particular contract or arrangement, by the Association in general meeting.

- 26.8 Ratification of a Contract by the Association
- 26.8.1 A contract which violates the terms of Article 26.7 of this Memorandum can be ratified by the Association at a general meeting.
- 26.8.2 The terms of Article 26.7 of this Memorandum do not prevent a Director from voting as a member at a general meeting at which a resolution in which he has a personal interest is tabled.
- 26.9
- 26.9.1 The Directors may exercise the voting powers conferred by the shares held or owned by the Association in any other company in such manner in all respects as they think fit, including the exercise thereof in favour of any resolution appointing themselves or any of them to be Directors or officers of such other company or for determining any payment of or remuneration to the Directors or officers of such other company.
- 26.9.2 A Director may vote in favour of a resolution referred to in Article 26.7 of this Memorandum for the exercise of the voting rights notwithstanding that he may be, or is about to become, a Director or other officer of such other company and for that or any other reason may be interested in the exercise of such voting rights in the manner aforesaid.

## **27. RETIREMENT OF DIRECTORS IN ROTATION**

- 27.1 At every annual general meeting, all of the Directors for the time being must retire from office.
- 27.2 A Director retiring at a meeting retains his office until the election of Directors at that meeting has been completed.
- 27.3 Retiring Directors are eligible for re-election.
- 27.4 No person, other than a Director retiring at the meeting shall, unless recommended by the Directors, be eligible for election to the office of a Director at any general meeting, unless –
- 27.4.1 not more than 14 (fourteen), but at least 7 (seven) clear days before the day appointed for the meeting, there shall have been delivered at the office a notice in writing by a member (who may also be the proposed Director) duly qualified to be present and vote at the meeting for which such notice is given;
- 27.4.2 such notice sets out the member's intention to propose a specific person for election as Director; and
- 27.4.3 notice in writing by the proposed person of his willingness to be elected is attached thereto (except where the proposer is the same persons as the proposed).
- 27.5 Subject to Article 27.4 of this Memorandum, the Association may at the meeting at which a Director retires, fill the vacated office by electing a person thereto and in default the retiring Directors, if willing to continue to act, are deemed to have been re-elected, unless –
- 27.5.1 it is expressly resolved at such meeting not to fill such vacated office; or

- 27.5.2 a resolution for the re-election of such Director shall have been put to the meeting and rejected.
- 27.6 The Association at a general meeting or the Directors may appoint any member as Director to fill a casual vacancy.

## **Part B**

Not applicable

### **Authority of the Board of Directors**

The authority of the Company's Board of Directors to manage and direct business and affairs of the Company, as set out in section 66(1) of the Act –

**is limited or restricted to the extent set out in Part C of Schedule 4 of this Memorandum.**

## **Part C**

### **28. POWERS OF DIRECTORS**

- 28.1 The management and control of the business of the Association vests in the Directors who, in addition to the powers and authorities expressly conferred upon them by the Memorandum of Incorporation, may exercise all powers and authorities and perform all acts which may be exercised or done by the Association, and are not hereby or by the Act expressly reserved to the Association in general meeting.
- 28.2 The Directors may delegate the powers and authorities referred to in Article 28.1 of this Memorandum to any one or more persons and to do all such acts as may be exercised or done by the Association which are not in terms of the Act or by this Memorandum of Incorporation expressly directed or required to be done or exercised by a general meeting.
- 28.3 Such management and control may not be inconsistent with the Memorandum of Incorporation nor with the provisions of the Act.
- 28.4 The general powers given by this Memorandum of Incorporation are not limited or restricted by any special authority or power given to the Directors by any other Article.
- 28.5 Directors have an expenditure limit of R500 000 on a capital expense project. Directors may not exceed this amount without a special resolution to this effect being passed at a general meeting, allowing them to do so, whether or not the Association has the available funds.

### **Board of Directors' meeting**

- (1) the authority of a Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 of the Act –

**is limited or restricted to the extent set out in Part D of Schedule 4 of this Memorandum.**

- (2) The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1) of the Act, may be exercised by –  
**at least two of the Directors, despite the provisions of that section.**
- (3) The authority of the Company's Board of Directors to 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, –  
**is limited or restricted to the extent set out in Part D of Schedule 4 of this Memorandum.**
- (4) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Act –  
**is limited or restricted to the extent set out in Part D of Schedule 4 of this Memorandum.**
- (5) The authority of the Company's Board of Directors to 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 –  
**is limited or restricted to the extent set out in Part D of Schedule 4 of this Memorandum.**
- (6) The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are –  
**as set out in section 73(5) of the Act, subject to the variations set out in Part D of Schedule 4 of this Memorandum.**

#### **Officers and Committees**

- (1) The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- (2) The authority of the Company's Board of Directors to 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 72(2)(a) of the Act –  
**is limited, restricted or extended to the extent set out in Part D of Schedule 4 of this Memorandum.**
- (3) The authority of a committee appointed by the Company's Board, as set out in section 72(2)(b) and (c) of the Act –  
**is limited, restricted or extended to the extent set out in Part D of Schedule 4 of this Memorandum.**

**Part D****29. PROCEEDINGS OF DIRECTORS**

- 29.1 The Directors may meet for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit.
- 29.2 Unless otherwise determined by the Directors, more than 50% of the Directors are a quorum.
- 29.3 The Chairman may at any time, and the secretary, upon the request of a Director shall at any time, convene a meeting of the Directors.
- 29.4 The Directors must determine the number of days notice to be given for Directors meetings, and the form of that notice.
- 29.5 A Director who is not in South Africa is not entitled to notice of any meeting.
- 29.6 The Directors may –
- 29.6.1 elect a Chairman and a Deputy Chairman (to act in the absence of the Chairman) of their meetings;
  - 29.6.2 determine the period for which they are to hold office, which shall not exceed 1 (one) year.
- 29.7 If no Chairman or Deputy Chairman is elected, or if at any meeting the Chairman or Deputy Chairman be not present within 5 (five) minutes after the time appointed for holding the meeting, the Directors present must choose one of their number to be chairman at such meeting.
- 29.8 All resolutions at a meeting of the Directors must be decided and passed by a majority of votes of the Directors present at that meeting at which it is proposed.
- 29.9 In the case of an equality of votes, the Chairman does not have a second or casting vote.
- 29.10 A meeting of the Directors at which a quorum is present are entitled to exercise all or any of the powers, authorities and discretions conferred by or in terms of the Articles which are vested in or are exercisable by the Directors generally.
- 29.11 A resolution in writing signed by –
- 29.11.1 all the Directors; or
  - 29.11.2 all the Directors who may at the time be present in Tshwane where the office is situated and who form a quorum, is as valid and effectual as a resolution passed at a meeting of the Directors duly called and constituted.
- 29.12 Such resolutions –
- 29.12.1 may consist of one or more documents so signed;
  - 29.12.2 must have regard to the provisions of Section 236 of the Act;
  - 29.12.3 must be delivered to the secretary without delay, and must be recorded by him in the Association's minute book.
- 29.13 Such resolution is deemed to have been passed on the day it was signed by the last Director or alternate Director who is entitled to sign it.

- 29.14 A resolution referred to in Article 29.11 of this Memorandum, which is not signed by all the Directors is inoperative if it purports to authorize any act which a meeting of the Directors has decided not to authorize, until confirmed by a meeting of Directors.
- 29.15 The meetings and proceedings of any committee consisting of 2 (two) or more Directors are governed by the provisions hereof in regard to meetings and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any regulations made by the Directors.
- 29.16 All acts performed by the Directors or by a committee of Directors shall, notwithstanding that afterwards it be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such persons had been duly appointed and was qualified and had continued to be a Director or member of such committee.

### **29.17 BORROWING POWERS OF DIRECTORS**

- 29.17.1 The Directors may from time to time (by unanimous resolution of all Directors then holding office) borrow for the purpose of the Association a total amount not in excess of R500 000 without the permission of the Members. Any request to borrow more than R500 000 on behalf of the Association must be approved at a General Meeting of the Members.
- 29.17.2 The Directors may by power of attorney appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or agent of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum) and for such period and subject to such terms and conditions as they may think fit.
- 29.17.3 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such agent as the Directors may think fit.

### **30. DUTIES OF DIRECTORS TO KEEP MINUTES**

- 30.1 The Directors must cause minutes to be made of –
- 30.1.1 all appointments of offices made by the Directors;
- 30.1.2 the names of the Directors present at each meeting of the Directors;
- 30.1.3 all resolutions and proceedings at each meeting of the Association;
- 30.1.4 all resolutions and proceedings at each meeting of the Directors.
- 30.2 Minutes of any resolutions and proceedings mentioned in Article 30.1 of this Memorandum appearing in one of the minute books of the Association, are be proof of the facts therein stated if signed by –
- 30.2.1 any person purporting to be the chairman of the meeting to which it relates; or

- 30.2.2 any person present at the meeting and appointed by the Directors to sign in the chairman's place; or
  - 30.2.3 the chairman of a subsequent meeting of the Directors.
  - 30.3 Any extract from or copy of those minutes purporting to be signed by –
    - 30.3.1 the chairman of that meeting; or
    - 30.3.2 any Director; or
    - 30.3.3 the secretary,
- is *prima facie* proof of the facts therein stated.

### **31. SECRETARY**

If the Directors so decide, they may appoint a secretary –

- 31.1 for such term;
- 31.2 at such remuneration; and
- 31.3 upon such conditions

as they may think fit, and the Directors may dismiss such secretary.

### **32. AUTHORISATION OF DOCUMENTS**

- 32.1 Any two Directors or the Estate Manager and a Director have the power to authenticate –
  - 32.1.1 the Memorandum of Incorporation;
  - 32.1.2 any resolutions passed by the Association or the Directors;
  - 32.1.3 any books, records, documents and accounts relating to the business of the Association,

and to certify copies thereof or extracts there from as true copies or extracts.
- 32.2 Where any books, records, documents or accounts are elsewhere than at the office, the Estate Manager or other officer of the Association or other person having custody thereof shall be deemed to be a person duly appointed by the Directors for the abovementioned purpose.
- 32.3 Subject to the provisions of the Act, a member shall not be entitled to demand that –
  - 32.3.1 any book, document or record be shown to him;
  - 32.3.2 any information concerning the Association's affairs be disclosed to him,

if the Directors in their sole and absolute discretion (which may not be disputed) consider that it is not in the Associations' interest to show that book, document or record to the member, or to disclose that information to him.

**Part E****33 DIRECTORS INDEMNITY**

33.1 The authority of the Company's Board of Directors to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(3) of the Act –

**is limited, restricted or extended to the extent set out in Part E of Schedule 4 of this Memorandum.**

33.2 The authority of the Company's Board of Directors to indemnify a Director in respect of liability, as set out in section 78(5) of the Act –

**is limited, restricted or extended to the extent set out in Part E of Schedule 4 of this Memorandum.**

33.3 The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a Director, as set out in section 78(6) of the Act –

**is not limited or restricted by this Memorandum.**

**34**

34.1 Every Director, manager, secretary, auditor and officer of the Association is indemnified out of the funds of the Association against –

34.1.1 all liabilities incurred by him in that capacity;

34.1.2 expenditure in defending any proceedings, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted; or

34.1.3 costs in connection with any application under Section 248 of the Act in which relief is granted to him by the Court.

34.2 Every such person is indemnified by the Association against, and it is the duty of the Directors to, out of the funds of the Association, pay all costs, losses and expenses for which any such person may become liable by reason of –

34.2.1 any contract entered into; or

34.2.2 any act done by him, in his capacity as Director, secretary, manager, auditor or officer of the Association or in any way in the discharge of his duties.

34.3 Subject to the provisions of the Act, no Director, manager, secretary, auditor, officer or servant of the Association is liable for –

34.3.1 any act, receipt, neglect or fault of any other such officer or servant of the Association; or

34.3.2 joining in any receipt or other act; or

34.3.3 loss or expense suffered by the Association through the insufficiency or deficiency of title to any subdivision acquired by order of the Directors for and on behalf of the Association; or

34.3.4 the insufficiency or deficiency of any security in or upon which any of the monies of the Association have been invested; or

- 34.3.5 any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effects have been deposited; or
- 34.3.6 any loss or damage occasioned by any error of judgement or oversight on his part; or
- 34.3.7 any other loss, damage or misfortune whatever which shall happen in the execution of his duties of office or in relation thereto, unless the same occurs through his own dishonesty.

**35. DIRECTORS' REMUNERATION**

- 35.1 The Directors are not entitled to any remuneration.
- 35.2 Any Director who performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director, may be paid such allowances to which he may be entitled as a Director, as the Directors may from time to time determine.
- 35.3 The Directors may, in the discretion of the Board, also be paid all their proven travelling and other expenses necessarily expended by them in connection with the business of the Association.