

HIGHLAND GATE HOME OWNERS ASSOCIATION NPC

Memorandum of Incorporation

Memorandum of Incorporation unique to
HIGHLAND GATE HOME OWNERS ASSOCIATION NPC
Registration Number : 2005/030810/08

1 **Interpretation**

1.1 Definitions

In this Memorandum of Incorporation, and, unless the context requires otherwise, the followings words and expressions shall have the meaning assigned to them hereunder -

1.1.1 **“Act”** means the Companies Act, 71 of 2008, as amended;

1.1.2 **“Aesthetics Committee”** means the aesthetics committee solely appointed by the Developer and after the Development Period, by the Company;

1.1.3 **“Alienate”** means the alienation of any Erf / Stand / Unit or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a company or membership in a close corporation or the beneficial interest in a trust, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and alienate shall have a corresponding meaning;

1.1.4 **“Architectural and Landscaping Guidelines”** means the architectural and landscaping guidelines applicable to any and all improvements on the Development and/or the Estate;

1.1.5 **“Articles”** means the Memorandum for the time being of the Company;

1.1.6 **“Authorised Representative”** means a person authorised to act as the representative of any natural person, company or an association of persons as the case may be;

1.1.7 **“Board”** means the Board of the Company;

1.1.8 **“Chapter”** means with reference to a Chapter by number refers to the corresponding Chapter of the Act;

1.1.9 **“Common Facilities”** means all facilities which form part of the Estate which are intended for the shared use of all Homeowners (and their invitees) in the Estate and may include all or any of a clubhouse, restaurants, gymnasium and/or fitness centre including such additional facilities as the Developer may determine from time to time and includes the Common Property;

1.1.10 **“the Common Property”** means:

1.1.10.1 the Golf Course;

1.1.10.2 the Golf Club;

1.1.10.3 the clubhouse;

1.1.10.4 the gatehouse with attached offices;

1.1.10.5 any access road;

1.1.10.6 any servitudal right of access;

1.1.10.7 the Maintenance Workshops;

1.1.10.8 the manager’s cottage;

1.1.10.9 all areas which form part of the Estate and which are intended for the shared used of all Homeowners (and their invitees),

but excluding:

- 1.1.10.10 all residential Erven and Units;
- 1.1.10.11 any Future Phases as demarcated on the Development Layout (whether subdivided and extracted from the Common Property, now or to be executed in future); and
- 1.1.10.12 any and all property of which *de facto* and *de jure* ownership vests in the Developer;
- 1.1.11 “**Company**” means Highland Gate Home Owners Association NPC, Registration Number 2005/030810/08 or any other name under which it may in future be known;
- 1.1.12 “**Conduct Rules**” means the Conduct Rules, which shall govern the conduct of all owners, residents, visitors and occupants of Erven or Units in the Estate. The Rules shall be provided by the Directors to each owner, who irrevocably undertakes to strictly abide to the said Rules, in accordance with the provisions hereof;
- 1.1.13 “**Council**” means the Highlands Municipality and its successors in title;
- 1.1.14 “**Deeds Office**” means the registration office in Mpumalanga as described in the Registration of Deeds Act, Act 47 of 1937, as amended;
- 1.1.15 “**Developer**” means Century Highland Gate Proprietary Limited; Registration Number: 2011/104659/07;
- 1.1.16 “**Developer Director**” means a director appointed by the Developer;
- 1.1.17 “**the Development**” means the Estate including any other township and/or property which the Developer wishes to incorporate under the Articles, which shall deem to include:
- 1.1.17.1 Portion 19 (a portion of portion 6) of the farm Kareekraal No. 135, Registration Division JT;
- 1.1.17.2 Remainder of Portion 9 of the farm Kareekraal No 135, Registration Division JT; and
- 1.1.17.3 Portion 24 of the farm Kareekraal No. 135, Registration Division JT;
- 1.1.18 “**Development Area**” means the land comprising of *inter alia* the townships known as Dullstroom Extension 3, Dullstroom Extension 4 and Dullstroom Extension 5, subject however to the provisions contained in article 1.1.17 and which may be developed by the Developer;
- 1.1.19 “**the Development/Aesthetics Approval**” means the approval by the Aesthetics Committee for the consideration, evaluation and approval of the development of and/or improvements to Erven or Units in the Estate;
- 1.1.20 “the Development Layout” means the development layout depicting amongst others the Properties, the Development and Future Phases which is annexed hereto as Annexure “A”;
- 1.1.21 “**Development Period**” means the period from:
- 1.1.21.1 the date of establishment of the Company until completion of the whole proposed Highland Gate Development in accordance with amongst others, the Development Layout including subsequent amendments thereto;
- 1.1.21.2 the sale and transfer of all Erven and Units by the Developer in the Townships, or
- 1.1.21.3 such time as the Developer notifies the Company that the Development Period has come to an end, (whichever occurs last);
- 1.1.22 “**Director**” means a member of the Board of the Company, as contemplated in Section 66, or an alternate director of the Company and includes any Person occupying the position of a director or alternate director, by whatever named designated, which shall deem to include a Developer Director and Member Director;
- 1.1.23 “**Erf**” means any erf, portion or subdivision of the Development Area and includes all improvements thereon, which shall deem to include a stand;
- 1.1.24 “**Estate**” means the Development Area as may be phased or subdivided from time to time;

- 1.1.25 **“Estate Manager”** means the estate manager appointed by the Developer during the Development Period, and thereafter by the Board in terms of the Articles;
- 1.1.26 **“Estate Rules”** means Conduct Rules;
- 1.1.27 **“Facilities”** means all and any facilities or amenities of whatever nature which may be provided within the Development Area and forming part of the Common Property;
- 1.1.28 **“Financial Year”** means the financial year of the Company which shall run from the date of establishment of the Company until the last day of February next and thereafter from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.29 **“Future Phase”** means a future phase which may be developed by the Developer as it moreover appears from the Development Layout. The term “Future Phases” will have a corresponding meaning;
- 1.1.30 **“the Golf Course”** means the golf course constructed and situated in the Townships, which includes the clubhouse with associated facilities and all sporting, recreational and other facilities, the use of which shall amongst others be governed by this Memorandum and are to be transferred to the Company by the Developer immediately after the acceptance of the Memorandum incorporating the Rules by the Members by way of special resolution and the registration thereof by the Companies and Intellectual Property Commission;
- 1.1.31 **“Homeowner/Registered Owner”** means an owner of an Erf or Unit which has been registered by the Registrar of Deeds in accordance with the provisions of the Deeds Registries Act, 47 of 1937, as amended;
- 1.1.32 **“the Lodge”** means the facility situated on the lodge erf (Erf 1070 Dullstroom Extension 5);
- 1.1.33 **“the Manual”** means the Architectural and Landscaping Guidelines according to which all development of and/or improvements to any Erf or Unit in and in respect of the Townships, including any other township or property which the Developer wishes to incorporate under the Memorandum as it moreover appears from the Development Layout (Future Phases), will be undertaken, which shall be subject to the prior Written approval thereof and supervision by the Aesthetics Committee. The Manual shall include the Architectural and Landscaping Guidelines;
- 1.1.34 **“Member”** means a Member of the Company as referred to in article 2.6 and includes owners of erven and Units in the Development;
- 1.1.35 **“Member Director”** means a director appointed by the Members;
- 1.1.36 **“Memorandum”** means this Memorandum of Incorporation of the Company;
- 1.1.37 **“month”** means a calendar month;
- 1.1.38 **“the Office”** means the registered office of the Company as it moreover appears from the Act;
- 1.1.39 **“Person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.1.40 **“Private Sale”** means the sale introduced, negotiated and concluded directly between the Registered Owner and any purchaser of any Erf or Unit without the intervention (whether directly or indirectly) of any third party;
- 1.1.41 **“the Properties”** means:
- 1.1.41.1 Dullstroom Extension 3 Township;
- 1.1.41.2 Dullstroom Extension 4 Township;
- 1.1.41.3 Dullstroom Extension 5 Township; and
- 1.1.41.4 Including any other Township, property or future phase which the Developer wishes to incorporate in the Township as it appears from the Development Layout, but provided that such incorporation occurs within the Development Period;

- 1.1.42 **“Regulation”** means a reference to a regulation by number refers to the corresponding regulation of the Companies Regulations of 2011, as amended;
- 1.1.43 **“residential erf / erven”** means any erf designated for residential use, and any reference to residential erven shall mean more than one residential erf;
- 1.1.44 **“residential membership”** means the right of a Member to have access to and enjoyment of entertainment, recreational facilities and other amenities in respect of the Townships, but excluding playing rights in respect of the Golf Course;
- 1.1.45 **“Secretary”** means any Person or body corporate appointed by the Board to perform the statutory secretarial duties of the Company;
- 1.1.46 **“Section”** means with reference to a section by number, refers to the corresponding section of the Act;
- 1.1.47 **“Services”** means the supply of water, sewerage, refuse removal, electricity, telecommunications, television cables, security, maintenance of Common Property, garden maintenance and such other utilities and services as are provided by the Company or any other supplier of services to the Estate, from time to time;
- 1.1.48 **“Stand”** means a residential stand (whether or not a Unit has been erected thereon) forming part of the Estate, which shall deem to include an erf;
- 1.1.49 **“These Presents”** means the Memorandum, as originally framed or as amended from time to time by special resolution;
- 1.1.50 **“Townships”** means the townships to be proclaimed as Dullstroom Extension 3, Dullstroom Extension 4 and Dullstroom Extension 5 known as Highland Gate comprising the Development Area, which shall deem to include the Properties;
- 1.1.51 **“Unit”** means a residential Unit (whether free standing and/or high density) registerable in accordance with the provisions of the Sectional Titles Act, 95 of 1986, as amended and Units shall have a corresponding meaning;
- 1.1.52 **“in Writing”** means writing, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form; and
- 1.1.53 **“year”** means a calendar year.
- 1.2 Words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act.
- 1.3 Words importing the singular shall include the plural, and words importing the masculine, feminine and neuter shall include the others of such genders; and words importing Persons shall include Bodies Corporate, and vice versa in each instance.
- 1.4 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of the Articles

2 **Incorporation and Nature of the Company**

2.1 **Incorporation**

The Company is incorporated as a non profit company, as defined in the Act with the following objects:

- 2.1.1 The main object of the Company is the owning, managing, controlling and rendering of Services related to the Common Property of the Townships for the mutual benefit, jointly and severally, of the Homeowners of Stands and/or Units in the Estate.
- 2.1.2 The Company shall have the following ancillary objects:
- 2.1.2.1 To ensure compliance by Members with the conditions of establishment of the Townships on the Properties, with particular reference to the conditions dealing with aesthetic and building regulations

and requirements, and where necessary to ensure that the Council enforces such conditions of establishment.

2.1.2.2 To act as a liaison between the Members and the Council regarding the landscaping and aesthetic usage of the Properties and the buildings erected or to be erected on the Stands or any other matter.

2.1.2.3 To exercise control over the rights created and still to be created over the Stands or Units on the Properties and to formulate Rules and by-laws for the control of buildings, walling, fencing, exterior lighting, signage, aesthetic planning and landscaping of the Properties and the Stands or Units and to ensure compliance with such Rules and by-laws by Members of the Company.

2.1.2.4 To implement and control the principal concepts of the Development relating to the security, architecture, landscaping, parking, signage and advertising, exterior finishing and maintenance as detailed by urban designers, landscape architects and ecological planners of the Properties appointed by the Developer (or its duly Authorised Representative) and in particular as stated in the Architectural Guidelines and Conduct Rules.

2.1.2.5 To implement and ensure compliance by Members with the co-ordinated landscaping plan for the Properties, as approved by the Developer (or its duly Authorised Representative) of the Townships on the Properties (see the Architectural and Landscaping Guidelines including the Rules issued by the Developer in this regard).

2.1.2.6 To ensure that each Member maintains his/her/its Stand or Unit in a clean and tidy condition and adheres to the specifications imposed by the Company relating to the landscaping and ecological planning. In the event of any Member failing to adhere to the specifications and maintenance of his Stand or Unit, the Directors or the Developer shall be entitled, but not obliged, to perform the necessary acts and Services and recover from such Member the costs thereof.

2.1.2.7 To undertake the maintenance of street verges and where required by Members to maintain the vegetation and landscaping on any individual Stand or Unit against payment to the Company of a special levy.

2.1.2.8 To administer the general security arrangements on the Properties, with particular reference to controlling access and the nature and type of security to be provided from time to time, excluding the security arrangement of any particular building on a Stand or Unit.

2.1.2.9 To consent or declare any proposed consolidation, subdivision/rezoning of any Stand or Unit valid and to stipulate the landscaping and certain aesthetic conditions, which shall apply prior to such rezoning and subdivision, if approved. It is however recorded that the Developer shall, during the Development Period be entitled to subdivide any Stand owned by the Developer after proclamation in accordance with the guideline plans alternatively rezoned for the purpose of subdivision and may furthermore develop any sectional title scheme within the aforesaid Townships and on any Stand and/or Properties (including the Future Phases) and the Company and its Members irrevocably consent to the said rezoning and/or subdivision and/or sectional title development (whichever is applicable). Any and all development costs (without any limitation, however subject to the provisions contained in this Memorandum) in respect of the Future Phases will be borne solely by the Developer. It is further recorded that the provisions hereof may not be amended by special resolution without the Developer's prior Written consent.

2.1.3 The Company is incorporated in accordance with, and governed by -

2.1.3.1 the unalterable provisions of the Act, that are applicable to Non Profit companies;

2.1.3.2 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

2.1.3.3 the provisions of this Memorandum.

2.2 **Objects and Powers of the Company**

2.2.1 The Objects of the Company are as set out in article 2.1.1 and, except to the extent necessarily implied by the stated objects, the purposes and the powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.

- 2.2.2 The Company is not subject to any restrictive conditions on changing the Memorandum, as contemplated in section 15(2)(b) of the Act, nor is prohibited from amending any particular provision of the Memorandum, as contemplated in section 15(2)(c) of the Act.
- 2.2.3 The Company—
- 2.2.3.1 must apply all of its assets and income, however derived, to advance its stated objects, as set out in the Memorandum; and
- 2.2.3.2 subject to article 2.2.3.1, may—
- 2.2.3.2.1 acquire and hold securities issued by a profit company; or
- 2.2.3.2.2 directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 2.2.4 The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how 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, or Person appointing a Director, of the Company, except—
- 2.2.4.1 as reasonable—
- 2.2.4.1.1 remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
- 2.2.4.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
- 2.2.4.2 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;
- 2.2.4.3 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
- 2.2.4.4 in respect of any legal obligation binding on the Company.
- 2.2.5 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company—
- 2.2.5.1 no past or present Member or Director of the Company, or Person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 2.2.5.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts—
- 2.2.5.2.1 having objects similar to the Company's main object; and
- 2.2.5.2.2 as determined—
- 2.2.5.2.2.1 in terms of the Company's Memorandum;
- 2.2.5.2.2.2 by its Members at or immediately before the time of its dissolution; or
- 2.2.5.2.2.3 by the court, if the Memorandum, or the Members fail to make such a determination.
- 2.2.6 The Company may not—
- 2.2.6.1 amalgamate or merge with, or convert to, a profit company; or
- 2.2.6.2 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 Company.

- 2.2.7 Any proposal to—
- 2.2.7.1 dispose of all or the greater party of the Company's assets or undertaking; or
- 2.2.7.2 amalgamate or merge with another non profit company,
- must be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.
- 2.2.8 Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in article 2.2.7.
- 2.2.9 The Company may grant loans only to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.10 The Company may only invest funds available for investment with a registered financial institution as described in section 1 of the Financial Institutions Act of 1984, as amended, and in a security listed on a licensed Stock Exchange as defined in the Stock Exchange Control Act, No 1 of 1985, as amended.
- 2.2.11 The Company may enter in to indemnities, guarantees and suretyships and secure payment thereunder in any way only with one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.12 The Company may-
- 2.2.12.1 make donations provided that no donations may be made to present or former incorporators, Members or Directors; and
- 2.2.12.2 pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees.
- 2.2.13 The Company shall have the following ancillary objects to:
- 2.2.13.1 take transfer of the Stands which constitutes the Common Property that will be owned by the Company for the benefit of its Members, subject however to the provisions contained in this Memorandum and with reference to amongst others article 20.7;
- 2.2.13.2 enter into agreements of servitude for the benefit of its Members or any adjacent property development;
- 2.2.13.3 manage, oversee and control all security aspects of the Townships;
- 2.2.13.4 enter into agreements for the provision of any services with any competent authority or any other third party, *inter alia* including the provision of access to the Townships, water, electricity and sewerage, services to the Company and where required, to supply such services to the various Members of the Company;
- 2.2.13.5 administer and enforce the Architectural and Landscaping Guidelines and the Estate Rules;
- 2.2.13.6 control the registration of transfer of Stands in the Townships and ensure compliance with all conditions imposed by the Council when approving the rezoning and/or subdivision of the Property/ies comprising the Development Area, which shall not be applicable to the Developer during the Development Period;
- 2.2.13.7 act as assignee of all the powers and functions of any body corporate in any sectional title scheme forming part of the Townships;
- 2.2.13.8 exercise control over the rights created and still to be created over the Stands in the Development and to formulate Estate Rules and by-laws for the control of buildings, walling, fencing, exterior lighting and to ensure compliance with such Estate Rules and by-laws by the Members of the Company;
- 2.2.13.9 ensure that each Member maintains his/her/its Stand or Unit in a clean and tidy condition and adheres to the specifications imposed by the Company relating *inter alia* to landscaping. In the event of any Member failing to adhere to the specifications and maintenance of his/her/its Stand or Unit, the

Directors or the Developer (during the Development Period) shall be entitled, but not obliged, to perform the necessary acts and services and recover from such Member the cost thereof;

- 2.2.13.10 undertake the maintenance of street verges and where required by Members to maintain the vegetation and landscaping on any Stand or Unit against payment to the Company of a special levy;
- 2.2.13.11 consent or declare any proposed consolidation, subdivision, rezoning of any Stand valid and to supervise the landscaping and certain aesthetic conditions, which shall apply prior to such rezoning and subdivision, if approved. It is however recorded that the Developer shall, during the Development Period be entitled to subdivide any Stand owned by it after proclamation in accordance with the guideline plans alternatively rezone same for the purpose of subdivision and may furthermore develop any sectional title scheme within the Estate and upon any Stand and/or Stands, and the Company and its Members irrevocably consent to the said rezoning and/or subdivision and/or sectional title development (whichever is applicable). It is further recorded that the provisions hereof may not be amended by special resolution without the Developer's prior Written consent being obtained;
- 2.2.13.12 ensure compliance, implementation and enforcement, in respect of the Townships, of any condition imposed by any authority in terms of the Land Use Planning Ordinance, 15 of 1985, the Environment Conservation Act, 73 of 1989, The National Environmental Management Act of 1998 or any other planning or environmental legislation, including any environmental plan approved in respect of the Townships;
- 2.2.13.13 maintain, repair, improve and keep in good order and condition the Common Property and the responsibility for the payment of all rates and taxes, all service charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the Common Property and/or for payment of the salaries and/or wages of the employees of the Company and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Company, and the Company's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Company or the pursuit of its principle business;
- 2.2.13.14 impose levies upon the Members of the Company for the purpose of meeting all the expenses that the Company has incurred or to which the Board reasonably anticipate the Company will incur in the attainment of the objects of the Company in pursuit of its business;
- 2.2.13.15 ensure that all provisions of These Presents are complied with by all Members / parties bound thereby; and
- 2.2.13.16 to promote, advance and protect the Townships and the interests of the Company and all its Members.
- 2.2.14 It is recorded that the owners for the time being of the Golf Course and Lodge shall be liable as Members of the Company to pay levies imposed on them and to be calculated in the following manner:
 - 2.2.14.1 Golf Course- levies equal to 1 Stand in the Estate; and
 - 2.2.14.2 Lodge- levies equal to 1 Stand in the Estate.
- 2.2.15 The responsibility for the management and control of the Common Property shall be transferred from the Developer to the Company after the Development Period (the aforesaid will have no bearing on the levies). The Developer will however, remain obliged and responsible to complete the development program which shall be restricted to:
 - 2.2.15.1 Infrastructure
 - 2.2.15.1.1 Road to treatment plant;
 - 2.2.15.1.2 Road in village two (next to Erf 917);
 - 2.2.15.1.3 Sewage services in village two (old Mtombeni and Mhashlangu sites);
 - 2.2.15.1.4 Road to reservoir;
 - 2.2.15.1.5 Road in village 7 incomplete (next to Erf 1189);
 - 2.2.15.1.6 Services and paving at club house site incomplete;
 - 2.2.15.1.7 Maintenance centre (no connection to the various reticulations have been made); and
 - 2.2.15.1.8 Paved walkways incomplete.
 - 2.2.15.2 Entrance
 - 2.2.15.2.1 Main gate entrance incomplete (plastering and painting);

- 2.2.15.2.2 Fountains / Water features; and
- 2.2.15.2.3 Gardens.
- 2.2.15.3 Water
- 2.2.15.3.1 Install flow meters at dam; and
- 2.2.15.3.2 Usage measure at reservoir for irrigation requires repair.
- 2.2.15.4 Golf Course
- 2.2.15.4.1 Furniture;
- 2.2.15.4.2 Trees;
- 2.2.15.4.3 Shelters;
- 2.2.15.4.4 Warning hooters, etc.;
- 2.2.15.4.5 Distance markers;
- 2.2.15.4.6 Insurance; and
- 2.2.15.4.7 Club House for the Golf Course which shall include change rooms for both sexes and halfway house/lounge facility.
- 2.2.15.5 Helipad

The Developer will determine the location and be responsible for the construction of a helipad, which may consist of a grassed or concrete footprint.

2.3 **Memorandum and Conduct Rules**

- 2.3.1 Subject to the provisions herein contained, this Memorandum of the Company may be altered or amended only:
 - 2.3.1.1 in compliance with a court order in the manner contemplated in section 16(4);
 - 2.3.1.2 at any other time if a special resolution to amend it—
 - 2.3.1.2.1 is proposed by—
 - 2.3.1.2.1.1 the Board of the Company; or
 - 2.3.1.2.1.2 Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution; and
 - 2.3.1.2.2 is adopted at a Members meeting, or in accordance with section 60;
 - 2.3.1.3 by the Board of the Company, or an individual authorised by the Board, in accordance with section 17, to alter the Conduct Rules, or its Memorandum, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by—
 - 2.3.1.3.1 publishing a notice of the alteration, in any manner required or permitted by the Memorandum or the Rules of the Company; and
 - 2.3.1.3.2 filing a notice of the alteration; and
 - 2.3.1.4 in implementing a business rescue plan pursuant to section 152(6)(b).
- 2.3.2 **Conduct Rules**
 - 2.3.2.1 The Board of the Company may make, amend or repeal any necessary or incidental Conduct Rules relating to the governance of the Company in respect of matters that are not addressed in this Act or the Memorandum, by—
 - 2.3.2.1.1 publishing a copy of those Conduct Rules, in any manner required or permitted by the Memorandum, or the Conduct Rules of the Company; and
 - 2.3.2.1.2 filing a copy of those Conduct Rules at the Company's Office.

- 2.3.2.2 A rule contemplated in article 2.3.2.1-
- 2.3.2.2.1 must be consistent with this Act and the Company's Memorandum, and any such rule that is inconsistent with this Act or the Company's Memorandum is void to the extent of the inconsistency;
- 2.3.2.2.2 takes effect on a date that is the later of—
- 2.3.2.2.2.1 10 (ten) business days after the rule is filed in terms of article 2.3.2.1.2; or
- 2.3.2.2.2.2 the date, if any, specified in the rule.
- 2.3.3 The Board must publish the Conduct Rules made in terms of article 2.3.2 by delivering a copy of those Conduct Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.
- 2.3.4 The Company must publish a notice of any alteration of the Memorandum or the Conduct Rules, made in terms of article 2.3.2.1, by delivering a copy of those alterations or Conduct Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.
- 2.3.5 Subject to any restriction imposed and direction given at a general meeting of the Company, and subject thereto that it must be equitable, the Directors may from time to time make Conduct Rules in regard to:-
- 2.3.5.1 the architectural design, construction, quality and building materials of any proposed building to be erected on any Stand or Unit in the Townships and as approved by the Aesthetics Committee;
- 2.3.5.2 determine from time to time Conduct Rules with regard to the security, vegetation, landscaping, parking, signage, advertising and maintenance of any Stand or Unit or building or the Properties itself (the Conduct Rules may not be amended without the Developer's written consent during the Development Period);
- 2.3.5.3 the furtherance and promotion of any of the objects of the Company and/or the better management of the affairs of the Company and/or for the advancement of the interests of Members of the Stands or Units;
- 2.3.5.4 the maintenance of all buildings, outbuildings, structures, electricity, water and sewerage reticulation, improvements of any nature and landscaping on a Stand or in respect of a Unit;
- 2.3.5.5 the right of reasonable access to any Stands or Units in order to effect the maintenance of any matter referred to above;
- 2.3.5.6 the placing of moveable objects upon or outside the buildings included in the Estate, including the power to remove any such objects;
- 2.3.5.7 the storing of flammable or other harmful substances including gas;
- 2.3.5.8 the conduct of any Persons within the Estate and the prevention of nuisance of any nature to any Homeowner and/or Member;
- 2.3.5.9 the use of the Stands and Units within the Estate;
- 2.3.5.10 the use of roads, pathways and other Common Facilities including appropriate traffic calming measures;
- 2.3.5.11 the management, administration, control and use of the Common Facilities;
- 2.3.5.12 the maintenance of all buildings, outbuildings and structures;
- 2.3.5.13 conditions with regard to the use and/or supply of electricity, water, sewerage reticulation, gas on or about the Estate; and
- 2.3.5.14 the keeping of pets.
- 2.3.6 For the enforcement of any of the Conduct Rules made by the Directors in terms hereof, the Directors may:

- 2.3.6.1 take or cause to be taken such steps as they may consider necessary to remedy the breach of a rule of which the Member may be guilty, and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or
- 2.3.6.2 impose a system of fines or other penalties. The amounts of such fines shall be determined by the Board and subsequently reviewed and confirmed at each annual general meeting of the Company; and/or
- 2.3.6.3 take such other action including proceedings in court, as they may deem fit.
- 2.3.7 In the event of Directors instituting any legal proceedings against any Member or resident of a Stand or Unit for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client.
- 2.3.8 In the event of any breach of the Conduct Rules by the Members or any Member's household or his guests or invitees or the like, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken steps against the Person actually committing the breach as they in their discretion may deem fit.
- 2.3.9 In the event of any Member disputing the fact that he has committed a breach of any of the Conduct Rules, a committee of three Directors appointed by the chairman for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the rules of natural justice shall be observed) as the chairman may direct.
- 2.3.10 Any fine imposed upon any Member shall as aforesaid, be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.
- 2.3.11 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company enforce the provisions of any Conduct Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 2.3.12 The Company may in general meeting itself make any Conduct Rules and may in general meeting vary or modify any Rules made by it or by the Directors from time to time.
- 2.4 **Optional provisions of the Act**
- 2.4.1 In terms of section 84(1)(c)(ii) of the Act, the Company elects voluntarily to appoint an auditor and to have its annual financial statements audited by such auditor.
- 2.4.2 The Company may voluntarily elect to appoint a company Secretary.
- 2.4.3 As the Company will be audited voluntarily, the Company does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditor shall be determined by the Board of Directors.
- 2.5 **Members of the Company**
- 2.5.1 The Company shall maintain at its registered office a register of Members of the Company as provided in section 24(4)(a) of the Act. The register of Members shall be opened to inspection, as provided in section 26 of the Act.
- 2.5.2 The number of Members shall never be less than 7 (seven) nor more than 1500 (one thousand five hundred).
- 2.5.3
- 2.5.3.1 Any Person, including a body corporate or trust, automatically becomes a Member of the Company on the date on which a Stand or Unit in the Estate is transferred and registered into his/her/its name in the Deeds Office (hereinafter referred to as "registered owners"): Provided that no Member shall become a registered owner of a Stand or Unit unless he/she/it has made application to be a Member of the Company and has agreed, to the satisfaction of the Company, that:

- 2.5.3.1.1 on registration of transfer of a Stand or Unit to him/her/it, he/she/it shall become a Member and he/she/it shall remain a Member as long as he/she/it remains a registered Homeowner of a Stand or Unit in the Townships;
- 2.5.3.1.2 he/she/it shall automatically cease to be a Member when he/she/it ceases to be a registered Homeowner of a Stand or Unit in the Townships; and
- 2.5.3.1.3 he/she/it shall be bound and undertakes to strictly comply with the terms, conditions, rules and provisions contained in the Memorandum as well as the Conduct Rules made by the Company from time to time.
- 2.5.3.2 A clearance certificate from the Company shall not be required in respect of any transfer of a Stand or Unit from the Developer to a third party. The provisions hereof does however not detract from the Developer's obligations to pay levies as contemplated in this Memorandum.
- 2.5.4 The Membership of the Company shall be restricted to Registered Owners and the Developer. Insofar as the Membership of the Developer is concerned, same shall be terminated as and when the Development Period comes to an end.
- 2.5.5 Where a registered owner becomes the registered owner of more than one Stand or Unit such owner shall be regarded as one Member of the Company per Stand or Unit owned.
- 2.5.6 Where more than one Person becomes the joint registered owner of a Stand or Unit, the joint Members must nominate and appoint one from their ranks to represent them as a Member of the Company for the receipt of notices from the Company. The joint registered owners shall advise the Company in writing of the full first names, surname, residential and postal addresses of such representative. Joint registered owners may with written notification to the Company change their representative provided that such representative shall at all times be one of the joint owners of the Stand or Unit. All joint owners are jointly and severally responsible for the proper fulfilment of the responsibilities arising from their Membership of the Company due to their ownership of the Stand or Unit.
- 2.5.7 The Membership of an existing registered owner is automatically terminated on date of the registration in the deeds office of a sold Stand and/or property and/or Unit in the name of the new owner on which date the new registered owner automatically becomes a Member of the Company.
- 2.5.8 A registered owner of a Stand or Unit cannot resign as a Member of the Company.
- 2.5.9 Any individual being a registered owner, joint registered owner or the representative of a body corporate or trust, which is a registered owner or joint registered owner, may be elected to any office in the Company.
- 2.5.10 A Member shall not be entitled to any rights and/or privileges associated with his Membership of the Company including his right to vote at a general meeting of the Company if any amount as at the end of the month immediately preceding the month in which the general meeting is held, is owed by such Member to the Company.
- 2.5.11 Each Member shall not undertake any development of and/or improvement to his/her/its Stand or Unit without having submitted the required plans, conforming to the requirements of the Architectural and Landscaping Guidelines, for consideration, evaluation and approval by the Aesthetics Committee and having obtained the prior Written consent thereto. Each Member shall in submitting his/her/its plans to the Aesthetics Committee, accept the supervision rights and responsibilities of the Aesthetics Committee over the development of and/or improvements to the Stand or Unit or otherwise (the amount payable to execute the supervision as contemplated herein amounts to R3 500,00, excluding VAT), which amount may be varied by the Directors from time to time and which variation shall only become operative 30 (thirty) days after written notice of such variation was given to the Members.
- 2.5.12 Each Member shall be responsible to the Company for any additional professional expenses and costs incurred by the Aesthetics Committee for the consideration, evaluation and approval of the plans for the development and/or improvements to his Stand or Unit over and above the services as contemplated in article 2.5.11 which expenses and costs shall be payable to the Developer (or its duly Authorised Representative – during the Development Period) on presentation of a statement of account.
- 2.5.13 Each Member undertakes to commence ("break ground") with the development of his/her/its Stand or Unit within 18 (eighteen) months from the date on which the clubhouse is completed (which shall deem to have been achieved upon the Council issuing an occupational certificate) by the Developer or the date of transfer of the Stand or Unit (if applicable) into his/her/its name (whichever occurs last) and complete same

within 12 (twelve) months thereafter. If the purchaser resells the Stand or Unit within the aforesaid period, the said period will not be extended and this article 2.6.13 will still apply with the 18 (eighteen) month period running from the date on which the clubhouse is completed by the Developer or the date of the first transfer from the Developer (whichever occurs last). Should a Member fail to commence with the Development of his/her/its Stand within the aforesaid 18 (eighteen) month period or complete same within 12 (twelve) months thereafter, the Developer (or its duly Authorised Representative) shall be entitled to charge a penalty levy to the purchaser/owner amounting to R2 000,00 (two thousand Rand) per month (which amount may be varied by the Directors from time to time and shall only become operative 30 (thirty) days after written notice of such variation was given to the Members) until such time as the construction has been completed and an occupational certificate is issued by the relevant authorities and the Aesthetics Committee, which shall be paid to and accrue in favour of the Developer.

- 2.5.14 Estate agents or owners shall not be permitted to display for sale, to let and/or pointer boards within the gate house area or entrance to the Development without the prior written approval first being obtained from the Developer (or its duly appointed representative) and the Company.
- 2.5.15 A registered owner shall be entitled to sell his/her/its Stand or Unit to a buyer of his/her/its choice: Provided that the Stand or Unit shall not be transferred into the name of the purchaser without all amounts owed by the seller to the Company and/or its agents have been paid and the purchaser has accepted in writing the terms and conditions contained in the Memorandum of the Company as well as the Conduct Rules of Townships as determined by the Directors. The said Stand or Unit shall only be transferred into the name of the purchaser after the Company has issued a certificate that all outstanding levies and amounts of whatever nature owing to the Company by the registered owner has been paid, the Member is not in breach of any of the provisions of the Memorandum including the Conduct Rules read in conjunction with articles 2.5.3.1.1 to 2.5.3.1.3 have been complied with. For the avoidance of doubt, it is recorded that the provisions of article 2.5.3 and this article do not apply to the Developer, and there will thus be no restriction whatsoever on the ability of the Developer to pass transfer of any Erf or Unit to a third party and that accordingly the Developer does not require a clearance certificate from the Company before it will be entitled to alienate and/or transfer any Erf or Unit to a Person or entity, however same does not affect the Developer's responsibility to pay levies as contemplated in this Memorandum.
- 2.5.16 The executor of an estate of a deceased sole registered owner of a Stand or Unit shall be the only Person recognised by the Company as having any title to such Stand or Unit and to Membership of the Company. In the case of a Stand or Unit registered in the names of two or more registered owners, the survivors or survivor, or the executor of the last survivor after his death shall be the only Persons recognised by the Company as having any title to such Stand or Unit and to Membership of the Company.
- 2.5.17 Any Person becoming entitled to Membership in consequence of the death or insolvency of a Member shall, upon such evidence being produced as may from time to time be required by the Directors, having the right, either to be registered as a Member in respect of the Stand or Unit or instead of being registered himself/herself/itself, to make such transfer of the Stand or Unit as the deceased or insolvent could have made.
- 2.5.18 A Person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Member of the Company or the estate of a Member whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any body corporate which is a Member of the Company shall be entered in the register of Members of the Company *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Member of the Company.

2.6 **Duties Of Members**

Each Member shall:

- 2.6.1 Abide by the provisions of the Memorandum and adhere to the Conduct Rules and by-laws provided by the Directors from time to time.
- 2.6.2 Abide by the Architectural and Landscaping Guidelines.
- 2.6.3 Obtain consent from the Aesthetics Committee to any building plans before submitting them for approval to the Council and before commencing with any building, walling, fencing and signage operation, exterior lighting, painting or repainting of exterior finishes. The decision of the Aesthetics Committee as contemplated herein above, shall be final and binding on the parties.
- 2.6.4 Maintain his/her/its Stand or Unit in a clean and tidy condition to the satisfaction of the Directors. Should the Directors be of the opinion that a Member is not complying with the Memorandum, the Directors shall

give such Member reasonable notice, depending on the nature of the breach, failing which, where possible, the Directors shall be entitled to perform the work or Services which is required to be done or provided at the expense of the Member and shall be entitled to recover the expenditure in this connection from the Member, together with interest calculated thereon at prime bank rate, for the period from date of expenditure to date of repayment.

- 2.6.5 Not construct a building on the Stand in a manner which causes danger, nuisance or disturbance to the occupiers of the neighbouring Stands or Units and where applicable, the Members shall cause suitable screens and/or barricades to be erected to reduce the emission of noise, dust, waste, effluent or other nuisance from the Stand or Unit.
- 2.6.6 Not burn or permit to be burnt any materials or rubbish resulting from or in connection with construction on the Stand or Unit and shall ensure that such materials or rubbish be removed from the Stand or Unit (where applicable).
- 2.6.7 Repair at his/her/its cost and expense any damage to the infrastructure, side walks and road shoulders or any part of the common or public areas in the Townships caused by the Member or his/her/its agents during the course of the construction of the Stand or Unit.
- 2.6.8 Not interfere with the convenience of the common or public areas within the Townships during construction of any approved building.
- 2.6.9 Ensure that all responsible means are used to prevent the roads leading to the Stand or Unit from being damaged or injured by any act or omission of the building contractor engaged by the Member in respect of the construction on the Stand or Unit and the subcontractors of the building contractors and the servants or agent of the Member whilst moving equipment and materials to and from the Stand or Unit.
- 2.6.10 Indemnify and shall keep the Company indemnified in respect of all loss, damage, cost or expense, which may be suffered by the Company as a result of any claim, demand, suit or proceedings which may be instituted against the Company as a result of any breach of any of the above obligations by the Member.
- 2.6.11 Prevent the accumulation of trash, garbage or other waste material on the Stand or Unit except in containers located in appropriate areas screened and concealed from the view so that odours do not emanate from such containers: Provided that such containers may not be placed on any common or public area or upon a thoroughfare for a period exceeding 24 (twenty four) hours.
- 2.6.12 Prevent the Stand or Unit from being used for any purposes, which may be illegal or injurious to the other Stands or Units in the Townships or Members.
- 2.6.13 Diligently further and execute the objects and interests of the Company.
- 2.6.14 A Member shall not without the prior Written consent of the Developer (during the Development Period) or the Company (after the Development Period), who in granting or refusing such consent shall act in its absolute sole discretion, apply to the Council or any other relevant authority for the subdivision or rezoning of an Erf / Stand or Unit owned by a Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. For the avoidance of doubt, it is recorded that this article shall not apply to the Developer during the Development Period, who is not required to obtain consent from the Company in respect of the aforesaid or any other applications of whatever nature. Any and all development costs (without any limitation, however subject to the provisions contained in this Memorandum) in respect of the Future Phases will be borne solely by the Developer.
- 2.6.15 A Member is required to ensure that the occupant of his/her/its Erf / Stand / Unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of These Presents. Without detracting from the foregoing, the Member shall remain bound by These Presents notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his/her/its obligations under These Presents.
- 2.6.16 To ensure compliance with article 2.6.15 above, each Member shall if it leases out his/her/its Erf / Stand / Unit:
- 2.6.16.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with the Memorandum, Conduct Rules and any other directives provided by the Board, and to give an undertaking that he/she/it will abide thereto, and in which the tenant is required to report to the Company and register his/her/its full details for security purposes prior to taking occupation; and

2.6.16.2 be responsible to ensure that the tenant does thus register himself/herself/itself with the Company prior to taking occupation.

3 Rights of Members

3.1 Members' authority to act

3.1.1 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 not limited or restricted by this Memorandum.

3.2 Members' right to Information

3.2.1 Pursuant to the provisions of section 27.1 of the Act, a Person who is a Member of the Company has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:

3.2.1.1 the Memorandum and any amendments to it, and any Conduct Rules made by the Company;

3.2.1.2 the records in respect of the Company's Directors;

3.2.1.3 the reports to annual meetings, and annual financial statements;

3.2.1.4 the notices and minutes of annual meetings, and communications; and

3.2.1.5 the Members register of the Company.

3.3 Proxies

3.3.1 The right of a Member of the Company to appoint Persons concurrently as proxies, as set out in section 58(3)(a) of the Act, is not limited, restricted or varied by this Memorandum.

3.3.2 The authority of a Member's proxy to delegate the proxy's powers to another Person, as set out in section 58(3)(b) of the Act, is not limited, restricted or varied by this Memorandum.

3.3.3 The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Member's rights at a Members meeting, as set out in section 58(3)(c) of the Act, is not limited, restricted or varied by this Memorandum.

3.3.4 The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in section 58(7) of the Act, is not limited, restricted or varied by this Memorandum.

3.3.5 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his/her/its agent duly authorised in writing, or, if the appointer is a body corporate or a trust, under the hand of an officer or agent authorised by the body corporate or trust. A proxy need not be a Member of the Company. The holder of a general or special power of attorney, whether he/she/it is a Member or not, given by a Member shall be entitled to attend meetings and to vote, if duly authorised under that power to attend and take part in the meetings.

3.3.6 The 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 or authority shall be deposited at the registered office of the Company not less than forty-eight hours before the time for holding the meeting at which the Person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

3.3.7 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

HIGHLAND GATE ESTATE HOME OWNERS ASSOCIATION NPC

I, _____ of _____ being a Member of Highland Gate Estate Home Owners Association NPC

_____ of _____ or failing him

_____ of _____ or failing him

_____ of _____,
as my proxy to vote for me and on my behalf at the annual general or general meetings (as the case may be) of the Company to be held on the _____ day of _____ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution to			
Resolution to			
Resolution to			

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

Unless otherwise instructed, my 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 vote in his stead, and such proxy need not also be a Member of the Company.)"

3.3.8 A Member shall not be entitled to appoint more than 1 (one) proxy.

3.4 Record date for exercise of Member rights

3.4.1 If the Board does not determine a record date for any action or event, the record date is—

3.4.1.1 in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or

3.4.1.2 the date of the action or event, in any other case, unless the Memorandum or Conduct Rules of the Company provide otherwise.

4 Members Meetings

4.1 Requirement to hold meetings

4.1.1 The Company is required to hold Members meetings in addition to those specifically required by the Act.

4.1.2 The Company must convene an annual general meeting of its Members—

4.1.2.1 initially, no more than 18 (eighteen) months after the Company's date of incorporation; and

4.1.2.2 thereafter, once in every calendar year within 6 (six) months after the end of its financial year, but no more than 15 (fifteen) months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.

4.1.3 An annual general meeting convened in terms of article 4.1.2 must, at a minimum, provide for the following business to be transacted:

4.1.3.1 Presentation of—

4.1.3.1.1 the Directors' report; and

4.1.3.1.2 audited annual financial statements for the immediately preceding financial year, a copy of which must be supplied to each Member together with the notice of the annual general meeting.

- 4.1.3.2 either
 - 4.1.3.2.1 audited annual financial statements; or
 - 4.1.3.2.2 annual financial statements, which have independently been compiled and reported on by an independent accounting professional,for the immediately preceding financial year;
- 4.1.3.3 Election of Directors, to the extent required by the Act or the Company's Memorandum;
- 4.1.3.4 Appointment of either an auditor or an independent accounting professional for the ensuing financial year; and
- 4.1.3.5 Any matters raised by Members, with or without advance notice to the Company.

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

- 4.2.1 Pursuant to section 61(3) and subject to article 4.1.2, the Board of the Company, or any other Person specified in the Company's Memorandum or Conduct Rules, must call a Members meeting if one or more written and signed demands for such a meeting are delivered to the Company, and—
 - 4.2.1.1 each such demand describes the specific purpose for which the meeting is proposed; and
 - 4.2.1.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 5% (five percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 4.2.2 The Company, or any Member of the Company, may apply to a court for an order setting aside a demand made in terms of article 4.2.1 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.
- 4.2.3 At any time before the start of a Members meeting contemplated in article 4.2.1—
 - 4.2.3.1 a Member who submitted a demand for that meeting may withdraw that demand; and
 - 4.2.3.2 the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.

4.3 **Location of Members meetings**

- 4.3.1 The Company's Board may determine the location of any Members meeting provided any such meeting, if it will not be held at the registered office of the Company, shall be held in the Republic at an address which the Board deems to be the most convenient for Members.

4.4 **Notice of Members meetings**

- 4.4.1 The minimum number of days for the Company to deliver a notice of a Members meeting to the Members, as required by section 62 of the Act, is 15 (fifteen) business days before the meeting is to begin.
- 4.4.2 A copy of either the audited annual financial statements or the annual financial statements, which have independently been compiled and reported on by an independent accounting professional, must be sent to each Member with the notice of the annual general meeting.

4.5 **Electronic participation in Members meetings**

- 4.5.1 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 not limited, restricted or varied by this Memorandum, provided that the provisions of article 4.4.1 above have been complied with.

4.6 **Quorum for Members meetings**

4.6.1 Pursuant to section 64 of the Act and subject to article 4.6.2 to 4.6.6—

4.6.1.1 a Members meeting may not begin unless the Developer (or its duly Authorised Representative) during the Development Period and at least 2 (two) Persons with voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting are present; and

4.6.1.2 a matter to be decided at the meeting may not begin to be considered unless the Developer (or its duly Authorised Representative) during the Development Period and at least 2 (two) Persons with voting rights are present at the meeting that are entitled to be exercised on that matter at the time the matter is called on the agenda.

4.6.2 If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved (during the Development Period) in any other case (thus after the Development Period) it shall stand adjourned to a day not earlier than 5 (five) business days and not later than 15 (fifteen) business days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the Members present in Person or by proxy shall be a quorum.

4.6.3 Where a meeting has been adjourned as aforesaid (thus after the Development Period), the Company shall, upon a date not later than 3 (three) business days after the adjournment, publish in a newspaper circulating in the province where the Office of the Company is situated, a notice stating-

4.6.3.1 the date, time and place to which the meeting has been adjourned;

4.6.3.2 the matter before the meeting when it was adjourned; and

4.6.3.3 the ground for the adjournment.

4.6.4 The chairperson of the Board shall preside as chairperson at every general meeting of the Company. If there is no such chairperson, the vice-chairperson shall preside as chairperson at every general meeting of the Company. If there is no such chairman and/or vice-chairperson or if at any meeting he/she is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, any one of the remaining Directors or the Board's duly appointed representative, shall preside as the chairperson, failing all of which the Members present shall elect one of their number to be chairperson.

4.6.5 The chairperson may, with the consent of any 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 shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of articles 4.6.2 and 4.6.3 shall *mutatis mutandis* apply to such adjournment.

4.6.6 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or any Member, and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

4.6.7 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

4.7 **Members resolutions**

4.7.1 For an ordinary resolution to be adopted at a Members meeting, it must be supported by at least 50% of the Members who voted on the resolution, as provided in section 65(7) of the Act.

4.7.2 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) of the Act.

- 4.7.3 A special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11) of the Act.
- 4.7.4 For the following matters a special resolution must be adopted at a Members meeting (subject however to the terms and conditions contained in the Memorandum):
- 4.7.4.1 amend the Company's Memorandum;
- 4.7.4.2 ratify a consolidated revision of the Company's Memorandum, as contemplated in section 18(1)(b) of the Act;
- 4.7.4.3 ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20(2) of the Act;
- 4.7.4.4 authorise the basis for compensation to Directors of the Company, as required by section 66(9) of the Act;
- 4.7.4.5 approve the voluntary winding up of the Company, as contemplated in section 80(1) of the Act;
- 4.7.4.6 approve the winding up of the Company in the circumstances contemplated in section 81(1) of the Act;
- 4.7.4.7 approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5) of the Act;
- 4.7.4.8 approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or
- 4.7.4.9 revoke a resolution contemplated in section 164(9)(c) of the Act.

4.8 **Votes of Members**

At every meeting (of whatever nature) including a general meeting:

- 4.8.1 During the Development Period, the Developer shall be entitled to 3 (three) times the total number of votes of all the other Members of the Company at any general meeting of the Company, in addition to the votes conferred upon it in terms of article 4.8.2 below.
- 4.8.2 Every Member, including the Developer, in Person or by proxy and entitled to vote, shall have 1 (one) vote for each Stand or Unit registered in its name. It is recorded that the aforesaid shall *mutatis mutandis* apply to unsold Stands or Units which the Developer owns, in other words, the Developer shall, in addition to the votes as contemplated in article 4.8.1, have 1 (one) vote per unsold proclaimed Stand or Unit (it thus need not have been registered as a separate Stand or Unit in the name of the Developer).
- 4.8.3 Save as expressly provided for in the Memorandum, no Person other than a Member (including the Developer) duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of or arising out of his Membership and who is not under suspension shall be entitled to vote on any question, either Personally or by proxy, at any general meeting.
- 4.8.4 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote provided that during the Development Period, in other words until such time as all the Stands or Units have been developed, sold and transferred, such casting vote may only be cast by the Developer.
- 4.8.5 A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded. Any Member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of, or arising out of his membership and who is not under suspension shall be entitled to demand a poll, and in which event a decision shall be taken by poll.
- 4.8.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a single majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated provided that during the Development Period (shall mean the period until all the Stands or Units have been developed, sold and transferred) the Developer shall have a second or casting vote (see article 4.8.4 supra).

- 4.8.7 Unless any Member present in Person or by proxy at a general meeting shall, before 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 meetings, 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 and an entry in the minutes to the effect that any motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
- 4.8.8 The parent or guardian of a minor, and the curator bonis of a lunatic Member, and also any Person entitled to transfer the Membership, may vote at any general meeting in respect thereof in the same manner as if he were the registered Member: Provided that forty- eight hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the Directors that he is such parent, guardian or curator or that he is entitled to transfer the Membership, or that the Directors have previously admitted his right to vote in respect of the Membership. Co-executors of a deceased Member whose names stand in the register shall, for the purposes of this article, be deemed to be joint holders of that Membership.
- 4.8.9 On a poll, votes may be given either personally or by proxy and the Member of proxy shall have one vote per Stand or Unit (the Developer's voting rights as per article 4.8.1 and 4.8.2 shall *mutatis mutandis* be applicable).

5 Directors and Officers

5.1 Composition of the Board of Directors

- 5.1.1 The Board shall for the Development Period be divided into 2 (two) classes, namely Developer Directors and Member Directors. Upon expiry of the Development Period, there shall only be Member Directors.
- 5.1.2 The Board shall consist of 6 (six) Directors during the Development Period, of whom:
- 5.1.2.1 the first 3 (three) directors shall be Developer Directors appointed by the Developer; and
- 5.1.2.2 the remaining directors shall be appointed by the Members (Member Directors), who shall, irrespective of their ownership of Stands, not be an employee, shareholder or director of the Developer.
- 5.1.3 After the Development Period, all Directors will be elected by Members in accordance with the provisions of section 68(2) of the Act. An elected Director serves for a term of 3 (three) years with one third of the elected Directors retiring at each annual general meeting, or if their number is not 3 (three) or a multiple of 3 (three), the number nearest to 3 (three) shall retire. The elected Directors to retire in every year shall be those who have been longest in office since their last election, but as between Persons who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot. A retiring elected Director shall be eligible for re-election.
- 5.1.4 Only Members and/or the representatives of juristic Persons who are members, may be elected as Directors of the Company. The Developer may however appoint Directors who are not Members during the Development Period.
- 5.1.5 The Company may from time to time in general meeting increase or reduce the number of elected Directors, and may also determine in what rotation such increased or reduced number is to retire from office. The provisions contained in article 5.1.2 shall however during the Development Period remain applicable.
- 5.1.6 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act and article 5.1.2, to become or remain a Director and/or prescribed officer of the Company, a Person need not satisfy any further eligibility requirements or qualifications.
- 5.1.7 Each appointed Director of the Company serves for an indefinite term, until substituted by the Person or entity that made the appointment, subject to the provisions contained in article 5.1.
- 5.1.8 Subject to article 5.1.2 and 5.1.4, only a Person who is a Member of the Company or is the representative of a juristic Person who is a Member of the Company, may be appointed as a prescribed officer.
- 5.1.9 The authority of the Company's Board of Directors to fill any vacancy on the Board on a temporary basis is not limited, restricted or varied by this Memorandum.

- 5.1.10 The office of Director, whether elected or appointed, or prescribed officer shall be vacated if the Director or prescribed officer -
- 5.1.10.1 no longer satisfy the qualification and eligibility requirements set out in section 69;
 - 5.1.10.2 ceases to be a Member of the Company, subject to the provisions of articles 5.1.1, 5.1.2, 5.1.3 and 5.1.4; or
 - 5.1.10.3 ceases to be the representative of a juristic Person who is a member, subject to the provisions of articles 5.1.1, 5.1.2, 5.1.3 and 5.1.4; or
 - 5.1.10.4 is a representative of a juristic Person and the juristic Person who appointed him or her, ceases to be a Member, subject to the provisions of articles 5.1.1, 5.1.2, 5.1.3 and 5.1.4; or
 - 5.1.10.5 ceases to be a Director or becomes prohibited from being a Director by virtue of any provision of the Act; or
 - 5.1.10.6 without the consent of the Company in general meeting holds any other office of profit under the Company except that of executive Director or managing Director; or
 - 5.1.10.7 resigns his or her office by notice in writing to the Company and the Registrar; or
 - 5.1.10.8 for more than six months is absent without permission of the Directors from meetings of Directors held during that period; or
 - 5.1.10.9 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his or her interest and the nature thereof in the manner required by the Act.
- 5.1.11 All the provisions contained in article 5 shall specifically be subject to the provisions contained in articles 5.1.1, 5.1.2, 5.1.3 and 5.1.4).

5.2 **Authority of the Board of Directors**

- 5.2.1 The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Act or the Company's Memorandum provides otherwise.
- 5.2.2 If, at any time, the Company has only one Director, as contemplated in section 57(3) of the Act, the authority of that Director to act without notice or compliance with any other internal formalities, as set out in that section, is not limited, restricted or varied by this Memorandum.
- 5.2.3 Subject to the express provisions hereof, the Directors shall be responsible for the administration, control, management and Services required in the fulfilment of the objects of the Company as defined in article 2 hereof and to manage and control the business and affairs of the Company. The Directors shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent and may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by These Presents required to be exercised or done by the Company in general meeting, subject, however, to such Conduct Rules as may have been made by the Company in general meeting or as may be made by the Directors from time to time.
- 5.2.4 Save as specifically provided in These Presents, the Directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, advocates, architects, engineers and managing agents and any other professional firm or Person or other employees whatsoever for any reason deemed necessary by the Directors and on such terms as the Directors shall decide.
- 5.2.5 Subject to any restriction imposed and direction given at a general meeting of the Company, the powers of the Directors shall include the following:
- 5.2.5.1 to appoint for and on behalf of the Company such agent and employees as they deem fit in connection with the control, management and administration required in terms of the Memorandum, more particularly for the maintenance of the street verges and areas of individual Stands and Units falling within building line reserves;

- 5.2.5.2 to delegate to one or more of their Members or an outside expert such of their powers and duties as they may deem fit, and at any time to revoke such delegation;
- 5.2.5.3 to make Conduct Rules and by-laws for the control, use, safety, cleanliness and aesthetic landscaping of the Properties (including the Stands and/or Units) and to determine by Conduct Rule and by-laws from time to time promulgated, inter alia, the security, vegetation, continuity, parking, signage, advertising and maintenance;
- 5.2.5.4 to open and operate a current account and savings account with a banking institution;
- 5.2.5.5 to purchase, hire or otherwise acquire movable property for use in fulfilling the duties imposed on the Directors in terms of the Memorandum;
- 5.2.5.6 to liaise with the Council regarding any matter falling under the ambit of the Memorandum, or on behalf of any Member;
- 5.2.5.7 to utilize the facilities and equipment of the Company for purposes of providing a maintenance service in respect of the individual Stand of any Member relating to such Member's Stand, against a remuneration fee to be determined by the Directors from time to time (this shall *mutatis mutandis* also be applicable to Units);
- 5.2.5.8 to sign, execute and to enter into on behalf of the Company all and any contracts as may be required to give effect to the provisions of These Presents to appoint an Estate Manager and to delegate the management of the affairs and the business of the Company whether in whole or in part to such Estate Manager;
- 5.2.5.9 to ensure that Members adhere to the provisions of the Memorandum; and
- 5.2.5.10 to do all things reasonable necessary for the enforcement, management, control and administration devolving upon the Directors in terms of the Memorandum, as more fully set out in the Memorandum read in conjunction with the Conduct Rules.
- 5.2.6 The Directors are hereby empowered to establish for administrative expenses a fund sufficient in the opinion of the Directors for the upkeep, control, management and administration required to be performed by the Directors in terms of the Memorandum and for the acquisition of such movables as may be required for purposes of providing the Services to be rendered in terms hereof, or for the discharge of any duty imposed upon the Directors in terms hereof.
- 5.2.7 The Directors shall have the right to co-opt on the Board any Person or Persons chosen by them. A co-opted Director need not necessarily be a Member of the Company.
- 5.2.8 The Directors shall be entitled to appoint committees consisting of such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 5.2.9 The Directors shall and at their sole and absolute discretion impose fines on Members who fail to diligently comply with the Memorandum read in conjunction with the Architectural and Landscaping Guidelines and Conduct Rules. The quantum of the fines will be determined annually by the Directors and provided to the Members.
- 5.2.10 The borrowing powers of the Directors shall be unlimited. The Directors may exercise all the powers of the Company to borrow money and to mortgage or bind its undertaking and properties or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. The said powers shall however be subject to prior approval by special resolution of the Members at a special general meeting.
- 5.3 **Board of Directors meetings**
- 5.3.1 A decision that could be voted on at a meeting of the Board, may instead be adopted by written consent of a majority of the Directors, given in Person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 5.3.2 A Director authorised by the Board —

- 5.3.2.1 may call a meeting of the Board at any time; and
- 5.3.2.2 must call such a meeting if required to do so by at least—
 - 5.3.2.2.1 25% (twenty five percent) of the Directors, if the Board has at least 12 (twelve) members; or
 - 5.3.2.2.2 2 (two) Directors, in any other case.
- 5.3.3 The authority of the Company's Board 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 not limited or restricted by this Memorandum.
- 5.3.4 The Board may determine the form and time for giving notice of its meetings, but—
 - 5.3.4.1 such a determination must comply with any requirements set out in the Memorandum or the Conduct Rules; and
 - 5.3.4.2 no meeting of the Board may be convened without notice to all of the Directors, subject to article 5.3.5.
- 5.3.5 Except to the extent that the Company's Memorandum provides otherwise—
 - 5.3.5.1 if all of the Directors of the Company—
 - 5.3.5.1.1 acknowledge actual receipt of the notice;
 - 5.3.5.1.2 are present at a meeting; or
 - 5.3.5.1.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice;
 - 5.3.5.2 at least 3 (three) Directors must be present at a meeting of which at least 2 (two) Developer Directors have to be present, before a vote may be called at a meeting of the Directors;
 - 5.3.5.3 each Director has one vote on a matter before the Board; and
 - 5.3.5.4 a majority of the votes cast on a resolution is sufficient to approve that resolution; and in the case of a tied vote the chairperson shall have a second or casting vote.
- 5.3.6 The continuing Directors may act notwithstanding any vacancy on their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the Memorandum as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of convening a general meeting of the Company but for no other purpose.
- 5.3.7 The Directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office (during the Development Period, the chairperson shall be elected from one of the Developer Directors), but if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding same, the Directors present may elect one of their number to be the chairperson of the meeting.

5.4 **Indemnification of Directors**

- 5.4.1 Except to the extent that the Company's Memorandum provides otherwise, the Company—
 - 5.4.1.1 may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
 - 5.4.1.2 may directly or indirectly indemnify a Director for expenses contemplated in article 5.4.1.1, irrespective of whether it has advanced those expenses, if the proceedings—
 - 5.4.1.2.1 are abandoned or exculpate the Director; or

- 5.4.1.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 5.4.2 and 5.4.3.
- 5.4.2 Except to the extent that the Memorandum provides otherwise, the Company may indemnify a Director in respect of any liability arising other than as contemplated in article 5.4.3.
- 5.4.3 The Company may not indemnify a Director in respect of—
 - 5.4.3.1 any liability arising—
 - 5.4.3.1.1 in terms of section 77(3)(a), (b) or (c) of the Act; or
 - 5.4.3.1.2 from wilful misconduct or wilful breach of trust on the part of the Director; or
 - 5.4.3.2 any fine contemplated in article 5.4.4.
- 5.4.4 The Company may not directly or indirectly pay any fine that may be imposed on the Director of the Company, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability.
- 5.4.5 Except to the extent that the Memorandum provides otherwise, the Company may purchase insurance to protect—
 - 5.4.5.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with article 5.4.2; or
 - 5.4.5.2 the Company against any contingency including, but not limited to—
 - 5.4.5.2.1 any expenses—
 - 5.4.5.2.1.1 that the Company is permitted to advance in accordance with subsection (4)(a); or
 - 5.4.5.2.1.2 for which the Company is permitted to indemnify a Director in accordance with article 5.4.1.1; or
 - 5.4.5.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with article 5.4.2.
- 5.4.6 The Company is entitled to claim restitution from a Director of the Company or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this article or section 78 of the Act.
- 5.5 **Committees of the Board**
 - 5.5.1 Except to the extent that the Memorandum provides otherwise, the Board may—
 - 5.5.1.1 appoint any number of committees of Directors; and
 - 5.5.1.2 delegate to any committee any of the authority of the Board.
 - 5.5.2 Except to the extent that the Memorandum, or a resolution establishing a committee, provides otherwise, the committee—
 - 5.5.2.1 may include Persons who are not Directors of the Company, but—
 - 5.5.2.1.1 any such Person must not be ineligible or disqualified to be a Director in terms of section 69 of the Act; and
 - 5.5.2.1.2 no such Person has a vote on a matter to be decided by the committee;
 - 5.5.2.2 may consult with or receive advice from any Person; and
 - 5.5.2.3 has the full authority of the Board in respect of a matter.

5.5.3 The Directors may delegate any of their powers to committees consisting of such Member or Members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to the Conduct Rules that may be imposed on it by the Directors.

5.5.4 A committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the Members present may elect one of their number to be chairperson of the meeting.

5.5.5 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the Members present, and in the event of an equality of votes the chairperson shall have a second or casting vote.

6 Accounting Records

6.1 The Directors shall cause such accounting records as are prescribed by the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transaction and financial position of the trade or business of the Company.

6.2 The accounting records shall be kept at the Office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.

6.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any accounting records or documents of the Company except as conferred by the Act or authorised by the Directors or by the Company in General Meeting.

7 Annual Financial Statements

7.1 The Directors shall from time to time, in accordance with section 30 of the Act, cause to be prepared and laid before the Company in Annual General Meeting such annual financial statements, group annual financial statements and group reports (if any) as are referred to in the Act.

7.2 A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the Company in Annual General Meeting, shall not less than 15 (fifteen) business days before the date of the meeting be sent to every Member of, and every holder of debentures of, the Company: Provided that this article shall not require a copy of those documents to be sent to any Person of whose address the Company is not aware.

8 Income of the Company

8.1 The income of the Company shall consist of the compulsory monthly contributions ("levies") paid by Members and shall be used to promote and fulfil the main objects of the Company and meet all expenses in respect of:

8.1.1 the control, management and administration of the Townships;

8.1.2 (in general) the attainment of its main objects as described in the Memorandum and These Presents;

8.1.3 the maintenance of Common Property and the costs of services such as electricity, water and sewerage consumed or used on the Common Property;

8.1.4 the supply of any services rendered by the Company;

8.1.5 the payment of all expenses necessary or reasonably incurred in connection with the management of the Company;

8.1.6 the costs of the provision of security of the Townships;

8.1.7 (in general) the costs of fulfilling any of the obligations of the Company; and

8.1.8 to act as bulk supplier to the Townships in respect of the services rendered to in article 10 below.

- 8.2 The levies for the first year shall be determined by the Directors and thereafter as detailed in the following articles.
- 8.3 The Directors shall prepare no later than 1 (one) month prior to the end of each financial year a budget which shall detail the anticipated expenses for the ensuing year and the provisions for any budgeted fund in order to ensure that the Company will be able to fulfil its main objects. The budget must reflect the total annual and monthly levies required. Each Registered Owner of a Stand and a Unit, including the Developer (however subject to the provisions contained in article 8.15), shall be responsible for a monthly levy equal to the total monthly levies divided by the total number of Stands and Units (proportionately). The Company shall however not be responsible for the payment of any levies.
- 8.4 The budget and levies as calculated in article 8.10 must be submitted to, considered and approved, with or without amendments, by a general meeting of Members. Such general meeting of Members should be held before the commencement of the new financial year.
- 8.5 The monthly levies shall be due and payable on the first working day of each month. Each registered owner shall pay his/her/its monthly levies by means of electronic funds transfer to the bank account of the Company. The Company shall furthermore be entitled to require a Member to sign a debit order authority to allow the Company or its authorised agent to collect levies directly from an operating bank account.
- 8.6 The Directors shall be entitled to raise interest at the Company's bankers' prime overdraft rate plus 3 (three) percent on all overdue levies.
- 8.7 The Directors may at any stage introduce a special levy on all Registered Owners should the Directors realise that the budgeted income of the Company will be insufficient to enable the Company to fulfil its main objects.
- 8.8 Any amount due by a Member by way of levy, interest or penalty shall be a debt due by him/her/it to the Company. The obligations of a Member to pay a levy, interest and penalty shall cease upon him/her/it ceasing to be a Member without prejudice to the Company's right to recover arrear levies, interest and penalties. No interest on levies paid by a Member shall under any circumstances be repayable by the Company upon him ceasing to be a Member. A Member's successor in title to a Stand or Unit shall be liable as from the date upon which he/she/it becomes a Member pursuant to the transfer of the Stand or Unit, to pay the levy and interest thereon attributable to that Stand or Unit.
- 8.9 The Company shall be entitled to refuse traversing rights over its access security Stands to any Member or such Member's employees, invites or visitors, while such Member is in breach of any of the terms and conditions of Membership or Conduct Rules of the Company, all of which are deemed to be material. In addition thereto, the Company may disconnect and/or discontinue any services to the Stand or Unit of such Member in breach in respect of the payment of his/her/its levies and furthermore may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and client, together with collection commission and any other expenses and charges incurred by the Company in recovering such amounts.
- 8.10 In calculating the levy payable by any Member and subject to the Memorandum, the Directors shall as far as practicable:
- 8.10.1.1 assign those costs directly attributable to the Townships and which is also directly attributable to a specific Stand or Unit in the Townships to the Member owning such Stand or Unit;
- 8.10.1.2 assign those costs directly attributable to the Townships, but which is not directly attributable to a Stand or Unit in such Townships generally to the owners of all Stands or Units in that Townships;
- 8.10.1.3 assign those costs not directly attributable to a particular Township to the owners of all Stands or Units in proclaimed Townships in accordance with their general participation (including the applicable participation quota); and
- 8.10.1.4 the Directors may in any case where they consider it equitable to do so, assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 8.11 The Directors shall be entitled to establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Company and of the Estate, including the provision of security services for the Estate, garden maintenance services, optic fibre cable networks, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the Council or any other authority, any charges for the supply of electrical current, gas, water, fuel and sewerage

disposal, refuse collection and any other services to the Estate and any services required by the Company to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Company, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligations of the Company (provided that nothing in the Memorandum shall be construed as obliging the Company to pay service charges due by Members to the relevant authority).

- 8.12 The Company shall not be entitled to undertake on behalf of its Members any permanent works of major capital nature without the sanction of a resolution of the Members adopted during a general meeting of Members. In this article "works of major capital nature" means works that will cost more than R100 000,00 (One Hundred Thousand Rand) (excluding value-added tax).
- 8.13 Subject to the provisions contained in article 2.2.14, the Company shall be entitled to require Members, including the owners of the Lodge to make contributions to such levy fund for the purposes of satisfying the expenses, as contemplated herein.
- 8.14 It is further recorded that the budget prepared in terms of article 8.3 above shall include the following items of expenditure that are charged to the Company by third parties:
- 8.14.1 all rates and taxes payable by the Company to the Council in respect of the Common Property, as well as any service charges payable, including those for bulk services, by the Company to the Council in respect of the Townships;
- 8.14.2 the costs of the Developer's nominated provider of security services, including security guards, monitoring and surveillance equipment; and
- 8.14.3 the fee payable to any Estate Manager with whom an agreement has been concluded in accordance with the provisions of this Memorandum.
- 8.15 Notwithstanding any other contrary term contained in the Memorandum of the Company, the Developer's obligation to pay levies in respect of any proclaimed Stand and Unit, shall be subject to the following provisions:
- 8.15.1 the Developer shall for the period 5 December 2012 until 31 December 2013 only pay 50% (fifty percent) of the levies in respect of any Stand and Unit proclaimed up to 31 December 2013;
- 8.15.2 the Developer shall pay 100% (one hundred percent) of the levies in respect of any Stand and Unit proclaimed (up to 31 December 2013) after 1 January 2014;
- 8.15.3 the Company shall pay to the Developer as a contribution towards the costs to repair the Golf Course an amount of R820 000,00, as it moreover appears from the cost estimate annexed hereto as Annexure "B" and the payment of which shall be effected by no later than 28 February 2014; and
- 8.15.4 the Company shall as from 1 January 2014 be solely responsible for the maintenance of the Golf Course including the Common Property, as contemplated in this Memorandum.

9 **Secretary**

- 9.1 The Directors may appoint a Secretary for a period, at a remuneration and on such terms and conditions, which they may deem fit. The Members in general meeting may also discharge a Secretary.
- 9.2 A Director or the auditors of the Company may not be appointed as Secretary of the Company.

10 **Special Conditions – Dullstroom Extension 3, Dullstroom Extension 4 and Dullstroom Extension 5, including any other Township or property which the Developer wishes to incorporate under the Articles as it moreover appears from *inter alia* article 1.1.17**

10.1 **Provisions of Services**

10.1.1 Potable water supply

- 10.1.1.1 Water will be obtained from surface and sub-surface sources on the Development Area and supplied therefrom to each Stand and Unit and separately metered. The Company shall define the water consumption and the metering of such water consumption which shall not be applicable to the Developer during the Development Period.

- 10.1.1.2 The management and maintenance of the complete internal water supply system will be the responsibility of the Company and all supplies of water will be managed and administered in the entire discretion of the Company.
- 10.1.1.3 The Developer shall install the infrastructure for the water supply to the boundary of each Stand or Unit in the Townships. The Company will be responsible for the costs of the maintenance and servicing of pipelines, pumps, meters, equipment and materials in respect of the internal potable water supply system up to the boundary of each Stand or Unit.
- 10.1.1.4 The Members of the Company shall be liable for and shall pay to the Company on demand all charges arising from water supply to or consumed in or on an Erf or Unit and the building thereon. The provisions hereof shall obviously not be applicable to the Developer during the Development Period.
- 10.1.1.5 The liability of Members of the Company for such charges shall be in accordance with separate sub-meters serving the Stands or Units of Members, which the company shall be entitled to install at the cost of such Member, as the case may be.
- 10.1.1.6 Where water charges are calculated and payable in terms of this article, any value-added tax levied in respect of the supply of such water shall be paid by the Member in question.
- 10.1.1.7 The Company will be entitled to charge interest at the prime rate plus 3 (three) percentage points on any charges payable by a Member in terms of this article which interest will be calculated from the due date on the balance of the charges owing from time to time until it has been paid in full.
- 10.1.1.8 The Company will be responsible for the maintenance of the potable water supply system, including all storage dams, water pumping systems, pipe networks, water purification facilities and bulk storage facilities up to the bulk supply point.
- 10.2 **Electricity**
- 10.2.1 Eskom or other relevant regional supplier of electricity will supply electricity in bulk to the boundary of the Townships. This will be known as the point of supply ("POS"). The Company will be responsible for paying Eskom the monthly electrical consumption charges as metered at the POS.
- 10.2.2 The POS will contain an intake substation with the necessary switch gear and a bulk supply meter to the Development. Ownership of this equipment (together with the responsibility to operate, maintain and repair same) will vest in Eskom.
- 10.2.3 The Developer shall install the internal infrastructure from the POS for the electricity supply to a distribution kiosk in the vicinity of each Stand or Unit in the Townships. The extent of the Developer's obligations as it moreover appears from the provisions hereof, are disclosed in article 2.2.15.
- 10.2.4 The Company will be responsible for the operation and maintenance of the internal reticulation of electricity and shall further be responsible to appoint a responsible person as defined in terms of the Occupational Health and Safety Act to exercise this function on its behalf.
- 10.2.5 The liability of Members of the Company for such charges shall be in accordance with separate sub-meters servicing the Stands or Units of Members, which the Company shall be entitled to install at the cost of such Member, as the case may be.
- 10.2.6 Where electricity charges are calculated and payable in terms of this article, any value-added tax levied in respect of the supply of such electricity shall be paid by the Member in question.
- 10.2.7 Lighting on the Common Property shall be supplied through separate electricity supply meters and the cost incurred by the Company in respect thereof shall be recovered from the Members as part of the levies imposed by the Company.
- 10.2.8 It is recorded that the current electricity supply to the Estate is insufficient and will be upgraded by the Developer, subject however thereto that the cost thereof shall proportionately be attributed to all the proclaimed Stands in the Estate and the cost of the upgrade shall subsequently be reimbursed to the Developer on the earlier of:
- 10.2.8.1 the date on which a Member commences with the construction of an Erf or Unit;

- 10.2.8.2 the date on which an Erf or Unit is sold and transferred to a third party; or
- 10.2.8.3 no later than 28 February 2016.
- 10.2.9 The Developer shall provide the Company with the accepted Eskom tender with proof of payment.
- 10.3 **General**
- 10.3.1 The Company will provide the necessary connections to the infrastructure services to the boundary of each Erf or Unit in the Townships by means of sub-meters or otherwise.
- 10.3.2 Each Member of the Company shall from date of transfer be responsible for any connection charges to the infrastructure of the Townships, including the costs of any metering device and the maintenance and replacement of any such device.
- 10.3.3 The Company shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the Company.
- 10.3.4 The Developer during the Development Period and thereafter the Company shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication and any other services over any Erf or Unit or building or any other portion of the Townships, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 10.3.5 The Members of the Company will allow reasonable access to the employees or representatives of the Developer or the Company (as the case may be) into the Stands, Units or buildings for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services rendered to above.
- 10.3.6 Without limiting the generality of the provisions of article 10.3.4 above, every Member shall allow gas mains, electricity, telephone and television cables and/or wires, and main and/or other water pipes and sewerage and drainage, including stormwater, of any other land, Erf or Unit to be conveyed across the relevant land, Stand or Unit, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon, if considered necessary by the Developer (during the Development Period) and thereafter the Company, and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the land, Stand or Unit at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the aforementioned.
- 10.3.7 Without limiting the generality of the provisions contained in the Memorandum, the Developer, during the Development Period and thereafter the Company, shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems, gas reticulation and any other type of service and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The Members accept and shall be bound by and consent to the registration of the servitudes as contemplated herein.
- 10.3.8 The Company will be responsible for the maintenance of the internal sewer reticulation servicing the Townships as well as for the maintenance of the sewerage treatment plant. The maintenance costs of the internal sewer reticulation and the sewerage treatment plant, as well as sewerage services costs will be recovered by means of levies imposed by the Company.
- 10.3.9 The Company will be responsible for the maintenance of the internal stormwater system servicing the Townships as well as for the maintenance of the stormwater catchment dams. The maintenance costs will be recovered by means of levies imposed by the Company.
- 10.3.10 The Members of the Company shall at all times ensure that they comply with all environmental conditions prescribed by any statutory body or by the Company and/or with any fire protection and/or health requirements that may from time to time be prescribed.
- 10.4 **Architectural and Landscaping Guidelines**
- 10.4.1 The Architectural and Landscaping Guidelines constitute an integral part of These Presents. It is recorded that the Architectural and Landscaping Guidelines contain the procedures, requirements and guidelines to be adhered to by every Member who wishes to effect construction, improvements or alterations to or undertake any renovation of any Stand or Unit.

- 10.4.2 Each Member shall not undertake any development of and/or improvement to his/her/its Stand or Unit without having submitted the required plans, conforming to the requirements of the Architectural and Landscaping Guidelines, for consideration, evaluation and approval to the Aesthetics Committee and having obtained the prior Written consent thereto from the Aesthetics Committee. After the required approval as contemplated herein has been obtained, the Aesthetics Committee on behalf of the Member shall submit the approved plans to the Council for acceptance.
- 10.4.3 No construction or erection of any improvements or alterations to and no renovation of any Stand or Unit that is undertaken by any party (other than the Developer) or any landscaping on any property may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovations by the Aesthetics Committee and, where required, the Council, in accordance with the following provisions:
- 10.4.3.1 the Member shall submit to the Aesthetics Committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
- 10.4.3.2 the Member shall be liable for the payment of the reasonable cost of professional scrutinizing and examination of such plans as contemplated in articles 2.5.11 and/or 2.5.12; and
- 10.4.3.3 after the approval of such plans by the Aesthetics Committee the plans shall be submitted to the Council by the Aesthetics Committee for approval. No plans shall be submitted to the Council unless it bears the endorsement of approval of the Aesthetics Committee, clearly dated, certifying that the plans complies with the Architectural and Landscaping Guidelines.
- 10.4.4 When effecting the construction, improvements, alterations or renovations contemplated in this article, the Member shall at all times comply strictly with the Architectural and Landscaping Guidelines as well as all conditions and standards imposed by the Council insofar as these may be additional to the provisions of the Architectural and Landscaping Guidelines. No Member shall be entitled to deviate in any manner whatsoever from any plan approved by the Aesthetics Committee and the Council unless the prior written approval of the Aesthetics Committee and the Council for such proposed deviation has been obtained.
- 10.4.4 No Member shall be entitled to challenge or contest any of the provisions of the Architectural and Landscaping Guidelines. No application for the amendment of the Architectural and Landscaping Guidelines shall be made to the Council unless prior Written consent of the Developer during the Development Period and thereafter the Company has been obtained thereto.
- 10.4.5 The Developer may, during the Development Period, and thereafter the Company, amend the Architectural and Landscaping Guidelines from time to time.
- 10.5 **Estate Rules / Conduct Rules**
- 10.5.1 The Estate Rules of the Company constitute an integral part of These Presents.
- 10.5.2 The Estate Rules annexed hereto as Annexure "C" shall constitute framework rules for the Estate Rules to be developed as provided herein and after These Presents have been registered.
- 10.5.3 Subject to These Presents and to any restriction imposed or direction given at a general meeting of the Company and subject to any condition imposed by the Council, the Board may from time to time make Estate Rules, and vary or modify these rules, in regard to:
- 10.5.3.1 the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the Development or any building, construction or any other work in the Townships;
- 10.5.3.2 the preservation of the natural environment, vegetation and fauna within the Townships including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any Stands or Units;
- 10.5.3.3 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 10.5.3.4 the conduct of any persons within the Townships and the use of his/her/its property for the prevention of nuisance of any nature to any Member;

- 10.4.3.5 the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
- 10.5.3.6 the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping in the Townships;
- 10.5.3.7 the control of the number of occupants or residents permitted on any one Stand or Unit;
- 10.5.3.8 the admission of any person in the Townships, and the eviction of any person not entitled to be therein;
- 10.5.2.8 the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of the Members and/or the residents within the Townships.
- 10.5.4 For the enforcement of any of the Estate Rules made by the Board in terms of this article or of any of the provisions of These Presents generally, the Board may:
- 10.5.4.1 give notice to the Member concerned requiring him/her/it to remedy such breach within such period as the Board may determine; and/or
- 10.5.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the Estate Rules or provision of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or
- 10.5.4.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 10.5.5 Should the Board institute any legal proceedings against any Member or resident in the township for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 10.5.6 In the event of any breach of the Estate Rules by the Members or any Member's household or his/her/its guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 10.5.7 If any Member disputes the fact that he/she/it has committed a breach of any of the provisions of the Estate Rules made by the Board in terms of this article or any provisions of These Presents, a committee of 3 (three) Board Members appointed by the chairman shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairman may direct.
- 10.5.8 Notwithstanding anything to the contrary herein contained, the Board may in the name of the Company enforce the provisions of any Estate Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 10.5.9 The Company may in a general meeting itself make any Estate Rules in regard to any matter and may also vary or modify any Estate Rule made by it or by the Board from time to time.
- 10.5.10 All Estate Rules shall be reasonable and shall apply equally to all Members of Stands or Units put to substantially the same use.
- 10.5.11 The Company shall not make any management or conduct rule applicable to the sectional title scheme, which is in conflict with an Estate Rule applicable to the Company in terms of this article of These Presents.
- 10.6 **Occupation and use of Stands or Units**
- 10.6.1 Occupation and use of Stands or Units shall, at all times, be in compliance with the Memorandum and the Conduct Rules. The Directors may, in their sole discretion, determine that any Person, not being a member, be denied access to the Estate and be required to leave in the event of such Person breaching the Memorandum or the Conduct Rules made in terms hereof. No Member shall use any Stand or Unit or part or any building or allow any other Person to use such Stand or Unit or part of any building, for purposes not permitted by the Memorandum and/or the Conduct Rules.

- 10.6.2 Without limiting the generality of any of the provisions of the Conduct Rules the following provisions will apply to every Member, Homeowner and their invitees-
- 10.6.2.1 the Member or Homeowner shall not carry on, and will not allow to be carried on or about the Stand or Unit, as a primary business any business which sells or distributes liquor or potable alcohol or which carries on any form of gaming or lottery, or any form of escort agency, strip show or similar entertainment. The provisions of this 10.6.2.1 do not prohibit the serving of alcohol to guests or invitees of a Homeowner for *bona fide* recreational purposes;
- 10.6.2.2 the Member or Homeowner will not use the Stand or Unit or permit the same to be used for any illegal or improper purposes or any manner which creates an unlawful nuisance or disturbance to other Persons;
- 10.6.2.3 no Member or Homeowner will be entitled to object to any application by the Developer or an associated Company to any governmental or other authority relating to or in connection with any development to take place within a radius of 10 (ten) kilometres from the Development, provided that such development is substantially in accordance with the requirements of the Council and/or the Department of Agriculture, Conservation, Environmental and Land Affairs and/or any other relevant authority.

11 **Articles binding on invitees**

- 11.1 The provisions of the Memorandum (including in particular but without limiting the generality of the foregoing restrictions and conditions relating to the use of Stands or Units and Common Facilities) shall be binding on all invitees as if they were Members.

12 **Restriction against Alienation**

- 12.1 No Member, as aforesaid, shall be entitled to Alienate his/her/its Stand or Unit to any third party unless-
- 12.1.1 the third party concerned has first agreed in writing to be and become a Member of the Company;
- 12.1.2 the Board has certified in writing that all levies and similar amounts payable by the Member concerned to the Company have been paid or secured to the satisfaction of the Board for a period terminating not earlier than 3 (three) months after the date of such certificate; and
- 12.1.3 the Board has certified that all penalties as contemplated in the Memorandum have been paid and/or secured to the satisfaction of the Developer (during the Development Period) and thereafter the Company.
- 12.2 Upon the registration of the Stand or Unit to a third party such third party will automatically be and become a Member of the Company.
- 12.3 The provisions hereof shall in any event be subject to article 2.5.15.

13 **Enforcement of obligations of Members**

- 13.1 Should any Member or guest or invitee of a Member fail to perform any obligation incumbent upon him/her/it, if applicable, within the period of any notice given for compliance, the Company shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Company, necessary and/or requisite to procure compliance. The costs thereby incurred by the Company shall be recoverable from the Member, which amounts shall be deemed to be part of the levy due by the Member concerned.

14 **Estate Manager**

- 14.1 During the Development Period an Estate Manager shall be appointed by the Developer and the Developer shall, in its absolute discretion, determine the fees or remuneration to be paid by the Company to the Estate Manager and the other terms and conditions of his or her appointment. This appointment may extend beyond the Development Period provided that the Developer shall endeavour to procure in making such appointment that it may, if so required by the Company in general meeting, and subject to the requirements of law, be terminated on reasonable notice after the end of the Development Period.
- 14.2 After the Development Period in the event that an existing Estate Manager's appointment is terminated in terms of this article, successor estate managers shall from time to time be appointed by the Company in

general meeting and the Members shall determine the fees or remuneration to be paid by the Company to such Estate Manager and all the other terms and conditions of his or her appointment, it being contemplated at all times the affairs of the Company will be entrusted in whole or part to a professional Estate Manager or person with appropriate executive powers so as to conform to the requirements of good corporate governance.

14.3 A director may be appointed as the Estate Manager.

15 **Powers of the Estate Manager**

15.1 Subject to the provisions of These Presents and the terms of his or her appointment, the Estate Manager shall have full power to manage and control the business and affairs of the Company or such portion thereof as may be determined by the Company in general meeting, and may exercise all such powers of the Company and do all acts on behalf of the Company itself.

16 **Entrenched provisions**

16.1 The Developer, during the Development Period and thereafter the Company have a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the development of the Townships. Accordingly none of the following provisions of articles 5.1.1 to 5.1.11 (both inclusive) may be deleted or varied in any way in terms of These Presents, without the prior written consent of the Developer during the Development Period and thereafter the Company being obtained. In addition thereto:

16.1.1 all Members of the Company shall enjoy residential membership of the Golf Course in accordance with the provisions of the constitution of the said club from time to time;

16.1.2 all Members of the Company shall automatically qualify for home owner membership fees of the Golf Club;

16.1.3 the Developer during the Development Period and thereafter the Company may register, in their entire and sole discretion and where necessary, services servitudes, including those referred to in article 10.3.7 below, in favour of the local authority, the Developer, the Company, and/or any adjacent property development over any separate Stand in the Townships, the Common Property (as defined herein), building or Common Property;

16.1.4 the Developer shall be entitled, during the Development Period, to incorporate adjacent immovable property into the Development Area and the Developer shall be entitled to develop the said property as it may deem fit, in which event all persons who become owners of Stands or Units in such development shall be entitled or subject to (as the case may be) the benefits, rights or obligations of Members of the Company. Any and all development costs (without any limitation, however subject to the provisions contained in this Memorandum) in respect of the Future Phases will be borne solely by the Developer. In respect of future phases, it is recorded that the Developer shall pay levies as and when such phases are proclaimed;

16.1.5 no Member shall be entitled to object to the subdivision and/or development of any part of the Development Area provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the Development Area (or the Development Layout), nor shall they be entitled to object to any such new development.

16.1.6 the Company shall at all times be entitled to draw electricity from Stands adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Company but recovered as part of the levy from Members;

16.1.7 ownership of a Stand or Unit does not confer any right, including that of access, in respect of property owned by the Developer, including any right of way or access across such property;

16.1.8 the Members acknowledge and agree that the Developer, its successor/s in title and its employees have certain rights, including rights of access across the Common Property and across any area occupied by the clubs;

16.1.9 the Members acknowledge and agree that Persons staying at the Lodge or utilising the Golf Club (including the Golf Course), shall be entitled to have a right of access across the Common Property;

16.1.10 after the Development Period all building contractors and architects must be approved by the Company before construction of any building or dwelling commences;

16.1.11 all estate agents marketing and/or selling property in the Estate shall be approved by the Developer during the Development Period; and

16.1.12 the Company's obligation to maintain the entire Golf Course shall, notwithstanding any other contrary term contained in this Memorandum or otherwise, commence on 1 January 2014.

17 **Special conditions (continued)**

17.1 In the event of any Member (including his/her/its successors in title) intending at any time to market, sell, alienate or in any manner whatsoever dispose of his/her/its Stand or Unit (including without limitation a disposal of shares, member's interest or beneficial interest in a trust), shall only employ or appoint an estate agent ("the designated estate agent") approved by the Developer, its successor in title or assigns. The Developer, its successors in title or assigns shall from time to time publish a panel ("the Panel") reflecting the designated estate agent approved by the Developer, its successors in title or assigns.

17.2 The Developer shall be entitled to construct a boutique hotel and spa forming part of or adjacent to the clubhouse during the Development Period. The said boutique hotel and spa shall be subject to the following conditions:

17.2.1 the Developer shall exercise the rights by providing the Company 60 (sixty) days prior written notice, as contemplated herein, and commence with construction within the Development Period;

17.2.2 all capital costs (without any restriction) and in respect of the construction of the boutique hotel and spa will solely be borne by the Developer;

17.2.3 the building plans of the boutique hotel and spa will be approved by the Aesthetics Committee and be in keeping with the standard of the Estate;;

] 17.2.4 the Company will transfer to the Developer at no charge the area comprising the boutique hotel and spa, conditional thereupon that the Developer will be liable for all costs associated with the subdivision and subsequent transfer of the portion in question.

17.3 The Members are aware that the Development and Estate as contemplated herein constitutes a phased development and subsequently irrevocably grants the Developer the exclusive and unfettered right to extend the Development and include the Future Phases and/or properties into the security parameter at its discretion, the owners of which will subsequently become Members of the Company. The Developer is thus irrevocably authorised to effect such amendments to the Memorandum in order to allow the incorporation of such Future Phases and owners of the properties therein, as Members of the Company.

17.4 The Members irrevocably undertake not to object to any rezoning or township establishment undertaken by the Developer, its nominee or successors in title within a 10km radius of the Estate.

17.5 The Developer shall be entitled to subdivide any portions of land which it owns for the Future Phases without the requirement to obtain any prior consent from the Company and authorises the Developer to sign amongst others, any such documents on its behalf to give effect thereto, provided however that the said portions are in accordance with the current urban design.

17.6 After the acceptance by the Members of the Memorandum as contemplated herein and without any material amendments and which incorporates the Rules by way of special resolution and the registration thereof by the Companies and Intellectual Property Commission, the Developer shall immediately transfer to the Company, the Golf Course, trout dams and all other Common Property.

18 **Determination of disputes**

18.1 In the event of any dispute arising between a Member and the Directors (as the representative of the Company) as to the construction, meaning or interpretation of any of the provisions of the Memorandum or as to the rights, obligations or liabilities of the Company or any Member in terms of the Memorandum the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 (fourteen) days, then such dispute or difference shall be submitted to and decided by summary arbitration.

18.2 The arbitration shall be held-

18.2.1 at Sandton, Johannesburg;

- 18.2.2 in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by the Arbitration Act or the strict rules of evidence; and
- 18.2.3 as soon as reasonable practicable in the circumstances and with a view to it being contemplated within 21 (twenty one) business days after it is demanded.
- 18.3 The arbitrator shall be a Person agreed to between the parties to the dispute and failing agreement, a Person nominated for such purpose by the president (or failing him, the secretary) for the time being of the Law Society of the Northern Provinces (or its successors in title).
- 18.4 The arbitrator shall determine-
- 18.4.1 the issues submitted to him or her according to what he or she considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to the strict rules of the law; and
- 18.4.2 which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.
- 18.5 The arbitrator shall be deemed to act as an expert and not as an arbitrator.
- 18.6 The decision of the arbitrator shall be-
- 18.6.1 final and binding on all parties;
- 18.6.2 carried into effect; and
- 18.6.3 capable of being made an order of any court of competent jurisdiction.

19 **Disclaimer responsibility**

- 19.1 The Company shall not be liable for any injury to any Person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Company be responsible for any theft of property occurring on the Estate. Members hereby acknowledge that they shall not, under any circumstances have any claim or right of action whatsoever against the Company for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.
- 19.2 The Company and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member or any such other Person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.
- 19.3 Members hereby accept responsibility for and indemnify the Developer and the Company and its employees, servants and agents and lawful invitees against all claims by any Person arising from any injury or loss or damage as contemplated in this article 19.

20 **General**

- 20.1 As contemplated in article 17, the Members irrevocably grant the Developer the right to:
- 20.1.1 extend its proposed development, provided it has complied with the provisions of the Deeds Registries Act, 47 of 1937;
- 20.1.2 during the Development Period, incorporate such new developments as it appears from the Development Layout with the ambit of the Memorandum even though it may fall beyond the boundary of the Development; and
- 20.1.3 effect amendments to the Memorandum to accommodate and incorporate the new Members as contemplated in 20.1.1 – 20.1.2.
- 20.2 The said Members furthermore authorises the Developer irrevocably to do whatsoever may be necessary to give effect to the provisions of 20.1 and hereby ratifying same, subject however thereto that all development costs of whatever nature shall be solely borne by the Developer.

- 20.3 The sales office situated in the gatehouse or otherwise, shall be utilised by the Developer at no cost during the Development Period, provided that the Developer shall be obliged to pay for all services (e.g. water and electricity). The Developer shall be obliged to maintain such sales office, fair wear and tear excepted. Such sales office may be upgraded or enlarged by the Developer, provided all costs associated thereto will be for the Developer's account and which shall be approved by the Aesthetics Committee.
- 20.4 The Company may enter into agreement with any third party for the provision of facilities or services to or for the Members, and may levy charges in respect of the provision thereof, or may pass on such costs direct to the Members. Provided that the contracts concluded by the Developer shall not exceed beyond the period of 3 (three) months after the termination of the Development Period, it is furthermore recorded that the Members will be bound by all contracts concluded by the Developer for the leasing or purchase of all equipment or infrastructural assets, or for the provision of security for the Estate, or for the provision of any other service or supplies for the Estate which the Developer may consider necessary in its discretion, even where such contractor or commitments include the payment of costs or outgoings on an ongoing basis. It is recorded, without limitation that the Developer intends to conclude contracts for the hire or supply of electronic surveillance, monitoring and detection equipment for security purposes relating to the perimeter of the Estate.
- 20.5 The Board or the Estate Manager or their employees, agents or contractors shall be entitled and shall have the right to enter any Stand or Unit for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the Estate generally.
- 20.6 Any Person using any of the services, land or facilities of the Company within the Estate does so entirely at his/her/its own risk.
- 20.7 If any Future Phase and including the Development Area (or a portion thereof), which is to be developed by the Developer, forms part of the Golf Course, that portion which is subject to development shall be retransferred to the Developer as soon as the Developer has obtained the subdivisional rights in respect thereof. The Developer shall subsequently be liable for all costs associated with the said subdivision and/or retransfer of the Development Area or portion thereof as it moreover appears from the Development Layout, as contemplated in this Memorandum.
- 20.8 Provisions of the Memorandum may only be amended by special resolution with the prior Written consent being obtained from the Developer during the Development Period.

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