

Companies and Intellectual Property Commission

Republic of South Africa

Memorandum of Incorporation

unique to

THE PLANTATIONS HOME OWNERS ASSOCIATION (RF) NPC

Registration No. 2003/009741/08

(which is referred to in the rest of this Memorandum of Incorporation

as “the Company”)

The long standard form of Memorandum of Incorporation for Non-Profit Companies with Members, Form CoR15.1E, as amended from time to time, shall not apply to the Company.

The Memorandum of Incorporation is in a form unique to the Company, as contemplated in Section 13(1)(a)(ii) of the Companies Act, 71 of 2008, as amended.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by a Special Resolution of the Members passed on the and in substitution for the existing Memorandum and Articles of Association of the Company.

1. DEFINITIONS AND INTERPRETATION

In this Memorandum of Incorporation, unless the context otherwise requires: –

- 1.1. “the Act” means the Companies Act No. 71 of 2008 as amended and any Regulations in force thereunder from time to time;
- 1.2. “the Architectural Design Review Committee” means the Committee established to oversee the application of the Architectural Design Guidelines;
- 1.3. “the Board” means the Board of Directors of the Company;
- 1.4. “the Company Property” means those properties in the ownership of the Company;
- 1.5. “Body Corporate” means a Body Corporate as defined in Section 1 of The Sectional Titles Act;
- 1.6. “the Company” means The Plantations Home Owners Association (RF) NPC, Registration No. 2003/009741/08;

- 1.7. "Conduct Rules" means the rules of conduct made by the Directors from time to time in terms of Article 13;
- 1.8. "the Development" means an upmarket residential estate incorporating stand alone dwellings and sectional title developments established on the land;
- 1.9. "Directors" means the Directors of the Company;
- 1.10. "Electronic Communication" has the meaning set out in Section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.11. "Erf" means a freehold subdivision of the land registered in the name of a member or upon which a sectional title scheme has been established; "erven" is the plural term;
- 1.12. "Estate" means the Development;
- 1.13. "the Guidelines" means the Architectural Design Guidelines, the Landscaping Guidelines and any other guidelines applicable from time to time;
- 1.14. "Improvements" means all structures erected on any property, including but not necessarily limited to those matters governed by the Architectural Design Guidelines, as amended from time to time;
- 1.15. "In writing or written" means and includes words printed, handwritten, typed, represented or reproduced in any mode in a visible form;
- 1.16. "Land" means the area of land (previously described as proposed Erf 1 Plantations, Registration Division FT, Province of Kwazulu-Natal, in extent approximately 84 hectares) on which the development is situated;
- 1.17. "Manager" means the person or legal body appointed from time to time by the Directors to undertake the management of certain specific functions within the Estate on behalf of the Company;
- 1.18. "Member" means an owner as referred to in Article 1.22;
- 1.19. "Memorandum" means the Memorandum of Incorporation for the time being of the Company;
- 1.20. "Office" means the registered office of the Company for the time being;
- 1.21. "Owner" means a person who has acquired registered title in the Kwazulu-Natal Deeds Registry of an erf, a unit or an undivided share in an erf or unit and includes the Bodies Corporate of Sectional Titles Schemes within the Estate, and has thereby become a member;
- 1.22. "Property" means in relation to the Estate, any erf or unit;

- 1.23. "Sectional Titles Act" means The Sectional Titles Act No. 95 of 1986 (as amended) together with the regulations applicable from time to time;
- 1.24. "the Statutes" means The Companies Act and any other Act for the time being in force concerning companies and affecting the Company;
- 1.25. "unit" means a sectional title unit as defined under the provisions of the Sectional Titles Act;
- 1.26. a reference to a Section by number refers to the corresponding Section of the Act;
- 1.27. a reference to a Regulation by number refers to the corresponding Regulation in the Regulations;
- 1.28. words that are defined in the Act bear the same meaning in this Memorandum as in the Act;
- 1.29. an expression which denotes:-
- 1.29.1. any gender includes the other genders;
- 1.29.2. a natural person includes a juristic person and *vice versa*; and
- 1.29.3. the singular includes the plural and *vice versa*;
- 1.30. any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in the manner and form permitted in terms of the Act and/or the Regulations;
- 1.31. any reference to "days" shall be construed as calendar days unless qualified by the word "business" in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as Gazetted by the Government from time to time.

2. INCORPORATION AND NATURE OF THE COMPANY

- 2.1. the Company is a pre-existing non-profit Company with Members as defined in the Act and, as such, continues to exist as a non-profit Company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 2.2. the Company is incorporated in accordance with and governed by –
- 2.2.1. the unalterable provisions of the Act, that are applicable to non-profit companies;
- 2.2.2. the alterable provisions of the Act, that are applicable to non-profit companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum; and

2.2.3. the provisions of this Memorandum.

3. THE OBJECTS AND POWERS OF THE COMPANY

3.1. The objects of the Company are:-

3.1.1 to promote, advance and protect the interests of the Members generally;

3.1.2 to manage the Estate;

3.1.3 to ensure acceptable aesthetic landscaping and architectural standards;

3.1.3.1 for the construction of residential buildings in the Estate;

3.1.3.2 for the ongoing maintenance of the Estate;

3.1.4 to maintain and administer all property vested in the Company.

4. MEMORANDUM AND COMPANY RULES

4.1. Subject to article 6 below, this Memorandum may be amended only by Special Resolution adopted at a Members' meeting or in terms of a Court Order.

4.2. Amendments to the Memorandum may be proposed by the Board or by Members entitled to exercise at least 10% (ten percent) of the voting rights.

4.3. The Board shall nevertheless have the power to alter this Memorandum to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in section 17 of the Act. A notice of any such alteration must be sent to each Member at least 10 (ten) business days prior to the filing of the notice of alteration with the Commission.

4.4. The authority of the Company's Board of Directors to make Rules for the Company, as contemplated in section 15(3) to (5) is not limited.

4.5. The Board must publish any Rules made in terms of section 15(3) to (5) by delivering a copy of those Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.

4.6. The Board must publish a notice of any alteration of the Memorandum or the Rules, made in terms of section 17(1) of the Act, by delivering a copy of those alterations or Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.

5. OPTIONAL PROVISIONS OF THE ACT

5.1. 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.

5.2. The Company may voluntarily elect to appoint a Company Secretary.

5.3. 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 and approved by the Members.

6. MEMBERSHIP

6.1. Membership of the Company shall be obligatory for an Owner.

6.2. This provision may never be altered by the Members.

7. MEMBERS OF THE COMPANY

7.1. 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 open to inspection, as provided in section 26 of the Act.

7.2. If an erf is owned by more than one person or if a sectional title register has been opened in respect of the improvements on an erf, each co-owner and each unit owner, as the case may be, will be required to become a Member, however the voting rights applicable to such erf will be exercised jointly by the co-owners or unit owners as the case may be.

7.3. No person may become an Owner without first being accepted as a Member. The rights and obligations of membership shall commence on the day upon which a person becomes a registered owner and shall cease:

7.3.1 upon the day when the person ceases to be a registered owner;

7.3.2 upon the issue of a final order of sequestration or liquidation of the Member concerned; or

7.3.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.

In the event of a Member ceasing to be a Member in terms of article 7.3.2 or 7.3.3 above, the Member's executors, curators, trustees or liquidators shall for all purposes be recognized and be bound as the Member under this Memorandum.

7.4. Each property is subject to the condition of title that neither the erf, a unit nor an undivided share in an erf or unit shall be transferred without the prior written consent of the Company, and a clearance certificate has been issued by the Company to the effect that the provisions of its Memorandum (previously the Articles of Association) have been complied with.

7.5. Any person desiring to take transfer of an erf or unit shall complete a prescribed membership application form and shall sign an undertaking to agree to be bound by:-

- (a) the Memorandum and any Company Rules as contemplated in sections 15(3) to (5) of the Act;
- (b) the Conduct Rules of the Company;
- (c) the Guidelines;

- (d) any other requirements of the Company,
as amended and updated from time to time

Upon compliance with all of the requirements of the Company applicable to existing and prospective Members in terms of the Memorandum, the Company Rules, the Conduct Rules and any Guidelines produced in terms thereof, the Company will issue a certificate consenting to the applicant becoming a Member with effect from the date upon which such applicant becomes a registered owner. The Company will be entitled to charge the applicant a reasonable fee for its services in ensuring that existing and prospective Members have complied with all of the requirements of the Company.

- 7.6. The liability of Members as Members of the Company shall be limited to an amount of R1,00 together with such other amounts as may be owing by such Member to the Company from time to time from whatever cause arising.

8. RIGHTS AND DUTIES OF MEMBERS

8.1. Members' authority to act

- 8.1.1 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.

8.2 Members' right to Information

- 8.2.1 In addition to the rights to access information set out in section 26(1) of the Act, a Member of the Company has no further rights to information.

8.3 Representation by concurrent proxies

- 8.3.1 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.

8.4 Authority of proxy to delegate

- 8.4.1 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 or restricted by this Memorandum.

8.5 Requirement to deliver proxy instrument to the Company

- 8.5.1 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 varied by this Memorandum.

8.6 Deliberative authority of proxy

- 8.6.1 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 or restricted by this Memorandum.

8.7 Record date for exercise of Member rights

- 8.7.1** If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59 of the Act, the record date for the relevant matter is as determined in accordance with section 59(3) of the Act.

8.8 Rights and Duties of Members

- 8.8.1** All Members shall abide by the Memorandum and adhere to the Rules as contemplated in Section 15(3) to (5) of the Act, Conduct Rules and Guidelines applicable from time to time.

9. MEMBERS MEETINGS

9.1 Requirement to hold meetings

- 9.1.1** The Company is required to hold Members meetings in addition to those specifically required by the Act.
- 9.1.2** The Company must convene an Annual General Meeting of its Members 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.
- 9.1.3** An Annual General Meeting convened in terms of Article 9.1(2) must, at a minimum, provide for the following business to be transacted:
- (a) the consideration of the Chairman's report;
 - (b) the election of Directors;
 - (c) the consideration of any other matters referred to the meeting including any resolutions proposed for adoption by such meeting, and the voting upon such resolutions;
 - (d) the consideration of the accounts of the Company for the preceding financial year;
 - (e) the consideration of the report of the auditors and confirmation of the appointment of the auditors for the ensuing financial year;
 - (f) the consideration and approval, with or without amendment of the budget and estimated levies for the current financial year.

9.2 Members' right to requisition a meeting

- 9.2.1** The right of Members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised by at least 10 (ten) percent of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

9.3 Location of Members meetings

- 9.3.1** The Company's Board of Directors shall determine the location of any Members meeting, and the Company is authorised to hold any such meeting provided that such meeting shall be in the Republic.

9.4 Notice of Members meetings

9.4.1 An Annual General Meeting and a meeting called for the passing of a special resolution shall be called by giving at least 21 (twenty-one) calendar days' notice in writing to each Member. Any other general meeting, other than one called for the passing of a special resolution, shall be called by giving at least 14 (fourteen) calendar days' notice in writing to each Member. In each case the notice shall be exclusive of the day on which it is given or deemed to be given and shall specify the place, the day and hour of the meeting. In the case of special business, the notice shall state the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it. A general meeting of the Company which is called by shorter notice than that specified in this clause shall be deemed to have been duly called if all the Members entitled to attend and vote thereat are present at the meeting and vote to waive the required minimum notice of the meeting.

9.4.2 The notice may be posted, or hand delivered, or it may be transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient. In addition a notice transmitted electronically must comply with Regulation 7(4) of the Regulations.

9.5 Electronic participation in Members meetings

9.5.1 Any Member's meeting may be conducted entirely by electronic communication, or one or more Members, or proxies of Members may participate by electronic communication in all or part of any Members meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

9.5.2 Any notice of a Members meeting at which it will be possible for Members to participate by way of electronic communication shall inform Members of the ability to participate in this way and shall provide the necessary information to enable Members or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the Member or proxy concerned.

9.6 Quorum for Members meetings

9.6.1 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Unless a general meeting determines that there shall be a greater quorum, a quorum for a general meeting shall be at least 10 (ten) Members personally present and entitled to vote and entitled to exercise in aggregate at least 25% (twenty five percent) of all of the voting rights in the Company.

9.6.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or such other place as the chairperson of the meeting shall appoint, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

9.7 Adjournment of Members meetings

9.7.1 The Company is not required to give further notice of a meeting that is postponed or adjourned unless the location for the meeting is different from the location of the postponed or adjourned meeting or a location announced at the time of adjournment in the case of an adjourned meeting.

9.8 Members resolutions

9.8.1 For an ordinary resolution to be adopted at a Members meeting, it must be supported by more than 50% (fifty percent) of the voting rights exercised on the resolution, as provided in section 65(7) of the Act.

9.8.2 For a special resolution to be adopted at a Members meeting, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(7) of the Act.

9.8.3 A special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except for those matters set out in sections 65(11) of the Act.

9.8.4 At every General Meeting:

9.8.4.1 Subject to Articles 7.2 and 12.8 every Member present in person or represented by proxy shall be entitled to one (1) vote which may be exercised either on a show of hands or by polling.

9.8.4.2 If voting is by show of hands any person who is present at the meeting, whether as a Member or as a proxy for a Member and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise.

9.8.4.3 On a poll each Member's vote shall be determined by the participation quota applicable to the erf owned by such Member or Members jointly and in respect of unit owners (where Members' votes are exercised jointly with all other unit owners in the Body Corporate) their vote shall be determined by the participation quota applicable to the erf on which the relevant sectional title scheme is established.

9.8.4.4 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 hand 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.

9.8.4.5 On a poll, votes may be given either personally or by proxy.

9.9 Representation by Proxies

9.9.1 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate. A proxy need not be a Member of the Company. The holder of a general or special power of attorney, whether he is himself 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 and to give or withhold written consent on behalf of a Member to a decision contemplated in section 60 of the Act.

9.9.2 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 before the commencement of 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 one year from the date when it was signed, unless so 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.

9.9.3 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit or in such other form as the directors may approve:

THE PLANTATIONS HOME OWNERS ASSOCIATION (RF) NPC

I,
of
being a member of
hereby appoint
of
or failing him
of
or failing him
of
as my proxy to vote for me and on my behalf at the annual/special general meeting (as the case may be) of the Company, to be held on the day of 20....
and at any adjournment thereof as follows:

In favour of	Against	Abstain
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Resolution to
Resolution to
Resolution to

(Indicate instruction to proxy by way of cross in space provided above). Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed this day of 20....

(Notes: 1. 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;

2. In the event of a vote on a show of hands a proxy shall only have one vote irrespective of the number of votes and/or proxies held by the proxy holder;
3. The appointment of a proxy is revocable unless stated to the contrary;
4. A proxy may be revoked in writing or by the making of a later inconsistent appointment of a proxy and delivering a copy thereof to the proxy and to the Company. Unless revoked, the proxy instrument will remain valid only until the end of the meeting at which it is intended to be used or any adjournment of that meeting;
5. The appointment of a proxy may be suspended at any time and to the extent that the Member chooses to act directly or in person).

10 MEMBERS ACTING OTHER THAN AT A MEETING

- 10.1** In accordance with the provisions of section 60 of the Act, a resolution that could be voted on at a Members' meeting (other than in respect of the election of Directors) may instead be –

10.1.1 submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and

10.1.2 voted on in writing by such Members entitled to exercise the voting rights in relation to the resolution within a period of 20 (twenty) business days after the resolution was submitted to them.

- 10.2** An ordinary resolution in writing signed by the holders of more than 50% (fifty percent) of the voting rights which may be exercised on the resolution and a special resolution in writing signed by the holders of at least 75% (seventy five percent) of the voting rights which may be exercised on the resolution, within 20 (twenty) business days after the resolution was submitted to them, has the same effect as if it had been approved by voting at a meeting of the Members. The written resolution may be signed in counterparts and if adopted will have the same effect as if it had been approved by voting at a meeting. For the purposes of this article “in writing” or “written” includes a resolution voted on electronically.

- 10.3** Any business required to be conducted at the Company's annual general meeting may not be conducted in this manner.

- 10.4** Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this article, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution.

11. DIRECTORS AND OFFICERS

11.1 Composition of Board of Directors

- 11.1.1** The number of directors shall not be less than five. If at any time the number of directors is reduced below five, the continuing directors may act only to increase the number of directors to five or to call a meeting for that purpose.

11.1.2 Directors shall be elected annually at the Annual General Meetings of the Company.

11.1.3 All directors must satisfy the qualification and eligibility requirements set out in section 69 of the Act.

11.1.4 The authority of the Company's Board of Directors to fill any vacancy on the Board of Directors on a temporary basis is not limited or restricted by this Memorandum.

11.1.5 The office of Director, whether elected, appointed or *ex officio*, or prescribed officer shall be vacated if the Director or prescribed officer -

11.1.5.1 no longer satisfies the qualification and eligibility requirements set out in section 69;

11.1.5.2 resigns his office by notice in writing to the Company; or

11.1.5.3 is removed as Director as provided for in section 71 of the Act.

11.2 Alternate Directors

11.2.1 Each director shall have the power to nominate, with the approval of the other Directors, another person to act as alternate director in his place during his absence or inability to act as a director and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other directors of the Company. No third parties may be appointed as alternate directors to ensure that the governance of the Company is at all times carried out by those individuals chosen by the Members. A director whilst also acting as an alternate director, shall at any meeting of directors be entitled to two votes.

11.2.2 The alternate directors, whilst acting in the stead of the directors who appointed them, shall exercise and discharge all the powers, duties and functions of the directors they represent. The appointment of an alternate director shall be revoked, and the alternate director shall cease to hold office, whenever the director who appointed him ceases to be a director or gives notice to the Company that the alternate director representing him has ceased to do so.

11.3 Remuneration of Directors

11.3.1 The directors of the Company shall not derive any remuneration from the Company for their services to the Company as directors. The directors shall however, be paid all traveling expenses and other expenses properly expended by them in and about the business of the Company.

11.4 Authority of The Board

11.4.1 The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Act, is not limited or restricted by this Memorandum.

- 11.4.2** Subject to the express provisions hereof, the Board of Directors shall be responsible for the fulfilment of the objects of the Company as defined in Article 3 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 Manager 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 this Memorandum required to be exercised or done by the Company in General Meeting, subject, however, to such Rules as may have been made by the Company in General Meeting or as may be made by the Directors from time to time.
- 11.4.3** Save as specifically provided in these presents, the Board of 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 Board of Directors and on such terms as the Board of Directors shall decide.
- 11.4.4** A Director may himself act, or any firm of which he is a member may act, in a professional capacity (other than auditor) for the Company, or any other company in which the Company is interested, however neither he nor any firm of which he is a member shall be entitled to remuneration for those professional services.
- 11.4.5** A Manager be appointed by the Company upon such terms and conditions as may be determined by the Directors. The main function of such Manager will be to administer the affairs of the Estate in accordance with directions given to the Manager by the Directors.
- 11.4.6** The Company in a general meeting shall have the right to limit and restrict the powers of the Directors provided that no resolution of the Company shall invalidate any prior act of the Directors which would otherwise have been valid.
- 11.5 Board of Directors Meeting**
- 11.5.1** A decision of the Board of Directors may be adopted by written consent of a majority of the Directors (without a meeting being held) given in person or by electronic communication provided that each Director has received notice of the matter to be decided. A decision taken in this manner will have the same effect as if it had been approved by voting at a meeting of the Board of Directors.
- 11.5.2** The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1) of the Act, is not limited or restricted by this Memorandum.
- 11.5.3** A meeting of the Board of Directors may be conducted by electronic communication or one or more Directors may participate in a meeting by electronic communication so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.
- 11.5.4** The Board of Directors may determine the form in which notice of its meetings is given, as well as the time for giving notice.
- 11.5.5** If all of the Directors of the Company acknowledge actual receipt of the notice, are present at a meeting, or 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.
- 11.5.6** A majority of Directors must be present at a meeting before a vote may be called at a meeting of the Directors.

11.5.7 Each Director has one vote on a matter before the Board. 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.

11.5.8 The Directors may elect a chairman of their meetings and determine the period, not exceeding one year, for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the Directors present may elect one of their number to be chairman of the meeting.

11.6 Indemnification of Directors

11.6.1 The authority of the Company's Board of Directors to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(4) of the Act, is not limited or restricted by this Memorandum.

11.6.2 The authority of the Company's Board of Directors to indemnify a Director in respect of liability, as set out in section 78(5) of the Act, is not limited or restricted by this Memorandum.

11.6.3 The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a Director, as set out in section 78(6) of the Act, is not limited or restricted by this Memorandum.

11.7 Officers and Committees

11.7.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.

11.7.2 The authority of the Company's Board of Directors to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Act, or to include in any such committee persons who are not Directors (but any such person must not be ineligible or disqualified to be a director in terms of section 69 of the Act and no such person has a vote on a matter to be decided by the committee), as set out in section 72(2)(a) of the Act, is not limited or restricted by this Memorandum.

11.7.3 The authority of a committee appointed by the Company's Board to consult with or receive advice from any person and to exercise the full authority of the Board on matters referred to it, as set out in section 72(2)(b) and (c) of the Act, is not limited or restricted by this Memorandum.

12 LEVIES

12.1 The Directors shall establish a levy fund sufficient in their opinion for:

12.1.1 the repair, upkeep, control, management and administration of the Company property;

12.1.2 the payment of all charges levied on the Company;

12.1.3 the payment of all expenses incurred by the Company on behalf of its Members; and

12.1.4 the discharge of any obligation of the Company.

Expenses of the Company shall include rates and taxes relating to the Company property, security services and other expenses for which the Company is liable.

12.2 Prior to each Annual General Meeting of the Company the Directors shall prepare a budget comprising an itemized estimate of the anticipated income and expenditure of the Company for the current financial year together with the amount of the annual levies which the directors shall have imposed on the Members with effect from the commencement of the financial year in which the Annual General Meeting is held. At the Annual General Meeting the Members shall ratify, with or without amendment, the budget and amount of the annual levies.

12.3 In accordance with the decision ratified at the Annual General Meeting, the Directors shall impose an annual levy on the Members in order to raise sufficient funds to meet the anticipated expenditure. The levy shall be determined in proportion to the participation quota applicable to each erf save for erven set aside for communal facilities/purposes which shall be exempt from the payment of levies. The annual levy shall be payable in equal monthly instalments in advance on the first day of each and every month with effect from the first day of the month following the month in which Members are notified of the amount of the levy and adjusted accordingly after consideration at the Annual General Meeting. The participation quota of each erf including the erven on which Sectional Title Schemes have been established shall be equal to A divided by B where A = the extent of the erf; and B = the total extent of all the erven in the Estate excluding the Company Property. In calculating A any portion of a Member's erf subject to a conservation servitude shall be excluded.

12.4 The Directors may at any time impose a special levy upon Members to provide funds for unforeseen or non-recurring expenditure. The Directors may in their discretion allow payment of a special levy to be made over a period of time.

12.5 Any levy due by a Member shall be a debt due by such Member to the Company. Should the Company be obliged to institute legal proceedings against the Member for the payment of levies, the Member shall be liable for and shall pay all legal costs so incurred upon the Attorney and Client scale in full whether or not legal action is actually instituted as well as collection commission, expenses and all other charges incurred by the Company in obtaining the recovery of arrear levies. Such costs shall be added to the levy statement as a debt due by the member to the Company.

12.6 No erf or unit or an undivided share in any erf or unit may be transferred unless all levies and other amounts owing by the Member to the Company have been paid in full or secured to the satisfaction of the Company. The obligation to pay levies shall cease upon the cessation of membership. Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be of full force and effect and recoverable from such person.

12.7 If a Member has not paid a monthly levy or any other amount falling due for payment under this Memorandum within 7 (seven) days of the due date, that Member shall be liable for interest on the amount due calculated from the due date of payment until the date on which the amount due is paid at a rate of interest of 2% per month. The interest shall be calculated and compounded monthly in arrears.

12.8 Unless a dispute has been referred to the Company's Auditors in terms of Article 12.9, a Member in arrears with the payment of any levies due in terms of this Article 12, shall be precluded from voting or participating at any meeting of the Members of the

Company. Two days before the scheduled date of a General Meeting of Members, the Manager or a person designated by the directors shall prepare a list of defaulting Members. Any defaulting Member appearing on the list shall be entitled to remedy his default and upon submission of proof thereof to the satisfaction of the Manager prior to the meeting shall become entitled to vote thereat.

12.9 Should there be any dispute between a Member and the Company concerning the amount of any levy payable by such Member, the dispute shall be referred to the Company's auditors whose decision shall be final and binding upon both the Member and the Company.

12.10 The Company shall establish a Levy Stabilisation Fund for the purposes of meeting any extraordinary expenditure of a capital nature to be incurred by the Company in carrying out its main objects and the provisions of this Memorandum. In the event of any property being sold, alienated or otherwise disposed of, the new Owner shall be obliged to pay the Levy Stabilisation Fund contributions applicable at that time and the ex-Owner shall not be entitled to a refund of the levy stabilisation fund contribution paid by him. In the case of deemed alienation of property by juristic persons a further contribution to the Levy Stabilisation Fund shall, upon alienation, become due by the juristic person, notwithstanding that the juristic person remains the Owner of the property. The object, in this regard, shall be to ensure that where there is a material change in the beneficial ownership or controlling interest of the juristic person the juristic person shall become liable for a further contribution to the Levy Stabilisation Fund on the same basis that would have applied if the juristic person had become a "new owner" of the property. An alienation of property by a juristic person shall be deemed:

12.10.1 in the case of a company, where all or the majority of the shares in a company are transferred or otherwise disposed of;

12.10.2 in the case of a close corporation, where all or the majority of the Members interests in the close corporation are transferred or otherwise disposed of;

12.10.3 in the case of a trust, where all or a majority of the trusts loan creditors or beneficiaries are varied or substituted or any trustee of the trust is changed;

and this is in consequence of or attendant upon the conclusion of any agreement for the payment of consideration with regard to the property held by that juristic person.

12.11 Notwithstanding the provisions of Article 12.10 above, a sale, alienation, disposal or deemed disposal shall not attract a levy stabilisation fund contribution should such sale, alienation, disposal or deemed disposal arise as a result of:

12.11.1 testate or intestate succession;

12.11.2 divorce or dissolution of a marriage or union and the property or share therein is acquired by a "spouse" as defined in the Transfer Duty Act No. 40 of 1949;

12.11.3 a joint owner of property acquiring a defined portion of any property allotted to him upon partition of the property or who acquires the sole ownership in the whole or a portion of the property;

- 12.11.4 an amalgamation transaction in terms of Section 44 of the Income Tax Act No. 58 of 1962;
- 12.11.5 the acquisition of a property within the estate by an existing Member of the Company and who is still a Member at the time that application is made to the Company for its consent to transfer of the property being acquired and provided that this exclusion shall not apply to the ownership of more than one property by a Member (ie this exclusion shall not apply where additional properties are acquired by a person but rather to a situation where one property is sold in order to acquire another property on the Estate and there is no discontinuation of membership of the Company envisaged);
- 12.11.6 any other transaction which the Members in general meeting in their sole and absolute discretion agree to exempt from the payment of the levy stabilisation fund contribution.

13 CONDUCT RULES AND GUIDELINES AND ENFORCEMENT PROVISIONS

13.1 The Directors may from time to time make Conduct Rules and Guidelines-

13.1.1 for the management, control, administration and use of the Estate

13.1.2 to give effect to the provisions of this Memorandum.

13.2 The Conduct Rules shall not be restricted to but shall provide for:

13.2.1 Compliance with the Guidelines issued and amended from time to time in order to give effect to the provisions of this Memorandum.

13.2.2 The use of and maintenance of the Company property including the roads.

13.2.3 The conduct of persons within the Estate;

13.2.4 The control of traffic on roads within the Estate and the regulation of the parking of vehicles;

13.2.5 The accreditation of estate agents and letting agents to sell and let respectively within the Estate;

13.2.6 The provision of security measures to the Estate;

13.2.7 Penalties and fines for non-compliance with the Memorandum, Conduct Rules and any Guidelines or any other requirements of the Company.

13.2.8 The accreditation of managing agents authorised to manage sectional title schemes within the Estate.

13.2.9 The letting of Property within the Estate.

- 13.2.10** The disposal of refuse waste and recyclable products.
 - 13.2.11** The provision of water harvesting and grey water and sustainable energy.
 - 13.2.12** The right to keep any animal, reptile or bird within the Estate.
 - 13.2.13** Any other matter which the Directors consider to be in the interests of or for the promotion of the interests of the Members, the Company or the Estate.
- 13.3** The Directors must publish any new Conduct Rule or Guideline to be made in terms of article 13.1 by way of notice to the Members within a reasonable time and any such new Conduct Rule or Guideline will take effect on the date specified in the notice.
- 13.4** The Directors shall take all necessary steps to ensure that the Conduct Rules and Guidelines are complied with by the Members.
- 13.5** The Directors may take such action as they consider necessary against any Member who breaches the provisions of the Memorandum, the Conduct Rules or Guidelines or any other requirements of the Company flowing from this Memorandum. The Directors may impose fines or other penalties which will be a debt due by the Member to the Company and added to the levy statement, without prejudice to any other rights or recourse in law to which the Company may be entitled. The amounts of such fines and/or penalties will be determined by the Board from time to time.
- 13.6** The Directors shall be empowered to apply to Court, including the Magistrate's Court for an order to enforce any decision of the Directors. The Directors may instruct attorneys and advocates to act on behalf of the Company.
- 13.7** A Member shall be liable for and shall pay all legal costs incurred by the Company on the Attorney and Client scale in full whether or not legal action is actually instituted, as well as collection commission, expenses and all other charges incurred by the Company in obtaining the recovery of other amounts due and owing by a Member to the Company in terms of Article 13.5 or in obtaining compliance with the Conduct Rules or Guidelines or any provision of this Memorandum. Such costs shall be added to the levy statement as a debt due by the member to the Company.
- 13.8** All Conduct Rules and Guidelines made by the directors pursuant to this Article are to be reasonable and are to apply equally to all Members.
- 13.9** The Conduct Rules and Guidelines issued by the Company may be amended by the Directors at any time and the Members shall forthwith be notified of such amendments.
- 13.10** Any breach of the Conduct Rules or Guidelines shall be deemed to be a breach of this Memorandum. In the event of any breach of the Conduct Rule or Guidelines by any tenant or occupier of any Property or any person who enters the Estate by virtue of any Members rights thereto, such breach shall be deemed to have been committed by the Member concerned and the Directors shall be entitled to take such action as they deem fit against the responsible Member, including the imposition of fines and/or penalties where appropriate.

14 DEVELOPMENT

- 14.1 A Member shall not commence the construction of or alteration of any improvements on an erf without the prior written approval of the Company's Architectural Design Review Committee.

15 MINUTES

- 15.1 The Directors shall in terms of the Act cause Minutes to be kept:

15.1.1 of all appointments of officers;

15.1.2 of names of Directors present at every meeting of the Company and at every meeting of the Directors, and

15.1.3 of all proceedings at all meetings of the Company and/or the Directors.

- 15.2 Such minutes once they are approved as a true record of proceedings, shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the following meeting.

16 ACCOUNTING RECORDS

- 16.1 The Directors shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.

- 16.2 The accounting records shall be kept at the Office or at such other place or places as the Directors think fit and shall always be open to inspection by the Members.

17 DIVIDENDS AND RESERVES

No dividends shall be paid to the Members of the Company.

18 ANNUAL FINANCIAL STATEMENTS

- 18.1 The Directors shall from time to time, in accordance with the Act, cause to be prepared and laid before the Company in general meeting such financial statements as are prescribed by the Act.

- 18.2 A copy of the audited financial statements shall be laid before the Company in Annual General Meeting and shall, not less than 15 (fifteen) business days before the date of the meeting, be sent to every Member of the Company: Provided that this clause shall not require a copy of those documents to be sent to any person of whose address the Company is not aware.

19 BORROWING POWERS

The Company may in its discretion from time to time raise or borrow any sum or sums of money for the purposes of the Company and may raise or secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as it thinks fit and in particular may mortgage or bind its undertaking and property or any part thereof whether outright or as security for any debt, liability or obligation of the Company, provided that the Company may only mortgage or bind its undertaking and property if authorised to do so by special resolution of its Members.

20 NOTICES

20.1 All notices shall be given by the Company to each Member in writing in any manner authorised by the Act and the Regulations, and particularly Table CR3 annexed to the Regulations.

20.2 Any notice sent by any means permitted in Table CR3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.

20.3 Each Member of the Company:-

20.3.1 shall notify in writing to the Company an address within the Republic of South Africa for the purposes of receiving written notices from the Company by post and if he has not named such an address, it shall be considered sufficient for the Company to serve notice at the property owned by the Member; and

20.3.2 shall notify in writing to the Company an email address and/or facsimile number; which address shall be his address for the purposes of receiving notices by way of electronic communication.

20.4 The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Company.

21 ENFORCEMENT OF OBLIGATIONS OF MEMBERS

Should any Member or any lessee of a Member, guest or invitee, authorised representative or other person duly authorised by a Member or lessee fail to perform any obligation incumbent upon him, 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 a debt due by the Member concerned, which shall be payable on demand. This is in addition to and without prejudice to the provisions of Article 13.

22 DETERMINATION OF DISPUTES

Should a dispute arise between a Member and the Directors of the Company, either the Member or the Directors may refer the dispute to an Arbitrator for determination in terms of the provisions of the Arbitration Act of 1965. If the parties are unable to agree upon the appointment of an Arbitrator, either party may refer the matter to the President for the time being of the Kwazulu-Natal Law Society or its successor with a request that the President nominate an Arbitrator to whom the dispute will be referred. The decision of the Arbitrator will be final and binding upon both the Member and the Company.

23 DISCLAIMER OF RESPONSIBILITY

- 23.1** 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.
- 23.2** 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 lessee for any injury or loss or damage of any description which 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.
- 23.3** The Members hereby indemnify the Company and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this Article 23.
- 23.4** The exclusions of liability and indemnity in this article will not apply in respect of any loss suffered by a person which is directly attributable to the gross negligence of the Company or any person acting for or controlled by the Company, if the Consumer Protection Act 68 of 2008 applies for the benefit of that person.

24 MISCELLANEOUS

- 24.1** The Company may sue or be sued in any court of law by its corporate name. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed shall be signed by any 2 (two) of the Directors for the time being duly authorized so to do by a Resolution of the Directors.
- 24.2** -Every Director, manager, secretary or other official or servant of the Company shall be indemnified by the Company against, and it shall be the duty of the Directors, out of the funds of the Company, to pay all costs, losses, and expenses which any such official or servant may incur or become liable for by reason of any contract entered into, or act or deed lawfully done by him as such officer or servant, or in any way in the discharge of his duties, including traveling expenses.