

REPUBLIC OF SOUTH AFRICA
COMPANIES Act, 1973

ARTICLES OF ASSOCIATION OF AN ASSOCIATION
NOT HAVING A SHARE CAPITAL

(Section 60(1) and Regulation 18)
(Association Incorporated under Section 21)

Registration No. of Association

Name of Association: **VULINTABA COUNTRY ESTATE
HOMEOWNERS' ASSOCIATION**
(Association Incorporated under Section 21)

A.

The Articles of Table A or Table B in Schedule 1 to the Companies Act, 1973 shall not apply to the Association.

B.

The Articles of the Association are as follows:

1 THE ASSOCIATION IS A NON PROFIT COMPANY WITH MEMBERS, WITH THE FOLLOWING OBJECTS:

To promote and protect the communal interests of the Members of the Association and to maintain high security, aesthetic and environmental standards in the Estate (as defined in this Memorandum of Incorporation), and all ancillary objects which are necessary to achieve these objects, including but not limited to the carrying on of operations of the Estate.

2 DEFINITIONS

2.1 In this Memorandum of Incorporation, unless the context otherwise requires, the following words shall have the meanings hereinafter assigned to them –

2.1.1 “Act” means the Companies Act of 1973, No. 71 of 2008 (as amended);

2.1.2 “Architectural Design” means the Architectural Design and Development Guidelines adopted by the Association named hereafter.

2.1.3 “Association” means the Company : Vulintaba Country Estate Homeowners’ Association NPC;

2.1.4 “Auditors” means the auditors of the Association appointed by the Association from time to time, in accordance with the Act;

2.1.5 “Board” means the Board of Directors of the Association;

2.1.6 “Body Corporate” means a body corporate as defined in Section 1 of the Sectional Titles Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act;

2.1.7 “Building Committee” means a committee as provided for in Article 20 hereof;

- 2.1.8 “Chairperson” means the Chairperson of the Board of Directors;
- 2.1.9 “Directors” means the Directors of the Board of Directors of the Association from time to time.
- 2.1.10 “Development and Architectural Controls” means the Design Guidelines and Town Planning controls of the Association, a copy of which is available from the offices of the Association, which Architectural Design and Development Guidelines may be amended by the Developer during the Development Period and, after the expiry of the Development Period, may be amended by the Board with the prior written consent of the Developer and the relevant local authority;
- 2.1.11 “the Estate” means the Vulintaba Country Estate comprising that portion of the immovable property described as Subdivision 4 (of 3) of the Farm Dumblane No 3317, Registration Division HS, Province of KwaZulu-Natal, shown on the PLAN, together with such additional immovable property as may be incorporated into the Estate by the Developer, as contemplated in Article 28 hereof ;
- 2.1.12 “Development Period” means the period reckoned from the date of registration of this MOI until the last sub-division is sold in the Estate (including any additional property incorporated into the Estate in terms of Article 28);
- 2.1.13 “Environmental Management Plan” means the environmental management plan adopted by the Association and amended from time to time, copies of which are available from the Association.
- 2.1.14 “gross leasable area” means the gross leasable floor area of any building(s) which the Owner is entitled to erect on his land in terms of the Scheme;
- 2.1.15 “individual ownership” means ownership by a natural or juristic person or persons including trusts;
- 2.1.16 “land” means any land in the Estate, including any subdivision capable of individual ownership, whether such land is improved or not, or a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established on any such land and includes the land covered by any right to extend such sectional title development and any other rights accruing in terms of the Sectional Titles Act 95 of 1986 (as amended);

- 2.1.17 “Manager” means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Estate;
- 2.1.18 “Member” means a member of the Association, as referred to more fully in clause 5;
- 2.1.19 “Memorandum” means the Memorandum of Incorporation for the time being of the Association;
- 2.1.20 “MOI” means the Memorandum of Incorporation of the Association;
- 2.1.21 “Municipal Services” means water, sewage, refuse removal and such other utilities and services as may be provided by the Local Authority, or any other appointed service provider, to the Estate from time to time;
- 2.1.22 “office” means : 5A Faraday Street, Newcastle, 2940 or the registered office of the Association for the time being;
- 2.1.23 “open spaces” means parks, common areas and other open spaces in the Estate which are owned or governed by the Association;
- 2.1.24 “Owner” means any person who is the registered owner of land or an undivided share in land in the Estate;
- 2.1.25 “Property Time Share Control Act” means the Property Time Share Control Act No. 75 of 1983 as amended and any regulations in force there under from time to time;
- 2.1.26 “Rules” mean the rules made by the Board in accordance with the provisions of clause 11.5 hereof;
- 2.1.27 “Scheme” means the Newcastle Town Planning Scheme in the course of preparation, as defined in the Scheme;
- 2.1.28 “Sectional Titles Act” means the Sectional Titles Act No. 95 of 1986 (as amended) and any regulations in force there under from time to time;
- 2.1.29 “Services” means security, maintenance of the common property and such other utilities or services as may be provided by the Association from time to time;
- 2.1.30 “Share Blocks Control Act” means the Share Blocks Control Act No. 59 of 1980 (as amended) and any regulations in force there under from time to time;

- 2.1.31 “Special Resolution” means a resolution dealing with any amendment of the MOI or, subdividing, or amending the zoning of any immovable property owned by the Association, and is otherwise referred to in the Act and this MOI, and being a resolution adopted with the support of at least 75% (Seventy-five percent) of the voting rights exercised on the resolution;
- 2.1.32 “Special Zone 17” means the special zone created in the Scheme for the Estate;
- 2.1.33 “Sports Club” means the Vulintaba Sports Club, a private sports and recreational centre, initially to be laid out on Erf 1, 2, 3, and 4,
- 2.1.34 “Trustees” means the Trustees of the Association (including any co-opted Trustees) who shall for the purpose of the Act be the Directors of the Association, and a reference to the “Board” or “Board of Trustees” shall be to the Trustees in meeting;
- 2.1.35 “Town Planning Ordinance” and “PDA” respectively mean the Town Planning Ordinance (Natal) 27/1949 and the Provincial Planning and Development Act, 2008, as amended from time to time, as the case may be (or any legislation enacted to replace such enactments).
- 2.2 Words and expressions used and not otherwise defined in this MOI shall have the meaning assigned to them by the Act.
- 2.3 Words importing the singular shall include the plural; 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.
- 2.4 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of the Articles.
- 2.5 Should the provisions of this MOI conflict in any way with the provisions of the contract of sale, entered into between an Owner and the Developer, in respect of the purchase of land, the provisions of this MOI shall prevail.
- 2.6 Where an expression has been defined and such definition contains provisions conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in this MOI.

3 **INCORPORATION OF THE ASSOCIATION**

- 3.1 The Association is a pre-existing Non Profit company as defined in the Act.
- 3.2 The Association exists in accordance with, and is governed by –
 - 3.2.1 the unalterable provisions of the Act that are applicable to Non Profit Companies
 - 3.2.2 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 MOI; and
 - 3.2.3 the provision of this MOI.

4 **OBJECTS AND POWERS OF THE ASSOCIATION**

- 4.1 The Objects of the Association are as set out in clause 1 and, except to the extent necessarily implied by the stated Objects, the purposes and powers of the Association are not subject to any restriction, limitation or a qualification as contemplated in section 19(1)(b)(ii) of the Act.
- 4.2 The Association is not subject to any provision contemplated in section 15(2)(b) or (c) of the Act.
- 4.3 The Association –
 - 4.3.1 must apply all its assets in income, however derived, to advance its stated Objects as set out in its MOI; and
 - 4.3.2 subject to clause 4.3.1, may –
 - 4.3.2.1 acquire and hold securities issued by a profit company; or
 - 4.3.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated Objects.
- 4.4 The Association 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 or was an incorporator of the Association, or who is a Member of Trustee, or person appointing Trustee, of the Association, except –
 - 4.4.1 as reasonable –

- 4.4.1.1 remuneration for goods delivered or services rendered to, or at the direction of the Association, or
- 4.4.1.2 payment of, or reimbursement for, expenses incurred to advance a stated Object of the Association;
- 4.4.2 as a payment of an amount due and payable by the Association, in terms of a bona fide agreement between the Association or another;
- 4.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance a stated Object of the Association; or
- 4.4.4 in respect of any legal obligation binding on the Association.
- 4.5 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Association –
 - 4.5.1 no past or present Member or Trustee of the Association or person appointing a Trustee of the Association, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied; and
 - 4.5.2 the entire net value of the Association 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 –
 - 4.5.2.1 having objects similar to its main objects; and
 - 4.5.2.2 as determined –
 - 4.5.2.2.1 by its Members, at or immediately before the time of its dissolution; or
 - 4.5.2.2.2 by the Court, if the Members fail to make such a determination.
- 4.6 The Commission may apply to the Court, on behalf of the Association, for a determination contemplated in clause 4.5.2.2 if the Association has –
 - 4.6.1 no remaining Members or Directors; and
 - 4.6.2 failed to –

- 4.6.2.1 make a determination contemplated in clause 4.5.2.2; or
- 4.6.2.2 applied to the Court for such a determination.
- 4.6.3 The Association may not –
- 4.6.3.1 amalgamate or merge with, or convert to a profit company; or
- 4.6.3.2 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 Association.
- 4.6.4 Any proposal to disposal of all or the greater part of the assets or undertaking of the Association, or to amalgamate or merge with any other non-profit company must be approved by the Members in a manner comparable to that required of profit companies in accordance with section 112 and 113 of the Act, respectively.

5 **MEMBERSHIP**

5.1 Membership of Association

- 5.1.1 Membership of the Association shall be obligatory for an Owner.
- 5.1.2 No Owner shall transfer land unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of Article 5.2.1.
- 5.1.3 In order to procure compliance with the provisions of this MOI, it shall be registered as a condition of ownership of land that no land shall be alienated without the written consent of the Association first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor). For the purposes of this clause “alienate” means to alienate any land or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolute condition. In the case of an

artificial person, such as a company, close corporation or trust, the material change in the “beneficial ownership” or in the “controlling interest” thereof, shall be deemed to constitute an alienation for the purposes of this MOI and, in the event of there being any dispute as to whether there has been a material change in “beneficial ownership” or in the “controlling interest”, such matters shall be referred to the Association Auditors acting as experts and not as arbitrators, whose decision shall be final and binding.

5.1.4 In the event of any land being owned in undivided shares by more than one Owner such co-owners shall nominate one of them to be the Member for the purposes of this MOI provided that all joint owners shall be bound by this MOI as if they were Members. Such nomination shall be made in writing to the Association within 7 (Seven) days of such co-owners becoming Members of the Association in terms of this MOI. Where such owners fail to make such a nomination, the natural person appearing first on the title deed of the property shall be deemed to be the nominated party.

5.1.5 A Member may not tender resignation of his membership of the Association.

5.2 Admission of Members

5.2.1 The initial Members of the Association shall be:

5.2.1.1 The Developer (during the Development period), and;

5.2.1.2 The Existing owners, and;

5.2.1.3 All existing owners who are bound hereto by virtue of acceptance hereof by the duly authorized directors.

Thereafter the Members of the Association shall be the Developer (during the Development Period) and those persons who, from time to time, become Members in accordance with the provisions of this MOI. Upon ceasing to be an owner, a member shall lose his/her/its membership.

5.2.2 The right to determine admission to membership of a proposed acquirer of land is hereby conferred upon the Board. The Board shall not unreasonably decline to admit to membership an applicant in the event of the applicant having undertaken to comply with and abide by this MOI and all the Association’s requirements, rules and regulations and the party from whom the applicant is taking transfer of land, has

complied with this MOI and all the Association's requirements, rules and regulations (and in no way detracting from the generality of the aforesaid), and has made payment of any amounts due by such transferor to the Association.

5.3 Rights and duties of Members

5.3.1 Subject to the rights of membership as prescribed by the Act, membership of the Association shall confer upon a Member, unless otherwise stipulated, the following rights:

5.3.1.1 the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Company as listed in Section 26 of the Act, which it is recorded includes the following, namely:

5.3.1.1.1 the Company's Memorandum of Incorporation and any amendments to it and any Rules made by the Company;

5.3.1.2 access to the reports to annual meetings and annual financial statements;

5.3.1.3 the right to inspect and/or receive copies of the annual financial statements of the Association;

5.3.1.4 the Company's Memorandum of Incorporation and any amendments to it and any Rules made by the Company.

5.3.1.5 the records in respect of the Company's directors;

5.3.1.6 the reports to annual meetings and annual financial statements;

5.3.1.7 the notices and Minutes of annual meetings and any communications to the members and

5.3.1.8 the register of members.

5.3.1.9 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this MOI

- 5.3.1.10 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with the provisions of this MOI; and
- 5.3.1.11 should Members holding between them, in aggregate, not less than 25% (Twenty Five Percent) of the voting rights in the Association, collectively so decide, the right to convene a general meeting in terms of Section 61 of the Act;
- 5.3.1.12 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with and subject to the provisions of this Memorandum of Incorporation;
- 5.3.2 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

5.4 Cessation of Membership

- 5.4.1 Membership of the Association shall cease:
 - 5.4.1.1 upon a Member ceasing to be an Owner;
 - 5.4.1.2 upon the issue of a final order of sequestration or liquidation of the Member concerned;
 - 5.4.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his or her affairs;
 - 5.4.1.4 In the event of a Member ceasing to be a Member in terms of Article 5.4.1.2 or 5.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this MOI.

5.5 Liability of each Member

The liability of each Member as a Member of the Association, shall be limited to R1,00 (One Rand) together with such other amount as may be owing by a Member to the Association, from time to time, from whatever cause arising.

5.6 Register of Members

The Association shall maintain at its office a register of Members as provided in Section 24

of the Act. The register of Members shall be open to inspection as provided in Section 26 of the Act.

6 **GENERAL MEETINGS**

6.1 Annual General Meeting

The Association shall hold a general meeting in every year as its annual general meeting on such date and at such time and place as may be determined by the Board, and shall specify the meeting as such in the notice calling it, provided, however, that the annual general meeting shall be held not later than 6 (Six) months after the end of each financial year of the Association, and provided that not more than fifteen months shall elapse after the holding of the last preceding annual general meeting.

6.2 Notice of Annual General Meeting, Extraordinary or Special Meeting

The annual general meeting and any extraordinary general meeting called for the passing of a Special Resolution shall be called by not less than 21 (Twenty One) clear days' notice in writing and any other general meeting shall be called by not less than 14 (Fourteen) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in a general meeting, to such persons as are, under this MOI, entitled to receive such notices from the Association: Provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.

6.3 Constitutional General Meeting

The Association shall be entitled to convene a Constitutional General Meeting ("CGM") for purposes of effecting or, where applicable, confirming any amendment, addition or deletion to:

6.3.1 the MOI; and/or

6.3.2 any Rules made pursuant to the provisions of clause 11.6 ; and/or

6.3.3 any previously passed Special Resolution.

6.4 Requisition by Members for the Holding of Extraordinary General Meeting and/or Constitutional General Meeting

6.4.1 The Trustees shall on receipt of a written requisition signed by Members holding not less than 10% (ten percent) of the voting rights of the Association, convene either an AGM or CGM, as the case may be, within not less than 15 (fifteen) business days from the date of such notice in conformity with the requirements set out in sections 61(3)(b) and 62(1)(a) of the Act.

6.4.2 The provisions as set out in sections 61(3)(a), 61(5), 61(6) and 61(9) of the Act shall otherwise apply to the written requisition referred to in the preceding clause hereof.

6.4.3 The written notice of the requisition shall set out in detail a draft of the resolution(s) required to be tabled at such AGM or CGM, as the case may be.

6.5 Proceedings at General Meetings

6.5.1 **Business**

The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the audited annual financial statements, a decision on the number of Trustees; and election of Trustees when such decision is required in accordance with the provisions of this MOI, and the appointment of an auditor, and any other business of which due notice has been given. All business laid before any other general meeting shall be considered special business.

6.5.2 **Quorum**

6.5.2.1 A quorum for :

6.5.2.1.1 a general meeting, shall be Members holding between, in aggregate, not less than 10% (Ten Percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote (subject to a minimum of 3 (Three) Members personally present), provided that during the Development Period, 1 (One) of such Members must be a nominee of the Developer;

6.5.2.1.2 Notwithstanding any of the preceding provisions of this clause, and subject to the provisions of section 64(10) of the Act, the Chairperson shall, with

the approval of a majority of the Members entitle to vote at any general meeting at which a quorum is present, adjourn the meeting to a fixed time and place agreed at the meeting, provided that the meeting may not be adjourned beyond the date that is 1 (one) week after the date on which the adjournment occurred. No business shall be transacted at any adjourned meeting other than the business which failed to be transacted at the meeting from which the adjournment took place.

6.5.2.1.3 a general meeting called for the passing of the Special Resolution, shall be Members holding between them, in aggregate, not less than 25% (Twenty Five Percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote, provided that during the Development Period, 1 (One) of such Members must be a nominee of the Developer.

6.5.2.2 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; in any other case it shall stand adjourned to a date not earlier than 7 (Seven) days and not later than 21 (Twenty One) 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 shall be a quorum.

6.5.3 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 3 (Three) days after the adjournment, send written notice to each Member of the Association and publish a notice on its website and, if it considers it expedient, in one or more national newspapers, stating:

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

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

6.5.3.3 the grounds for the adjournment.

6.5.4 **Chairman**

6.5.4.1 The chairman, if any, of the Board shall preside as chairman at every general meeting of the Association. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the Members shall elect one of their

Members to be chairman. Notwithstanding the foregoing, during the Development Period, the chairman and deputy chairman shall be nominees of the Developer.

6.5.4.2 The chairman 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 3.3.3 and 3.3.4 shall *mutatis mutandis* apply to such adjournment.

6.5.5 **Voting**

6.5.5.1 Every motion and every amended motion proposed for adoption as a resolution by a general meeting shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.

6.5.5.2 An amendment proposed shall also require to be seconded and if approved by the meeting, will replace the initial proposal and such amended proposal must then be put to the vote.

6.5.5.3 Any ordinary motion or the amendment of any ordinary motion shall be carried by a simple majority of all votes cast.

6.5.5.4 Should there be any equality of votes for or against any ordinary motion, the motion shall be deemed to have been defeated.

6.5.5.5 A Special Resolution shall be carried by 75% (seventy-five percent) of the votes of Members entitled to vote (in good standing) present in person or by proxy at the general meeting (based on 1 (one) vote per Erf) and in the event of no quorum being present by 75% (seventy-five percent) of the vote of the Members entitled to vote (in good standing) present in person or by proxy, at any adjourned meeting (based on 1 (one) vote per Erf) in accordance with the provisions of clause 6.5.2.1.2.

6.5.5.6 Subject to the provisions of Article 3.4, 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 (at any time before or on the declaration of the result of the show of hands) demanded by the Chairman or by any Member, and unless a poll is so

demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or not carried and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of a meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of Article 3.4.

6.5.6 **Proxy and Resolutions**

- 6.5.6.1 The instrument appointing a proxy shall be signed by the appointer and shall be in such form as approved by the Board.
- 6.5.6.2 The instrument appointing a proxy shall be deposited at the nominated office of the Association not less than 24 (Twenty Four) hours before the time for the holding of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy otherwise provides. For the purpose of this clause the Association may nominate an office, in writing, to be its office, and circulate such notice to all Members.
- 6.5.6.3 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided no intimation in writing of the death or revocation shall have been received at the office or by the chairman of the meeting before the vote is given.
- 6.5.6.4 In the event of a Member being a juristic person, such as a close corporation, company or trust, such Member shall lodge at the offices of the Association, a resolution authorising a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such Resolution shall

be lodged at the offices of the Association at least 24 (Twenty Four) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

6.5.7 **Votes of Members**

Each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote for each piece of land which such Member (or the Owner of which he is the nominee) owns, provided always that for the Development Period no resolution shall be carried unless the nominee of the Developer present in person, or by proxy, votes in favour of such resolution and any ordinary resolution shall be carried if the nominee of the Developer present, in person or by proxy, votes in favour of such resolution.

6.6 **Resolutions of Members**

6.6.1 For an ordinary resolution to be approved of by Members, it must be supported by more than 50% (Fifty Percent) of the voting rights exercised on the resolution.

6.6.2 For a special resolution to be approved of by members, it must be supported by at least 75% (Seventy Five Percent) of the voting rights exercised on the resolution.

7 **INSPECTION OF MINUTES**

The minutes kept of every general meeting and annual general meeting of the Association under Section 25 of the Act, may be inspected and copied as provided in Section 26 of the Act.

8 **DIRECTORS**

8.1 The number of Trustees (Directors for the purposes of the Act) and the election thereof shall be determined from time to time by the Members in a general meeting subject to the following provisions:

8.2 During the Development Period, there shall be a maximum of 5 (Five) Directors, 3 (Three) of whom shall be nominees of the Developer.

- 8.3 After the expiry of the Development Period, there shall be a maximum of 6 (Six) Directors and a minimum of 2 (Two) Directors;
- 8.4 A retiring Director shall be eligible for re-election;
- 8.5 A nominee of the Developer shall be a Director for so long as the Developer does not revoke his appointment;
- 8.6 Save as is set out in Article 8.3 and Article 13, and save for the Directors nominated by the Developer in terms of Article 8.1, each Director shall continue to hold such office from the date of his commencement of office until the next Annual General Meeting following the said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Trustees at such meeting.
- 8.7 Notwithstanding the provisions of Article 8.2 above, Members may, at the Annual General Meeting, elect to appoint up to 2 (Two) Directors for a period of 2 (Two) years (for the purposes of these Articles, a year shall be deemed to be the period between consecutive Annual General Meetings).
- 8.8 If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this MOI. If the Director so retiring or resigning was the nominee of the Developer, then during the Development Period, his successors shall be appointed by the Developer. The validity of any resolutions taken or acts performed by the Directors during a period when the number falls short of that provided in 8.1 above shall not be prejudiced by such shortfall.
- 8.9 Any Director, with the exception of a Director appointed by the Developer, may be removed by a majority Board decision, for any reason whatsoever.
- 8.10 The appointment by the Board of any Director to fill any vacancy for whatever reason, shall be made within 45 (Forty Five) days of the date upon which such vacancy occurs.
- 8.11 The Directors shall have the power to co-opt persons onto the Board for the purposes of assisting the Directors in carrying out any of their functions. During the Development Period the Members shall be entitled to elect one person to the Board in this capacity. Any person so co-opted onto the Board shall not be entitled to vote on any matter which comes up for consideration by the Board.

- 8.12 The chairman and deputy chairman shall be elected by the Directors at their first meeting after the Annual General Meeting of the Association, provided that for the Development Period, the Chairman and the Deputy Chairman shall be Directors nominated by the Developer.

9 **ALTERNATE DIRECTORS**

- 9.1 Any Director appointed by the Developer may for any reason, and at or for any time, appoint an alternate.
- 9.2 Any other Director may obtain leave of absence by a resolution of the majority of the Directors, and the Board may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him. The appointment of such alternate shall not, however, be valid unless confirmed by a resolution of the majority of Directors present at the meeting.

10 **REMUNERATION OF DIRECTORS**

- 10.1 A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Association, provided that nothing in this MOI shall prohibit him from receiving reimbursement of any travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Association and which is authorised or approved by the Board where disclosure has been made in terms of Section 75(5) and 75(6) of the Act.

- 10.1.1 Where a director performs services or supplies goods to the Association, he shall be permitted to charge a reasonable amount provided that the director informs the Board thereof in terms of Section 75 of the Act.

- 10.1.2 The Director having a personal financial interest shall not be entitled to vote in any motion proposed about the use of his goods or services.

- 10.2 If any Director commits a breach of Article 10.1 he shall forthwith cease to be a Director and shall not be eligible for re-election.

11 **POWERS AND DUTIES OF DIRECTORS**

- 11.1 The business of the Association shall be managed by the Board who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and

may exercise all such powers of the Association as are not required by the Act, or by this MOI, to be exercised by the Association in a general meeting. Without in any way derogating from the generality of the foregoing, the Board shall be entitled to exercise on behalf of the Association all and any of the common powers set out in paragraph 4 of the MOI.

- 11.2 Without in any way affecting the generality of Article 11 the Board shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of the Memorandum and Articles of the Association.
- 11.3 The Board may, pursuant to their rights, obligations and duties in terms of this MOI and as provided for and contemplated under this MOI, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of the Memorandum and Articles of Association of the Association.
- 11.4 After the termination of the Development Period, the Association in a general meeting, shall have the right to limit and restrict the powers of the Board, provided that no resolution of the Association shall invalidate any prior act of the Trustees which would otherwise have been valid.

Rules

- 11.5 The Board shall have the power to make rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Estate, for the purposes of giving proper effect to the provisions of the Memorandum and Articles of the Association and for any other purpose, which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this MOI or the rules.
- 11.6 In no way detracting from the generality of the aforesaid, the Board may from time to time make rules, applicable within the Estate, specifically in regard to –
- 11.6.1 the preservation of the natural environment;
- 11.6.2 vegetation and flora and fauna in the Estate;
- 11.6.3 the storing of flammable and other harmful substances;

- 11.6.4 the conduct of any persons within the Estate and the prevention of nuisance of any nature to any owner of immovable property in the Estate;
- 11.6.5 the use of roads, pathways and open spaces;
- 11.6.6 the imposition of fines and other penalties to be paid by Members of the Association and persons accredited to do work on the Estate;
- 11.6.7 the management, administration and control of the common areas and open spaces;
- 11.6.8 the erection of all buildings and other structures on the Estate (including, but in no way limited to, service connections to buildings);
- 11.6.9 the accreditation of contractors and architects for the Estate;
- 11.6.10 the establishment, installation and maintenance of gardens, both public and private (including the accreditation of landscape architects, landscape contractors and garden maintenance personnel);
- 11.6.11 the use by owners or their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings,
- 11.6.12 the right to keep any animal, reptile or bird;
- 11.6.13 the use of recreation and entertainment areas and amenities and facilities (excluding those forming part of the Sports Club) and the right to charge a reasonable amount for such use;
- 11.6.14 the control of business premises in the Estate (if any) and the use of land within the Estate (excluding that forming part of the Sports Club);
- 11.6.15 the accreditation of estate agents and letting agents (insofar as this does not conflict with any rights of the Developer), to sell land on the Estate;
- 11.6.16 the accreditation of managing agents to manage sectional title schemes on the Estate,

and generally in regard to any other matter which the Board from time to time consider appropriate.

11.7 **Enforcement of Rules**

- 11.7.1 The Board may take or cause to be taken such steps as they may consider necessary to remedy the breach of any rules 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 to the Association. In addition the Board may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.
- 11.7.2 In the event of any breach of the rules by any tenant or occupier of any land owned by the Member, or any person who goes upon the Estate by virtue of the Member's rights thereto, such breach shall be deemed to have been committed by the Member and the Board shall be entitled to take such action as they deem fit against the responsible Member.
- 11.7.3 Notwithstanding the foregoing, the Board may in the name of the Association enforce the provisions of any rules by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or Counsels as they may deem fit.
- 11.8 Any rules made by the Board shall reasonably be in the interest of the Association and the Development and shall apply equally to all Owners.
- 11.9 The rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.
- 11.10 In no way detracting from the generality of any other provision of this MOI, in the event of the Association incurring any legal costs as a result of any breach of this MOI by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

12 **MINUTES**

- 12.1 The Board shall in terms of the Act cause Minutes to be kept:
- 12.1.1 of all appointments of officers;
- 12.1.2 of names of Directors present at every meeting of the Association and at every meeting of the Board; and
- 12.1.3 of all proceedings at all meetings of the Association and/or the Board.

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

13 DISQUALIFICATION OR RESIGNATION OF TRUSTEES

A Trustee shall have be deemed to have vacated his office upon:

- 13.1 his having become disqualified to act as a Director in terms of the Act;
- 13.2 his being removed from office as provided for in section 75 of the Act;
- 13.3 his being disentitled to exercise a vote as a Member in terms of this MOI;
- 13.4 the remaining Trustees take a vote of no confidence against said Trustee and which vote is unanimous;
- 13.5 is found to be a lunatic or of unsound mind; or
- 13.6 his having submitted his resignation in writing to the Association. Or in the case of a Trustee appointed by the Developer, on the Developer revoking his appointment as such.

14 PROCEEDINGS AT MEETINGS OF TRUSTEES

- 14.1 The Trustees may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (Four) times during a financial year.
- 14.2 A Director may, on 14 (Fourteen) days' written notice to all other Trustees, at any time summon a meeting of the Trustees.
- 14.3 The quorum necessary for the transaction of the business of the Trustees shall be at least 50% of the total number of Trustees, provided that for the Development Period one of such Trustees must be a nominee of the Developer.
- 14.4 If at a meeting neither the chairman nor the deputy chairman is present within 10 (Ten) minutes after the time appointed for holding the same, the Trustees present may choose one of their number to be chairman for that meeting subject to the provisions of 5.8.

- 14.5 Questions arising at any meeting of the Trustees shall be decided by a majority of votes of the Trustees, present in person or by an alternate. Each Director shall be entitled to exercise 1 (One) vote, provided that during the Development Period, no resolution of Trustees shall be carried unless the nominees of the Developer votes in favour of same. Subject to the aforesaid, in the event of an equality of votes the chairman shall have a second or casting vote. Where a person is an alternate Director to more than one Director, or where an alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Trustees he is representing.
- 14.6 All acts done in terms of any resolution passed at any meeting of the Trustees or a committee of Trustees or by any person acting as a Director, notwithstanding that it be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Trustees or a committee of Trustees had been duly appointed and had qualified to be a Director.
- 14.7 A Resolution signed by all of the Trustees shall be a valid Resolution notwithstanding that such Resolution may not have been passed at a meeting of Trustees.

Committees

- 14.8 The Board may delegate any of their powers to committees consisting of such persons as they think fit, the chairman of which committees may be appointed by the Board. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Board.
- 14.9 Should the Board not appoint the chairman of a committee, the members of that committee shall elect a chairman of its meetings. If at any meeting the chairman is not present within 10 (Ten) minutes after the time appointed for holding the same, the committee members present may elect one of their number to be chairman for that meeting.
- 14.10 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 committee members present and in the event of an equality of votes the chairman shall have a second or casting vote.
- 14.11 **Limitation of Liability of Trustees**

No Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same occurs as a result of his own dishonesty, gross negligence or default, breach of duty or breach of trust.

15 **DELEGATION OF POWERS OF TRUSTEES**

The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Board and may from time to time revoke or vary all or any of such powers and authorities.

16 **ASSIGNMENT OF POWERS AND FUNCTIONS**

The Association shall carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Association may require to be delegated to it by the relevant Body Corporate and those functions imposed in terms of the Share Blocks Control Act (and in particular Sections 13, 15 and 19 thereof), as the Association may require to be delegated to it by a Share Block Company, in relation to any Sectional Title or Share Block Scheme in the Estate. In addition to the foregoing any controlling body of any Share Block Scheme or Sectional Title Scheme, shall assign such powers and functions to the Association as may be required of it by the Association.

17 **FINANCE**

- 17.1 The Board shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Estate including the provision of security services for the Estate, garden maintenance services, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the local or any other authority, any charges (including recoupment of capital expenditure for infrastructure installed by and at the cost of the developer after the prior approval of the Association) for the supply of electric current, gas, water, fuel and sewage

disposal, refuse collection and any other services to the Estate including any matter arising from the provisions of Article 16, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, 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 obligation of the Association (provided that nothing in this MOI shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).

- 17.2 All levies due by Members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.
- 17.3 Notwithstanding anything contained herein or elsewhere, during the Development Period, the Developer shall be entitled to recoupment of capital and other expenditure incurred by it with the prior approval of the Board.
- 17.4 Subject to the provisions of Articles 17.3, the Board shall determine the proportions in which Members shall contribute towards the levy fund in accordance with the following principles, having regard to all circumstances prevailing at the time, and to equity :
- 17.4.1 they shall assign those costs arising directly out of the land itself to the Member owning such land;
- 17.4.2 they shall assign those costs relating to the Estate generally, to the Owners of all land equally (provided that if an Owner owns more than one piece of land, he shall be deemed to be a separate Owner in respect of each piece of land he owns for the purposes of this clause). Therefore, purely by way of example, if there are 100 (One Hundred) pieces of land, and an Owner owns two pieces of land, he shall be assigned 2% (Two) of those costs relating to the Estate generally, in terms of this clause);
- 17.4.3 they may draw a distinction between the services rendered by the Association to a particular Body Corporate for a particular type of scheme, again taking into account the nature and the extent of the services rendered to that Body Corporate and the owners of that Body Corporate;
- 17.4.4 they may, during the development of the Estate, assign costs arising solely out of a particular phase of the Estate to the Owners of land within that phase (for example in the event of the developed phases of the Estate having the benefit of services and

the undeveloped phases not having the benefit of services, the costs of services may be assigned to the Owners in the developed phases of the Estate),

Provided however that the Board may in any case where they consider it equitable to do so, assign to any owner any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any replacement or other reserves shall be determined by the Board.

- 17.5 All contributions received from Members and the Developer shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 17.6 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 17.1 above.
- 17.7 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.
- 17.8 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this MOI, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited at its prime overdraft rate plus 3 (Three) percentage points. Such interest shall be calculated and compounded monthly.
- 17.9 Subject to the provisions of Article 17.3, the Board shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in Article 17.4.
- 17.10 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 17.11 All contributions levied under the provisions of this MOI shall be due and payable by Members on the passing of a resolution to that effect by the Board and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due.

- 17.12 The Association shall establish a levy stabilisation fund for the purposes of meeting any extraordinary expenditure and expenditure of a capital nature to be incurred by the Association in carrying out its main objects and the provisions of this MOI. In the event of any land being sold, alienated or otherwise disposed of, the new owner shall be obliged to pay the levy stabilisation fund contribution applicable at that time and the immediately previous owner shall not be entitled to a refund of the levy stabilisation fund contribution paid by him. In the case of deemed alienation of land by artificial persons (see Article 5.1.3 above), a further contribution to the levy stabilisation fund shall, upon alienation, become due by the artificial person, notwithstanding that the artificial person remains the owner of the land. The object, in this regard, shall be to ensure that where a material change in the beneficial ownership or controlling interest of the artificial person (for example, by the members of a close corporation selling their interest to 1 (one) or more persons or by the beneficiaries of a trust ceding their interest to 1 (one) or more persons) the artificial person shall become liable for a further contribution to the levy stabilisation fund on the same basis that would have applied if the artificial person had become a "new owner" of the land. (Notwithstanding the above, a material change in the beneficial ownership or the controlling interest which results from an alienation by way of succession, whether testate or intestate, shall not give rise to an obligation on the part of the artificial person or its new representative member to pay a contribution to the levy stabilisation fund).
- 17.13 Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Article or any other amount of any nature whatsoever due to the Association by such Member (including by not limited to any fine that may be imposed by the Association on any such Member) and remain in arrears notwithstanding demand for payment by the Association, then in that event such Member shall not be entitled either in person or by proxy to speak or vote at a meeting of Members of the Association. A letter addressed to the Chairman of a meeting of Members of the Association by the Board, dated not more than 14 (Fourteen) days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid letter having been signed on behalf of the Board).
- 17.14 In the event of there being a dispute as to the amount of any levy due by the Member, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.

- 17.14.1 Where a member refuses or neglects to pay any levy or levies due, the Association shall commence legal action in a court of competent jurisdiction and if defended, the matter shall be transferred to the Arbitration Court in terms of Article 25.
- 17.15 The Association shall not be entitled to borrow money, save in accordance with a Special Resolution of Members (this shall not include any amounts due to the Developer by the Association, in respect of amounts the Developer may have expended on the Association's behalf).
- 17.16 Although the obligation to pay the aforesaid levy to the Association shall rest with the individual Member it shall, if the Association so chooses, be the responsibility of the body corporate of any sectional title scheme laid out on land in the Estate, to collect the aforesaid levy due to the Association, from the body corporate's members, on the Association's behalf, and to pay same over to the Association timeously.
- 17.17 In no way detracting from the generality of any other provision of this MOI (and in particular in no way detracting from the generality of the provisions of this Article 17) it is recorded that, Members may by way of an ordinary resolution, passed at a properly constituted general meeting of Members, direct the Board to raise a special levy to upgrade or maintain the Sports Club should the Developer (or in the event of the Developer having sold Sports Club, the owner of the Sports Club at that time) being so agreeable, without any claim for compensation.

18 **ACCOUNTING RECORDS**

- 18.1 The Board 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 Association and to explain the transactions and financial position of the trade or business of the Association.
- 18.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Board think fit, and shall always be open to inspection by the Members.

19 **ANNUAL FINANCIAL STATEMENTS**

- 19.1 The Board shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are prescribed by the Act.
- 19.2 A copy of the audited financial statements shall be laid before the Association's Annual General Meeting. A summary of the aforesaid audited financial statements shall, not less than 21 (Twenty One) days before the date of such meeting, be sent to every Member of the Association: provided that this Article shall not require copies of documents to be sent to any person of whose address the Association is not aware.
- 19.3 Where such financial statements are not available at the Annual General Meeting, the same shall be sent to each member as soon as practicable after the financial statements.

20 **AUDITOR**

An auditor shall be appointed in accordance with the Act.

21 **NOTICES**

- 21.1 A notice may be given by the Association to any Member either by advertisement or personally, or by sending it by post by prepaid letter addressed to such Member at his registered address, or if he has no registered address in the Republic, at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him. Any notice which may be given by advertisement shall be inserted in such newspaper as the Board may from time to time determine.
- 21.2 Notice of every general meeting shall be given in any manner authorised:
- 21.2.1 to every Member of the Association. If a Member has not supplied the Association with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the Association to serve notice at the address of the land owned by the Member;
- 21.2.2 to the auditor for the time being of the Association.
- 21.2.3 No other person shall be entitled to receive notice of general meetings.
- 21.3 Any notice by post shall be deemed to have been served within 5 (FIVE) days after the day the letter containing same was posted, and any notice by advertisement shall be deemed to

have been given on the day upon which the advertisement was published in the newspaper, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

21.4 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 Association.

21.5 Notwithstanding anything contained herein or elsewhere, the sending of any notice or other communication to a Member at an electronic mail address, nominated by such Member for these purposes in writing to the Association, shall be deemed to be good and proper services of such notice or other communication, in terms of this Memorandum of Incorporation, and shall be deemed to have been received by the Member on the date that such communication or other notice was sent by electronic mail.

22 **WINDING-UP OF ASSOCIATION**

22.1 In the event of the Association being wound up, its assets (if any) shall devolve upon such other corporation as the Members in such winding-up order determine, provided that such corporation has aims and objectives similar to those of the Association.

23 **BUILDING COMMITTEE**

23.1 The Building Committee shall be comprised of :

23.1.1 during the Development Period, one (1) professional architect appointed by the Developer, one (1) landscape consultant appointed by the Developer, the Manager (if any) and any other individuals appointed by the Board;

23.1.2 after the Development Period, one (1) architect and such other individuals appointed by the Board;

23.1.3 The Building Committee will act as, *inter alia*, an aesthetics committee with a view to ensuring any development within the Estate is in accordance with the Architectural Design and Development Guidelines, the Scheme and to standards and an architectural theme which will enhance the attraction of the Estate as a whole.

23.2 The Board shall ensure that the Building Committee carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Architectural Design and Development Guidelines.

23.3 Any individual appointed to the Building Committee by the Developer may, for any reason or for any time, appoint an alternative.

23.4 The Chairman of the Building Committee shall be elected by the Committee at their first meeting in the financial year of the Association, provided that, for the Development Period, the Chairman shall be a member of the Committee nominated by the Developer.

23.5 The Committee shall meet a minimum of 4 (Four) times during the Association's financial year.

24 **REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE DEVELOPMENT**

24.1 Buildings and improvements

24.1.1 In order to procure compliance with the nature and amenity of the Estate nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Building Committee and no building, extension or alteration to an existing building or other structure shall be built or erected on any land, other than in accordance with the Scheme, the Architectural Design and Development Guidelines and plans approved by the Building Committee and the relevant local authority. The Building Committee's approval shall be in writing and signed by a duly authorised representative of the Building Committee. Before giving such approval, the Committee may require, *inter alia*, that there be lodged with them :

24.1.1.1 such descriptions and/or drawing and/or plans as may be necessary, in the opinion of the Committee, to enable them to consider the matter;

24.1.1.2 details of construction materials to be used;

24.1.1.3 the payment of a scrutiny fee, set by the Association, to peruse the aforesaid documentation (which fee shall be set by the Association in its sole and absolute discretion);

24.1.1.4 where deemed necessary, a geotechnical report of the piece of land in question;

- 24.1.1.5 a detailed survey of the piece of land in question (which shall include the position of the following, namely: all indigenous trees, the road edges and markings, all services, all embankments, all retaining walls, the road reserve and the cadastral boundaries of the land in question) and;
- 24.1.1.6 such other documentation as the Building Committee, in its sole and absolute discretion, may require.
- 24.1.2 Any approval as contemplated in this clause 23 may be subject to such conditions as the Building Committee may deem fit. In the event of any building or other structure being erected on land, save in accordance with the plans approved of by the Building Committee as set out in this clause, then in that event, the Association shall be entitled to make such amendments to such building or other structure in order to procure compliance with building plans approved of by the Building Committee and recover the costs of such alterations from the relevant owner of the land in question which amount shall be deemed to be part of the levy due by the Owner to the Association. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period. This clause shall in no way alter or supersede any requirements of or obligations to the relevant Local Authority.
- 24.1.3 Members shall ensure that their land is kept in a neat and tidy state at all times to the reasonable satisfaction of the Building Committee.

24.2 Landscaping

The landscaping of land by a Member shall be undertaken in accordance with the Architectural and Landscape Design Guidelines drafted (in accordance with the Association's rules and requirements) by a Landscape Architect and/or contractor appointed by the Association. No Member shall commence landscaping of any land until such time as the aforesaid landscape plan has been approved by the Board in writing. The maintenance of any garden area shall be in accordance with such rules and regulations as the Board may lay down from time to time (including, but in no way limited to, any rules or regulations the Board may lay down, from time to time, in respect of the appointment and accreditation of persons authorised to maintain such garden areas).

24.3 Provision of Services

The Association may, from time to time, contract with suppliers of services to provide services to the Estate.

24.4 Maintenance of Buildings

Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition by the Owner. No Owner shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Building Committee which consent shall not unreasonably be withheld. An Owner shall, on receipt of a notice given by the Building Committee, undertake such work as may be specified in such notice relative to such Owner's building. Should an Owner fail to carry out any work as required by the Building Committee, after the Building Committee has given the owner notice, which the Building Committee deems reasonable in the circumstances, so to comply, the Board shall be entitled to carry out such work and to recover the reasonable cost thereof from the Owner concerned which amount shall be deemed to be part of the levy due by the Owner to the Association.

24.4.1 The Owner shall at all times bear responsibility for the acts and omissions of persons occupying the property of the owner or working thereon or therein.

24.5 Occupation of Buildings

Occupation and use of a building shall, at all times, be in compliance with the Scheme and this MOI. No Member shall use any building on any land or allow any other person to use such building for purposes not permitted by the Scheme or this MOI or the Rules.

24.6 Services

Inasmuch as the provision, establishment, maintenance and repair of Services may be required to take place in the Estate, Members shall be obliged to accept the laying out and installation of such Services across their land, in such places as the Building Committee determines, from time to time. The Building Committee or persons authorised by it, shall be entitled to enter upon such land for the purpose of providing, establishing, maintaining and/or repairing the Services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

24.7 Security of the Estate

The Association shall provide such security in the Estate as it deems appropriate, from time to time. The Association or persons authorised by it, shall be entitled to enter upon any land for the purposes of maintaining the security perimeter fence of the Estate, for the purposes of maintaining any other security apparatus or for the purposes of patrolling the Estate for security purposes.

24.8 Maintenance of Open spaces, Private Roads and Municipal Services

The Association shall be responsible for the maintenance, upkeep and repair of any private open spaces, private roads or other common landscaped area within the Estate. Further, in the event of the Local Authority, or any other service provider, not having the means or being unwilling to maintain or provide the services normally provided by a local authority or, in the event of the local authority or any other service provider not maintaining the services normally provided by a local authority to a standard acceptable to the Association, then in that event, the Association shall provide and maintain such services.

24.9 Private Roads and Open Spaces

24.9.1 Members and their invitees shall be entitled to use all open spaces as well as private roads on the Estate subject to such rules as the Board may lay down from time to time, provided that at all times Owners shall have vehicular and pedestrian ingress and egress from their land to a public road.

24.9.2 No resolution for the winding up of the Association shall be passed prior to the rights of vehicular and pedestrian ingress and egress above referred to being secured by way of servitudes registered against the title of the Estate or the transfer of such accesses to a local authority, as public roads.

24.10 The Association bears no responsibility for the condition of the properties upon which owners have traversing rights in terms of the Members Title Deeds.

24.11 Where the owners of such properties attempt to diminish the rights of the members to traverse the said properties, the Association may take such action as it deems fit in its sole discretion.

25 **ENFORCEMENT OF OBLIGATIONS OF OWNERS**

Should any Owner or any lessee of an Owner fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Association, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Owner concerned, which shall be payable on demand. The Owner shall be obliged to bring to the attention of any tenant of his land, the rules and regulations of the Association. In addition, an Owner shall utilise its best endeavours to ensure that any invitee of the Owner who goes upon the Estate complies with the Association's rules and regulations.

26 **DETERMINATION OF DISPUTES**

26.1 In the event of any dispute or difference arising between the members themselves or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Association or any Member in terms of this MOI, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 60 (sixty) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.

26.2 The arbitrator shall be if the question in issue is:

26.2.1 primarily an accounting matter, an independent chartered accountant of not less than 15 (fifteen) years standing as such appointed by the President for the time being of the South African Institute of Chartered Accountants in Kwazulu-Natal;

26.2.2 primarily a legal matter, a practising senior Advocate of not less than 10 (ten) years standing as such, or a practising attorney of not less than 15 (fifteen) years standing as such, in either event as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or anybody enacted to replace such Society);

26.2.3 any other matter, an independent person agreed upon between the parties and, failing agreement, as may be appointed by the President for the time being of the

KwaZulu-Natal Law Society (or anybody enacted to replace such Society) regard being had to the needs of the dispute and the qualifications required therefore.

26.2.4 If agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under 25.2.1, 25.2.2 or 25.2.3, then a practising Advocate of not less than 10 (ten) years standing or alternatively practising attorney of not less than 15 (fifteen) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or anybody enacted to replace such Society) as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.

26.3 The arbitration referred to in 25.1 shall be held:

26.3.1 in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:

26.3.2 the usual formalities or procedure, which may be otherwise be prescribed in terms of the laws referred to in clause 25.4.3 below, or

26.3.3 the strict rules of evidence;

immediately and with a view to it being completed within 30 (thirty) days of the appointment of the arbitrator having particular regard to any urgency regarding the matter in issue, provided that should any party to such dispute delay or omit to fulfil any act required of it to enable the arbitration to be duly completed within the period aforesaid, any other party hereto shall be entitled at its election and upon the expiration of 6 (six) days' notice to the defaulting party to that effect, without such defaulting party having remedied its default or omission to the satisfaction of the arbitrator, either to require the arbitrator summarily without hearing the parties to determine the rules of procedure for the finalising of the arbitration proceedings within such further period not exceeding 14 (fourteen) days beyond the original 30 (thirty) day period as the arbitrator may determine, or alternatively and in the discretion of the party serving such 6 (six) day notice aforesaid, to require the arbitrator to proceed with the arbitration without the further participation of the defaulting party, in which event the defaulting party shall be barred from participating in the further conduct of the arbitration other than at the hearing thereof, and the decision of the arbitrator then to proceed with the arbitration, either with the presence or in the absence of the defaulting

party, will be competent, or further alternatively and in the discretion of the party serving the 6 (six) day notice aforesaid, such party shall be entitled to have recourse to the competent Court having jurisdiction, in which event the arbitrator shall then be entitled to make an award of any wasted costs occasioned by the proceedings, and whereupon such arbitration proceedings shall then terminate and the wasted costs borne by the party against whom the award is made, and the decision of the arbitrator as to such costs shall be final and binding upon the relevant parties;

26.3.4 otherwise, but subject to the relevant provisions hereof and subject to any other alternative directions which the arbitrator may and shall be competent to prescribe, under the provisions of the arbitration laws of the place in which the arbitration takes place as amended from time to time.

26.4 The arbitrator shall:

26.4.1 be entitled to make any award as to costs of the proceedings;

26.4.2 decide the matter submitted to him according to what he considers just and equitable in the circumstances, and shall have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially, and the strict rules of law need not be observed or taken into account by him in arriving at his decision.

26.5 The parties irrevocably agree that the decision of those arbitration proceedings:

26.5.1 shall be binding on all of them and shall be forthwith carried into effect;

26.5.2 may at the instance of any party hereto be made an Order of Court of competent jurisdiction, provided that such proceedings for such Order of Court shall not delay in any way at all the due execution and carrying into effect of the arbitrator's award.

26.6 Notwithstanding anything to the contrary contained in this Article 25, the provisions hereof shall not preclude any party hereto from taking any action against any other party or parties to the dispute in any competent Court having jurisdiction where such action is reasonably required either to restrain temporarily pending the outcome of any arbitration proceedings as hereinbefore provided for, any party hereto from commencing or continuing any action or course of action or likewise to enforce temporarily pending such arbitration proceedings any omission by any party, which action, course of action or omission is or is likely to materially prejudice any party hereto, and regard being had to all the circumstances, is of

such an urgent nature that it would not be appropriate merely to have recourse to arbitration proceedings, the parties agreeing that the test to be generally applied being that which would otherwise entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.

27 DEVELOPER'S RIGHTS REGARDING THE ESTATE

27.1 The Developer shall, during the Development Period, be entitled to develop any land within the Estate of which it is the owner in conformity with the Scheme, without the approval of the Association.

27.2 It is recorded that an Owner may have certain contractual obligations to the Developer in terms of the contract of sale, entered into between the Owner and Developer, in respect of the purchase of land. Should there be any conflict between the rights and obligations of the Association, in terms of this MOI, and the rights of the Developer in terms of the aforesaid contract of sale, the provisions of the contract of sale (and the Developer's rights in terms thereof) shall prevail.

28 DISCLAIMER OF RESPONSIBILITY

28.1 The Association 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 Association be responsible for any theft of property occurring within the Estate. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

28.2 The Association 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 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.

28.3 Members shall indemnify the Association 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 clause 27.

29 **PROPERTY TO BE INCORPORATED INTO THE ESTATE**

The Developer, on written notice to the Association, may advise the Association of any immovable property which is to be incorporated into the Estate. The definition of Estate in this MOI shall be deemed to include such property from the date of receipt of such notice by the Association.

30 **PROHIBITION AGAINST THE SUB-DIVISION AND CONSOLIDATION OF ANY LAND**

No land shall be sub-divided or consolidated without the consent of the Association, which consent the Association may in its sole and absolute discretion grant or refuse. During the Development Period this provision shall not be binding upon the Developer.

31 **ENVIRONMENTAL MANAGEMENT PLAN**

31.1 Members shall at all times adhere to the provisions of the Environmental Management Plan. In particular, but in no way detracting from the generality of the aforesaid, each Member shall ensure that the provisions of the Environment Management Plan are adhered to in respect of land owned by such Member.

31.2 It is recorded that management and the other obligations undertaken by the Developer in terms of the Environmental Management Plan shall pass to the Association on the expiry of the Development Period.

32 **TRANSITIONAL ARRANGEMENTS**

32.1 Subject to the provisions of the MOI and the Rules on and after the commencement date, anything which was done under a provision of the Articles of Association and the Rules in effect on the day immediately preceding the day on which the MOI comes into effect and which could be done under a corresponding provision of the MOI and the Rules, is deemed to have been done under that corresponding provision.

32.2 The coming into effect of the MOI does not affect any rights, obligations and/or any liabilities which existed on the day immediately preceding the day on which the MOI comes into effect and such rights, obligations and liabilities shall continue under the MOI and

Rules on and after the commencement date and shall be deemed to have existed under, and in terms of or by virtue of a corresponding provision of the MOI and the Rules.

32. As at 18 October 2013 this MOI contains no other provisions.