

Memorandum of Incorporation unique to

**SABLE HILLS WATERFRONT ESTATE HOME OWNERS ASSOCIATION NPC  
2003/015759/08**

**1 Interpretation**

1.1 Definitions

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

- 1.1.1 **“Act”** means the Companies Act, 71 of 2008, as amended;
- 1.1.2 **“Articles”** means the Memorandum for the time being of the Company;
- 1.1.3 **“Board”** means the Board of the Company;
- 1.1.4 **“Chapter”** a reference to a Chapter by number refers to the corresponding Chapter of the Act;
- 1.1.5 **“Company”** means Sable Hills Waterfront Estate Home Owners Association, registration number 2003/015759/08;
- 1.1.6 **“Connected Person”** means any person who falls within the definition of connected person as defined in section 1 of the Income Tax Act;
- 1.1.7 **“Estate”** – means the Sable Hills Waterfront Estate development situated upon portions 80, 132 and 133 of the farm Sable Hills No 741, Registration Division, J.R, Province of Gauteng comprising the Township and Schemes.
- 1.1.8 **“Developer”** – means Sable Hills Waterfront Estate CC, registration number 2009/168596/23, formerly Sable Hills Waterfront Estate (Pty) Ltd, registration number 2002/019752/07.
- 1.1.9 **“Facilities”** – means inter alia the club house and recreational facilities.
- 1.1.10 **“Income Tax Act”** means the Income Tax Act, Act 58 of 1962, amended;
- 1.1.11 **“Member”** means a Member of the Company as referred to in article 2.6;
- 1.1.12 **“Memorandum”** means this Memorandum of Incorporation of the Company;
- 1.1.13 **“Property”** – means erven in the Township and units in the schemes.
- 1.1.14 **“Regulation”** a reference to a regulation by number refers to the corresponding regulation of the Companies Regulations, 2011, as amended;
- 1.1.15 **“Rules”** means rules made by the Directors in terms of article 2.4;
- 1.1.16 **“SARS”** means the South African Revenue Service;
- 1.1.17 **“Schemes”** – means the sectional title schemes known as Sable Hills 3 and Sable Hills 4 situated on portions 132 and 80 respectively of the farm Sable Hills 741 Registration Division J.R. Province of Gauteng.
- 1.1.18 **“Section”** a reference to a section by number refers to the corresponding section of the Act;
- 1.1.19 **“Township”** – means the township known as Sable Hills Waterfront Estate situated on Portion 133 of the farm Sable Hills 741 JR.
- 1.2 Words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act.
- 1.3 Words importing the singular shall include the plural, and words importing the masculine, feminine and neuter shall include the others of such genders; and words importing Persons shall include Bodies Corporate, and vice versa in each instance.

- 1.4 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of the Articles
- 2 Incorporation and Nature of the Company**
- 2.1 Incorporation**
- 2.1.1 The Company is incorporated as a non profit company, as defined in the Act with the following object:
- The sole object of the company is to manage the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable.
- 2.1.2 The Company is incorporated in accordance with, and governed by -
- 2.1.2.1 the unalterable provisions of the Act, that are applicable to Non Profit companies;
- 2.1.2.2 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 Memorandum; and
- 2.1.2.3 the provisions of this Memorandum.
- 2.2 Objects and Powers of the Company**
- 2.2.1 The Objects of the Company are as set out in article 2.1.1 and, except to the extent necessarily implied by the stated objects, the purposes and the powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii).
- 2.2.2 The Company is not subject to any restrictive conditions on changing the Memorandum, as contemplated in section 15(2)(b), nor is prohibited from amending any particular provision of the Memorandum, as contemplated in section 15(2)(c).
- 2.2.3 The Company—
- 2.2.3.1 must apply all of its assets and income, however derived, to advance its stated objects, as set out in the Memorandum; and
- 2.2.3.2 subject to article 2.2.3.1, may—
- 2.2.3.2.1 acquire and hold securities issued by a profit company; or
- 2.2.3.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 2.2.4 The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a member or director, or person appointing a director, of the company, except—
- 2.2.4.1 as reasonable—
- 2.2.4.1.1 remuneration for goods delivered or services rendered to, or at the direction of, the company; or
- 2.2.4.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the company;
- 2.2.4.2 as a payment of an amount due and payable by the company in terms of a bona fide agreement between the company and that person or another;
- 2.2.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or
- 2.2.4.4 in respect of any legal obligation binding on the company.
- 2.2.5 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company—

- 2.2.5.1 no past or present member or director of the Company, or person appointing a director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 2.2.5.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts—
  - 2.2.5.2.1 having objects similar to the Company's main object; and
  - 2.2.5.2.2 as determined—
    - 2.2.5.2.2.1 in terms of the company's Memorandum;
    - 2.2.5.2.2.2 by its members at or immediately before the time of its dissolution; or
    - 2.2.5.2.2.3 by the court, if the Memorandum, or the members fail to make such a determination.
- 2.2.6 The Company may not—
  - 2.2.6.1 amalgamate or merge with, or convert to, a profit company; or
  - 2.2.6.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- 2.2.7 Any proposal to—
  - 2.2.7.1 dispose of all or the greater party of the Company's assets or undertaking; or
  - 2.2.7.2 amalgamate or merge with another non profit company,
    - must be submitted to the voting members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.
- 2.2.8 Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in article 2.2.7.
- 2.2.9 The Company may grant loans only to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.10 The Company may only invest funds available for investment with a registered financial institution as described in section 1 of the Financial Institutions Act of 1984, as amended, and in a security listed on a licensed Stock Exchange as defined in the Stock Exchange Control Act, No 1 of 1985, as amended.
- 2.2.11 The Company may enter in to indemnities, guarantees and suretyships and secure payment thereunder in any way only with one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.12 The Company may
  - 2.2.12.1 make donations provided that no donations may be made to present or former incorporators, members or directors; and
  - 2.2.12.2 pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees.
- 2.3 Memorandum and Company rules**
  - 2.3.1 This Memorandum of the Company may be altered or amended only
    - 2.3.1.1 in compliance with a court order in the manner contemplated in section 16(4);

- 2.3.1.2 at any other time if a special resolution to amend it—
- 2.3.1.2.1 is proposed by—
  - 2.3.1.2.1.1 the Board of the Company; or
  - 2.3.1.2.1.2 members entitled to exercise at least 25% (twenty five percent) of the voting rights that may be exercised on such a resolution; and
  - 2.3.1.2.2 is adopted at a members meeting, or in accordance with section 60;
- 2.3.1.3 by the Board of the Company, or an individual authorised by the Board, in accordance with section 17, to alter the Company's rules, or its Memorandum, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by—
  - 2.3.1.3.1 publishing a notice of the alteration, in any manner required or permitted by the Memorandum or the rules of the Company; and
  - 2.3.1.3.2 filing a notice of the alteration; and
- 2.3.1.4 in implementing a business rescue plan pursuant to section 152(6)(b).
- 2.3.2 Company Rules
  - 2.3.2.1 The Board of the Company may make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in this Act or the Memorandum, by—
    - 2.3.2.1.1 publishing a copy of those rules, in any manner required or permitted by the Memorandum, or the rules of the Company; and
    - 2.3.2.1.2 filing a copy of those rules.
  - 2.3.2.2 A rule contemplated in article 2.3.2.1—
    - 2.3.2.2.1 must be consistent with this Act and the Company's Memorandum, and any such rule that is inconsistent with this Act or the Company's Memorandum is void to the extent of the inconsistency;
    - 2.3.2.2.2 takes effect on a date that is the later of—
      - 2.3.2.2.2.1 10 (ten) business days after the rule is filed in terms of article 2.3.2.1.2; or
      - 2.3.2.2.2.2 the date, if any, specified in the rule; and
    - 2.3.2.2.3 is binding—
      - 2.3.2.2.3.1 on an interim basis from the time it takes effect until it is put to a vote at the next general members meeting of the Company; and
      - 2.3.2.2.3.2 on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in article 2.3.2.2.2.1.
  - 2.3.2.3 If a rule that has been filed in terms of article 2.3.2.1.2, is subsequently—
    - 2.3.2.3.1 ratified as contemplated in article 2.3.2.2.3, the Company must file a notice of ratification within 5 (five) business days in the prescribed manner and form; or
    - 2.3.2.3.2 not ratified when put to a vote—
      - 2.3.2.3.2.1 the Company must file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form; and
      - 2.3.2.3.2.2 the Company's Board may not make a substantially similar rule within the ensuing 12 (twelve) months, unless it has been approved in advance by ordinary resolution of the members.

- 2.3.2.4 Any failure to ratify the rules of the Company does not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in article 2.3.2.2.3.1.
- 2.3.3 The Board must publish any rules made in terms of article 2.3.2 by delivering a copy of those rules to each member using any of the delivery methods contemplated in section 6 of the Act.

- 2.3.3.1 The Company must publish a notice of any alteration of the Memorandum or the Rules, made in terms of article 2.3.1.4, 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.

## **2.4 Optional provisions of the Act**

- 2.4.1 In terms of sections 34(2) and 84(1)(c)(ii) of the Act, the Company elects voluntary to appoint an auditor and to have its annual financial statements audited by such auditor.

### **2.4.2 Secretary**

- 2.4.2.1 The Company may voluntary elect to appoint a company secretary.

- 2.4.2.2 The secretary is appointed by the Members for a term and at such remuneration and they may decide upon. They are also entitled to terminate the employ of such a person.

- 2.4.2.3 The same person may not be the secretary and a director.

### **2.4.3 Auditors**

- 2.4.3.1 As the Company will be audited voluntarily, the Company does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditor shall be determined by the Board of Directors.

## **2.5 Public Benefit Organisation and Income Tax Exemption**

- 2.5.1 If and for so long the company is a public benefit organisation in terms of section 30 of the Income Tax Act and has been granted tax exemption in terms of section 10(1)(e)(i)(cc) of the Income Tax Act by SARS, the company must, amongst others, comply with the following provisions:

- 2.5.2 At least three persons, who accept fiduciary responsibility for the public benefit organisation, will not be connected persons in relation to each other, and no single person directly or indirectly controls the decision making powers relating to such organisation.

- 2.5.3 The company is not or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Service.

- 2.5.4 The company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donations, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act, provided that a donor (other than an approved Public Benefit Organisation or an institution, board or body exempt from tax in terms of section 10(1)(cA)(i), which as its sole or principal object has the carrying on of any public benefit activity) may not impose conditions which could enable such donor to derive some direct or indirect benefit from the application of such donation.

- 2.5.5 The company shall submit to the Commissioner of the South African Revenue Services a copy of any amendment to the Memorandum and/or Articles of Association of the Company.

- 2.5.6 In the event of the company being registered as a fund-raising institution in terms of the Fund-raising-Act, a copy of all amendments to the Memorandum and/or Articles of Association of the Company shall be supplied to the Director of Fund-raising referred to in that Act.

- 2.5.7 No activity will directly or indirectly promote the economic self-interest of any incorporator, director, prescribed officer or employee of the organisation in a manner which is not inconsistent with its objects otherwise than by way of reasonable remuneration.

2.5.8 The company shall not use its resources directly or indirectly to support, advance or oppose any political party.

2.5.9 The company shall submit its annual returns of income tax together with financial statements to the Tax Exemption Unit of SARS.

## **2.6 Members of the Company**

2.6.1 The Company shall maintain at its registered office a register of members of the Company as provided in section 24(4)(a) of the Act. The register of members shall be opened to inspection, as provided in section 26 of the Act.

2.6.2 A member, being a natural person, shall immediately cease to be a member -

2.6.2.1 on such member's death; or

2.6.2.2 if such member tenders written notice of his resignation as a member to the directors; or

2.6.2.3 if such member becomes a lunatic or of unsound mind; or

2.6.2.4 if such member's estate is surrendered or sequestrated, whether voluntarily or compulsorily; or

2.6.2.5 if such member commits any act of insolvency.

2.6.3 A member, being a juristic person, shall immediately cease to be a member -

2.6.3.1 if such member tenders written notice of resignation as a member to the directors; or

2.6.3.2 if such member is liquidated, wound up or placed under judicial management, whether provisionally or finally and whether compulsorily or voluntarily; or

2.6.3.3 if such member commits any act of insolvency.

2.6.4 Members consist of the Developer, and all other persons, including legal entities who are registered owners of residential property in the Estate which includes residential erven in the Estate, residential erven whereon bodies corporate are situated and residential units in such bodies corporate, including owners of residential erven / residential unites with real rights. It excludes owners of non-residential property whether in the Estate or bodies corporate.

2.6.5 If more than one person are jointly the owner of an undivided share in Property, they will be obliged to appoint one of the joint owners as member of the Company to represent the group on a rotating basis. All joint owners are jointly and severally responsible to the Company and the other owners for the proper compliance with their obligations in terms of the Memorandum.

2.6.6 An owner shall *ipso facto* become a member of the Company once he becomes the registered owner of residential Property.

2.6.7 A registered owner may not resign as a member of the Company.

2.6.8 Any member of the Company including any representative of a juristic person or trust can serve in any capacity in the Company.

2.6.9 All members are obliged to ensure that in the event of alienation of their property (or interest therein) that the new transferee binds himself to become a member of the Company and that the Company issues a clearance certificate that the outgoing member has complied with the provisions of the Memorandum.

2.6.10 A member shall *ipso facto* cease to be a member of the Company once he is no longer the registered owner of Property in the Estate.

2.6.11 A person's membership lapses on his death.

2.6.12 No member ceasing to be a member of the Company shall have any claim upon or interest in or right to funds or other property of the Company.

### **3 Rights of Members**

#### **3.1 Members' authority to act**

3.1.1 If, at anytime, every member of the Company is also a director of the Company, as contemplated in section 57(4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum.

#### **3.2 Members' right to Information**

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

3.2.1.1 The Company's Memorandum and any amendments to it, and any rules made by the Company;

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

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

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

3.2.1.5 the members register of the Company.

3.2.2 A person not contemplated in article 3.1.1 has a right to inspect or copy the members register or the register of directors of the Company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.

#### **3.3 Proxies**

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

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

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

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

3.3.5 This Memorandum limits any Proxy appointed by any member to no more than 2 appointments as proxy for any particular meeting. Each appointment should be on a separate instrument appointing such a proxy.

#### **3.4 Record date for exercise of member rights**

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

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

3.4.1.2 the date of the action or event, in any other case, unless the Memorandum or rules of the company provide otherwise.

**3.5 Proxy form**

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

" \_\_\_\_\_ NPC  
 I, \_\_\_\_\_ of \_\_\_\_\_ being a member of \_\_\_\_\_ NPC, 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 general or general meetings (as the case may be) of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution to .....	.....	.....	.....
Resolution to .....	.....	.....	.....
Resolution to .....	.....	.....	.....

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

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

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 Signature

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

**4 Members Meetings**

**4.1 Requirement to hold meetings**

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

4.1.2 The company must convene an annual general meeting of its members—

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

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

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

4.1.3.1 Presentation of—

4.1.3.1.1 the directors' report; and

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

4.1.3.2 Election of directors, to the extent required by the Act or the company's Memorandum and subject tot the provisions of article 2.5.2,;

4.1.3.3 Appointment of an auditor for the ensuing financial year.

4.1.3.4 Any matters raised by members, with or without advance notice to the company.

4.1.4 The directors may, whenever theythink fit, convene a general meeting.

- 4.1.5 If at any time there shall not be, within the Republic, sufficient directors capable of acting to form a quorum, any director or any 2 (two) Members of the Company may convene a general meeting in the same manner as nearly as possible to that in which meetings may be convened by the directors.
- 4.2 **Members' right to requisition a meeting**
- 4.2.1.1 Pursuant to section 61.3 and subject to article 4.1.2, the Board of the Company, or any other person specified in the Company's Memorandum or rules, must call a members meeting if one or more written and signed demands for such a meeting are delivered to the Company, and—
- 4.2.1.2 each such demand describes the specific purpose for which the meeting is proposed; and
- 4.2.1.3 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 25% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 4.2.2 The Company, or any member of the Company, may apply to a court for an order setting aside a demand made in terms of article 4.2.1 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the members, or is otherwise vexatious.
- 4.2.3 At any time before the start of a members meeting contemplated in article 4.2.1—
- 4.2.3.1 a member who submitted a demand for that meeting may withdraw that demand; and
- 4.2.3.2 the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.
- 4.3 Location of members meetings**
- 4.3.1 The Company's Board may determine the location of any members meeting provided any such meeting, if it will not be held at the registered office of the Company, shall be held in the Republic at an address which the Board deems to be the most convenient for members.
- 4.4 Notice of members meetings**
- 4.4.1 The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62, is 15 (fifteen) business days before the meeting is to begin.
- 4.4.2 A copy of either the audited annual financial statements or the annual financial statements, which have independently been compiled and reported on by an independent accounting professional, must be sent to each member with the notice of the annual general meeting.
- 4.5 Electronic participation in members meetings**
- 4.5.1 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63, is not limited or restricted by this Memorandum.
- 4.6 Quorum for members meetings**
- 4.6.1 Pursuant to section 64 and subject to article 4.6.2 to 4.6.5—
- 4.6.1.1 a members meeting may not begin until at least 25% (twenty five percent) persons with voting rights are present at the meeting; and
- 4.6.1.2 a matter to be decided at the meeting may not begin to be considered unless at least 25% (twenty five percent) persons with voting rights are present at the meeting.
- 4.6.2 If, within one hour after the appointed time for a meeting to begin, the requirements of article 4.6.1.1 or 4.6.1.2 if applicable,
- 4.6.2.1 for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week;

- 4.6.2.2 for consideration of a particular matter to begin have not been satisfied—
- 4.6.2.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
- 4.6.2.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote.
- 4.6.3 The person intended to preside at a meeting that cannot begin due to the operation of article 4.6.1.1 or 4.6.1.2 if applicable, may extend the one-hour limit allowed in article 4.6.2 for a reasonable period on the grounds that—
  - 4.6.3.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting; or
  - 4.6.3.2 one or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members, together with others in attendance, would satisfy the requirements of article 4.6.1.1 or 4.6.1.2 if applicable.
- 4.6.4 The Company is not required to give further notice of a meeting that is postponed or adjourned in terms of article 4.6.2, unless the location for the meeting is different from—
  - 4.6.4.1 the location of the postponed or adjourned meeting; or
  - 4.6.4.2 a location announced at the time of adjournment, in the case of an adjourned meeting.
- 4.6.5 If, at the time appointed in terms of this article for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of article 4.6.1 or 4.6.2 if applicable, have not been satisfied, the members of the Company present in person or by proxy will be deemed to constitute a quorum.
- 4.6.6 Unless the Company's Memorandum or rules provide otherwise, after a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
- 4.6.7 A meeting may not be adjourned beyond the earlier of—
  - 4.6.7.1 the date that is 120 (one hundred and twenty) business days after the record date determined in accordance with section 59; or
  - 4.6.7.2 the date that is 60 (sixty) business days after the date on which the adjournment occurred.

#### **4.7 Members resolutions**

- 4.7.1 For an ordinary resolution to be adopted at a members meeting, it must be supported by at least 50% of the members who voted on the resolution, as provided in section 65(7).
- 4.7.2 For a special resolution to be adopted at a members meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided in section 65(7).
- 4.7.3 A special resolution adopted at a members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11).
- 4.7.4 For the following matters a special resolution must be adopted at a members meeting:
  - 4.7.4.1 amend the Company's Memorandum to the extent required by section 16(1)(c) and section 36(2)(a);
  - 4.7.4.2 ratify a consolidated revision of the Company's Memorandum, as contemplated in section 18(1)(b);
  - 4.7.4.3 ratify actions by the Company or directors in excess of their authority, as contemplated in section 20(2);
  - 4.7.4.4 authorise the basis for compensation to directors of the Company, as required by section 66(9);
  - 4.7.4.5 approve the voluntary winding up of the Company, as contemplated in section 80(1);
  - 4.7.4.6 approve the winding up of the Company in the circumstances contemplated in section 81(1);

- 4.7.4.7 approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5);
- 4.7.4.8 approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or
- 4.7.4.9 revoke a resolution contemplated in section 164(9)(c).
- 4.7.5 At every General Meeting
  - 4.7.5.1 The chairperson, and failing him, the vice chairperson, of the Board of directors, shall preside as chairperson at every meeting of the members of the Company. If there is no such chairperson, or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson, the members present shall choose a director as chairperson.
  - 4.7.5.2 If no director is present, or if all the directors present decline to take the chair, the Members present shall choose a Member present to be the chairperson of the meeting.
  - 4.7.5.3 Each member shall have 1 (one) vote provided his levies are paid up to date. Each of the Company, including the Developer, present in person or by proxy, or if a member is a body corporate, duly represented at any meeting of the Company, shall have 1 (one) vote irrespective of the number of properties registered in its name.
  - 4.7.5.4 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal, or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the membership in respect of which the proxy is given, provided that no notification in writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.
  - 4.7.5.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
  - 4.7.5.6 A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
  - 4.7.5.7 Every resolution and every amended resolution proposed for adoption by a General Meeting shall be seconded at the meetings and if not so seconded, shall be deemed not to have been proposed.
  - 4.7.5.8 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.
  - 4.7.5.9 The parent or guardian of a minor, and the curator bonis of a lunatic member, and also any person entitled to transfer the membership, may vote at any General Meeting in respect thereof in the same manner as if he were the registered member: Provided that 48 (forty-eight) hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the directors that he is such parent, guardian or curator or that he is entitled to transfer the membership, or that the directors have previously admitted his right to vote in respect of the membership. Co-executors of a deceased member whose names stand in the register shall, for the purposes of this article, be deemed to be joint holders of that membership.
  - 4.7.5.10 On a poll, votes may be given either personally or by proxy.

## **5 Directors and Officers**

### **5.1 Composition of the Board of Directors**

- 5.1.1 Subject to the provisions of article 2.5.2, the board of Directors of the Company comprises of at least 3 (three) directors and not more than 12 (twelve) directors each of whom is to be elected by Members in accordance with the provisions of section 68(2). Subject to the provisions of article 2.5.2, the directors are elected by the Members from their ranks for a period of two years or such shorter period as the Members may determine, and the election of directors shall be subject thereto that one-third of the directors must retire each year at the annual general meeting. Retiring directors are re-eligible.
- 5.1.2 In addition to satisfying the qualification and eligibility requirements set out in section 69 and the provisions of article 2.5.2, to become or remain a director and/or prescribed officer of the Company, only a member or the representative of a juristic person who is a member, may be elected or appointed as a director.
- 5.1.3 Subject to the provisions of article 2.5.2, the authority of the Company's Board of Directors to fill any vacancy on the Board on a temporary basis is not limited or restricted by this Memorandum. The Board may only appoint a member or the representative of a juristic person who is a member, as a director. Each appointed director of the Company serves until the next annual general meeting.
- 5.1.4 The office of director, whether elected, appointed or *ex officio*, or prescribed officer shall be vacated if the director or prescribed officer -
- 5.1.4.1 no longer satisfy the qualification and eligibility requirements set out in section 69;
  - 5.1.4.2 ceases to be a member of the Company; or
  - 5.1.4.3 ceases to be the representative of a juristic person who is a member; or
  - 5.1.4.4 is a representative of a juristic person and the juristic person who appointed him, ceases to be a member; or
  - 5.1.4.5 resigns his office by notice in writing to the Company and the Registrar; or
  - 5.1.4.6 for more than six months is absent without permission of the directors from meetings of directors held during that period; or

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

- 5.2.1 The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Act or the Company's Memorandum provides otherwise.
- 5.2.2 If, at any time, the Company has only one Director, as contemplated in section 57(3), the authority of that Director to act without notice or compliance with any other internal formalities, as set out in that section, is not limited or restricted by this Memorandum.

### **5.3 Borrowing Powers**

- 5.3.1 The directors may, from time to time, borrow for the purpose of the Company such sums as they think fit, and may encumber the business and assets, or any part thereof with a mortgage bond, notarial and or pledge.

### **5.4 Management**

- 5.4.1 The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not by the Act or by these Articles required to be exercised by the Company at any meeting of members, subject nevertheless to the provisions of these Articles and of the Act and to such regulations being no inconsistent with the Articles or the Act, as may be prescribed by the Company at any such meeting, but no regulation made by the Company at such meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.
- 5.4.2 The directors may appoint a chairperson and vice-chairperson to manage the general administration of the Company.

- 5.4.3 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and for as many times as the chairperson may determine.
- 5.4.4 Subject to the provisions contained in the Memorandum, and subject to any directions given by any general meeting of the Company, the directors are entitled to draft rules for the orderly and proper management, control and administration of the Estate. These rules may provide for the usage by members and their household, guests and lessees of any roads, access areas, parks and open spaces etc. Special emphasis will be upon preservation of the environment. The rules may also make provision for disciplinary or other steps (including penalties payable) in the vent of a breach by a member of the rules or any of the conditions contained in the Memorandum.
- 5.4.5 The directors are responsible for the issuing of architectural guidelines and building requirements and for ensuring that all developments, additions and alterations to the property comply therewith. For this purpose the directors are empowered to approve all building plans and no owner may commence with any building works before such approval has been granted.
- 5.5 Representation
- 5.5.1 The directors may from time to time entrust to and confer upon any company, firm person or association, for the time being, such powers vested them as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient and they may confer such power either collaterally, or to the exclusion of, and in substitution for, all or any of the power of the directors, and may from time to time revoke or vary all or any of such powers.
- 5.6 Cheques, Promissory Notes, Etc.
- 5.6.1 All cheques, promissory notes and all negotiable instruments, as well as all receipts for moneys paid to the Company, will be signed, drawn, endorsed or otherwise executed as the case may be, in the manner prescribed by the directors by virtue of a resolution.
- 5.7 Board of Directors meetings**
- 5.7.1 A decision that could be voted on at a meeting of the Board, may instead be adopted by written consent of a majority of the directors, given in person, or by electronic communication, provided that each director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 5.7.2 A Director authorised by the Board —
- 5.7.2.1 may call a meeting of the Board at any time; and
- 5.7.2.2 must call such a meeting if required to do so by at least—
- 5.7.2.2.1 25% (twenty five percent) of the Directors if the Board has at least 12 (twelve) members; or
- 5.7.2.2.2 2 (two) Directors, in any other case.
- 5.7.3 The directors may elect a chairperson for their meetings and determine the period for which he is to hold office, but if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.
- 5.7.4 The authority of the Company's Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), is not limited or restricted by this Memorandum.
- 5.7.5 The Board may determine the form and time for giving notice of its meetings, but—
- 5.7.5.1 such a determination must comply with any requirements set out in the Memorandum or the rule of the Company; and
- 5.7.5.2 no meeting of the Board may be convened without notice to all of the Directors, subject to article 5.3.5.
- 5.7.6 Except to the extent that the Company's Memorandum provides otherwise—

- 5.7.6.1 if all of the Directors of the Company—
  - 5.7.6.1.1 acknowledge actual receipt of the notice;
  - 5.7.6.1.2 are present at a meeting; or
  - 5.7.6.1.3 waive notice of the meeting,
 the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice;
- 5.7.6.2 the quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds 3 (three), be 3 (three) and when the number of directors does not exceed 3 (three), shall be 2 (two).
- 5.7.6.3 a quorum of the Directors must be present at a meeting before a vote may be called at a meeting of the Directors;
- 5.7.6.4 each Director has one vote on a matter before the Board;
- 5.7.6.5 a majority of the votes cast on a resolution is sufficient to approve that resolution; and in the case of a tied vote the chairperson shall have a second or casting vote.

## **5.8 Indemnification of Directors**

- 5.8.1 Except to the extent that the Company's Memorandum provides otherwise, the Company—
  - 5.8.1.1 may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - 5.8.1.2 may directly or indirectly indemnify a Director for expenses contemplated in article 5.4.1.1, irrespective of whether it has advanced those expenses, if the proceedings—
    - 5.8.1.2.1 are abandoned or exculpate the Director; or
    - 5.8.1.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 5.4.2 and 5.4.3.
- 5.8.2 Except to the extent that the Memorandum provides otherwise, the Company may indemnify a Director in respect of any liability arising other than as contemplated in article 5.4.3.
- 5.8.3 The Company may not indemnify a Director in respect of—
  - 5.8.3.1 any liability arising—
    - 5.8.3.1.1 in terms of section 77(3)(a), (b) or (c); or
    - 5.8.3.1.2 from wilful misconduct or wilful breach of trust on the part of the director; or
  - 5.8.3.2 any fine contemplated in article 5.4.4
- 5.8.4 The Company may not directly or indirectly pay any fine that may be imposed on the Director of the Company, or on a director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability.
- 5.8.5 Except to the extent that the Memorandum of the Company provides otherwise, the Company may purchase insurance to protect—
  - 5.8.5.1 a director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with article 5.4.2 or
  - 5.8.5.2 the Company against any contingency including, but not limited to—
    - 5.8.5.2.1 any expenses—
      - 5.8.5.2.1.1 that the Company is permitted to advance in accordance with subsection (4)(a); or

- 5.8.5.2.1.2 for which the Company is permitted to indemnify a director in accordance with article 5.4.1.1; or
- 5.8.5.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with article 5.4.2.

5.8.6 The Company is entitled to claim restitution from a Director of the Company or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this article or section 78 of the Act.

## **5.9 Committees of the Board**

5.9.1 Except to the extent that the Memorandum of the Company provides otherwise, the Board may—

5.9.1.1 appoint any number of committees of Directors; and

5.9.1.2 delegate to any committee any of the authority of the Board.

5.9.2 Except to the extent that the Memorandum of the Company, or a resolution establishing a committee, provides otherwise, the committee—

5.9.2.1 may include persons who are not Directors of the Company, but—

5.9.2.1.1 any such person must not be ineligible or disqualified to be a director in terms of section 69; and

5.9.2.1.2 no such person has a vote on a matter to be decided by the committee;

5.9.2.2 may consult with or receive advice from any person; and

5.9.2.3 has the full authority of the Board in respect of a matter

## **6 Accounting Records**

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

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

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

## **7 Annual Financial Statements**

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

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

## **8 Income, Levies, Legal Action and Domicilium**

8.1 The income of the Company consists mainly of the compulsory monthly levies payable by Members, and is applied to the furtherance of the Company's objectives. No portion thereof may directly or indirectly be paid or transferred to Members of the Company, whether by means of dividends, bonuses or otherwise. Nothing contained herein shall restrict the *bona fide* payment of any remuneration to an official or employee of the Company for services rendered to the Company.

- 8.2
- 8.2.1 The directors will from time to time determine the levies payable as provided for in 8.1. All levy payments will be apportioned equally between the owners of Property (i.e. between stands and units in the estate). No levies will be payable by the Company in respect of property owned by it.
- 8.2.2 Although the two bodies corporate will continue to exist (in respect of the Scheme) their functions with the exception of those listed hereinafter will by agreement between the Company and itself be taken over by the Company and hence the duty on members of the Schemes to make levy contributions to the Company equal to that payable by owners of stands in the township.
- 8.2.3 The duties taken over by the Company from the bodies corporate as referred to in 8.2.2 will be those normally associated with the running of a Home Owners Association and specifically excludes inter alia the duty of insurance and of maintenance and repair of roofs and geysers of individual units which will become the duty of each individual owner of a unit in the Schemes. The Bodies Corporate can by agreement between the owners of units continue with the existing contracts provided they indemnify the Company against all and any claims arising from it.
- 8.3 The directors may enter into an agreement to exempt or partially exempt the Developer from the payment of levies in respect of any property owned by him and not yet developed / alienated by him.
- 8.4 The directors may, at any stage, impose special levies upon the Members if they are of the opinion that the budgeted levies are insufficient to enable the Company to achieve its objectives.
- 8.5 The directors are entitled to determine the date of payment of levies and the rate of interest payable in respect of arrear levies.
- 8.6 In the enforcement of any rules made by the Directors in terms hereof and for the payment of any amount due to the Company, the directors may:
- 8.6.1 Give notice to the Member or resident concerned requiring to remedy a breach thereof or make payment within such reasonable period as that the director may determine and/or
- 8.6.2 Take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the Member or the resident may be guilty or recover the debt, and debit the cost of so doing to the Member or the resident concerned which amount shall then be deemed to be a debt owing by the Member or resident concerned to the Company and/or
- 8.6.3 Also impose penalty amounts in respect of arrear payments and in respect of any Member who is in breach of the Company's Memorandum as well as rules and regulations applicable to the Estate and/or
- 8.6.4 Take such other action including proceedings in any competent Court as they may deem fit.
- 8.7 In the event of the directors instituting any legal proceedings against any Member for the enforcement of any rights of the Company in terms hereof including the collection of levies, or any other expenses, the Company shall be entitled to recover, on demand, all legal cost so incurred by the member or resident concerned on a scale as calculated between Attorney and Own Client.
- 8.8 For purposes of service of any summons, legal document and / or Court Application, the Members of the Company consent to and chose the physical address of their erf and/or unit as their chosen domicilium citandi et executandi.
- 8.9 All the Members of the Company must notify the Company in writing of the change of its domicilium citandi et executandi should such a change occur.
- 8.10 Owners of Property accept full responsibility for the conduct/actions of their guests, residents and or tenants occupying the Property.
- 9 Financial Year**
- 9.1 The financial year ends on 28 February of each year.

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