

**Memorandum of Incorporation unique to**  
**CEDAR CREEK ESTATE HOME OWNERS ASSOCIATION NPC**  
**Registration number No 2002/019331/08**

**Contents**

<b>Article 1 – Interpretation .....</b>	<b>3</b>
<b>Article 2 – Incorporation and Nature of the Company .....</b>	<b>6</b>
<b>2.1 Incorporation .....</b>	<b>6</b>
<b>2.2 Objects and Powers of the Company .....</b>	<b>7</b>
<b>2.3 Memorandum and Company rules.....</b>	<b>8</b>
<b>2.4 Other Provisions.....</b>	<b>10</b>
<b>2.5 Optional provisions of the Act .....</b>	<b>11</b>
<b>2.6 Members of the Company .....</b>	<b>11</b>
<b>Article 3 – Rights of Members .....</b>	<b>12</b>
<b>3.1 Members’ authority to act.....</b>	<b>12</b>
<b>3.2 Members’ right to Information.....</b>	<b>12</b>
<b>3.3 Proxies .....</b>	<b>12</b>
<b>3.4 Record date for exercise of Member rights .....</b>	<b>13</b>
<b>4.1 Requirement to hold meetings.....</b>	<b>13</b>
<b>4.2 Members’ right to requisition a meeting.....</b>	<b>14</b>
<b>4.3 Location of Members’ meetings.....</b>	<b>14</b>
<b>4.4 Notice of members meetings .....</b>	<b>14</b>
<b>4.5 Electronic participation in Members’ meetings.....</b>	<b>15</b>
<b>4.6 Quorum for Members’ meetings .....</b>	<b>15</b>
<b>4.7 Members resolutions.....</b>	<b>16</b>
<b>Article 5 – Directors and Officers .....</b>	<b>17</b>
<b>5.1 Composition of the Board of Directors.....</b>	<b>17</b>
<b>5.2 Alternate directors .....</b>	<b>18</b>
<b>5.3 Remuneration of directors .....</b>	<b>18</b>
<b>5.4 Authority of the Board of Directors.....</b>	<b>18</b>
<b>5.5 Board of Directors meetings .....</b>	<b>18</b>
<b>5.6 Indemnification of Directors.....</b>	<b>19</b>
<b>5.7 Committees of the Board.....</b>	<b>20</b>
<b>5.8 Delegation of powers of Directors .....</b>	<b>21</b>
<b>5.9 Assignment of powers and functions.....</b>	<b>21</b>
<b>5.10 Minutes.....</b>	<b>21</b>
<b>Article 6 – Accounting Records.....</b>	<b>21</b>
<b>Article 7 – Annual Financial Statements .....</b>	<b>22</b>
<b>Article 8 –Levy fund .....</b>	<b>22</b>
<b>Article 9 – Repair, Upkeep, Administration, Management And Control Of The Estate .....</b>	<b>23</b>
<b>9.1 Building and Improvements .....</b>	<b>23</b>
<b>9.2 Landscaping .....</b>	<b>23</b>
<b>9.3 Provision of Services .....</b>	<b>23</b>
<b>9.4 Open Spaces and Rights of Access.....</b>	<b>23</b>

<b>9.5</b>	<b>Occupation and use of Stands or Units</b> .....	24
<b>9.6</b>	<b>Services</b> .....	24
<b>9.7</b>	<b>Security of the Estate</b> .....	24
<b>9.8</b>	<b>Maintenance of Open Spaces and Public Road Verges</b> .....	24
<b>Article 10</b>	<b>– Articles binding on invitees</b> .....	25
<b>Article 11</b>	<b>– Internal services</b> .....	25
<b>Article 12</b>	<b>– Restriction in favour of local authority</b> .....	25
<b>Article 13</b>	<b>– Enforcement of obligations of Members</b> .....	25
<b>Article 14</b>	<b>– Determination of disputes</b> .....	25
<b>Article 15</b>	<b>– Disclaimer responsibility</b> .....	26
<b>Article 16</b>	<b>– Conflicting provisions</b> .....	26
<b>Article 17</b>	<b>– Conflict of interests</b> .....	26

## Article 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 -

- (a) **”Act”** means the Companies Act, 71 of 2008, as amended or any act which replaces it;
- (b) **”Aesthetics Committee”** means the Aesthetics Committee to be appointed by the Directors which shall have such powers and functions as may be assigned to it by the Directors;
- (c) **”Alienate”** means the transfer of any right or interest whatsoever in nature in respect of any stand, unit, part thereof or undivided share therein howsoever arising and whether voluntary or involuntary and includes by way of sale, exchange, donation, deed, intestacy, will, session, assignment, court order of insolvency, irrespective of whether such alienation is subject to a suspensive or resolutive condition and alienating has a corresponding meaning;
- (d) **”Articles”** means each numbered paragraph of the Memorandum for the time being of the Company;
- (e) **”Board”** means the Board of Directors of the Company;
- (f) **”Business Day”** means any day other than a Saturday, Sunday or public holiday of the Republic;
- (g) **”Chapter”** a reference to a Chapter by number refers to the corresponding Chapter of the Act;
- (h) **”Commission”** means the Companies and Intellectual Property Commission established by section 185 of the Act;
- (i) **”Company”** means the Cedar Creek Estate Home Owners Association NPC, registration number 2002/019331/08, herein referred to as **”the Association”**;
- (j) **”Common Facilities/Property”** means all facilities which form part of the Estate and which are intended for the shared use of all Home Owners (and their invitees) in the Estate which may include all or any of a clubhouse, restaurants, gymnasium and/or fitness centre, swimming pools, shelters, parks, dams, outbuildings, extensions, sidewalks, roads and storm water systems including such additional facilities as the Company may determine from time to time;
- (k) **”Communications Infrastructure”** has the meaning ascribed to electronic communications facilities in the Electronic Communications Act, 2005 and shall include telecommunication structures, systems and/or equipment, required for the delivery of electronic communications services whether or not such facilities, equipment, structure or services are licenced or regulated;
- (l) **”Deeds Office”** means the office of the Registrar of Deeds in which jurisdiction ownership in any stand or unit or of an undivided share in a stand or unit of Cedar Creek Estate is registered;
- (m) **”Deeds Registration Act”** means the Deeds Registration Act 47 of 1937;
- (n) **”Development”** means the residential development on the Cedar Creek Estate;
- (o) **”Director”** means a member of the Board of the Company, as contemplated in section 66, or an alternate director of the Company and includes any person occupying the position of a director or alternate director, by

whatever name designated;

- (p) **“Electronic Communication”** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- (q) **“Estate”** means Cedar Creek Estate established or to be established on the Land comprising collectively Needwood Ext 5 and Needwood Ext 8;
- (r) **“Encumbrance”** means any right of refusal, purchase right, option or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest;
- (s) **“Facilities”** means any facilities of whatsoever nature which have been or may be provided on the Cedar Creek Estate including without limitation such facilities relating to the entertainment, recreation or otherwise, erected on the common property, the use of which may be exclusive, reserved or conditional;
- (t) **“Financial Year”** means the financial year of the Company which shall run from 1 April in any year to 31 March in the subsequent year;
- (u) **“The Income Tax Act”** means the Income Tax Act 58 of 1962, as amended from time to time;
- (v) **“Land”** means those portions of Needwood Ext 5 and Needwood Ext 8 on which the Estate is located;
- (w) **“Levy Contribution”** means the levy contributions, as determined from time to time and referred to in Article 8 and includes special contributions as referred to in Article 8 and additional contributions as referred to in Article 8;
- (x) **“Local Authority”** means the Local Municipality in whose municipal boundaries the Cedar Creek Estate falls;
- (y) **“Manager”** means the Person appointed by the Company, from time to time, to undertake the management of the Estate;
- (z) **“Member”** means a Member of the Company and reflected as an owner in the records of the Deeds Office as the registered owner of any stand or unit or a portion of a stand or of an undivided share in a stand or unit within Cedar Creek Estate;
- (aa) **“Members’ Meeting”** means any meeting of the Members and refers collectively to the Annual General Meeting and any Extraordinary General Meetings of the Company;
- (ab) **“Memorandum”** means this Memorandum of Incorporation of the Company together with any such amendments thereto from time to time;
- (ac) **“Month”** means a calendar month;
- (ad) **“Office”** means the registered office of the Company;
- (ae) **“Person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- (af) **“Purchaser”** means any person who has acquired rights, regardless as to the nature therein relative to and which gives rise or purports to give rise to an entitlement to occupy a stand or a unit, or a portion of a stand, part thereof or undivided share therein forming part of the Cedar Creek Estate;
- (ag) **“Regulation”** a reference to a regulation by number refers to the corresponding regulation of the Companies Regulations, 2011, as amended;
- (ah) **“Republic”** means the Republic of South Africa;

- (ai) **“Roads”** means the roads that have been constructed on the Cedar Creek Estate including all right of way servitudes;
- (aj) **“Rules”** means rules made by the Directors in terms of Article 2;
- (ak) **“Scheme”** means any sectional title scheme or development scheme having a fraction assigned to each unit of the scheme, established in terms of the Sectional Titles Act;
- (al) **“Sectional Titles Act”** means the Sectional Titles Act 95 of 1986, as amended;
- (am) **”Section”** a reference to a section by number refers to the corresponding section of the Act;
- (an) **“Services”** means the supply of water, sewerage, refuse removal, electricity telecommunications, television cables, security, maintenance of common property, garden maintenance and such other utilities or services including the cleaning of the Klein Jukskei River as are provided by the Company or any other supplier of services to the Estate with approval of the Board, from time to time;
- (ao) **“Stand”** means a residential Stand (whether or not a Unit has been erected thereon) forming part of the Estate and such stand being capable of registration in the Deeds Office;
- (ap) **“Sub-divisional Stand”** means any sub-division of a stand;
- (ar) **“Town Planning Scheme”** means the operative town planning scheme applicable to the Cedar Creek Estate and registered by the relevant local authority; and
- (as) **“Unit”** means an erf in the township zoned residential and/or a dwelling unit for a single family, as defined in the Peri Urban Town Planning Scheme, 1975, As Amended from time to time or any scheme replacing the aforesaid, with or without outbuildings and whether held under tenure in terms of the Sectional Titles Act No. 66 of 1971, as amended or situated on its own residential erf or individual subdivision of a residential erf, tenure of which may be registered in the Deeds Office.

- 1.2.1 Words and expressions used and not otherwise defined in these Articles shall have the meaning assigned to them by the Act.
- 1.2.2 A reference to a section of the Act by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which this MOI is registered.
- 1.2.3 In any instance where there is a conflict between a provision (be it expressed, implied or implicit) of this MOI and:
  - 1.2.3.1 an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict; and
  - 1.2.3.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict, unless the MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.
- 1.2.4 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.
- 1.2.5 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of the Articles.
- 1.2.6 If the due date for the performance of any obligation in terms of this MOI is a day which is not a business day then (unless otherwise stipulated) the due date for the performance of the relevant obligation shall be the immediate succeeding business day.

- 1.2.7 Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted by the Act and/or Regulations.
- 1.3 Any reference in this MOI to:
- 1.3.1 **“Days”** shall be construed as calendar days unless qualified by the word “business” in which case Article x shall apply, and when this MOI provides for the happening of one event and another, the number of days must be calculated by:
- 1.3.1.1 excluding the day on which the first such event occurs;
  - 1.3.1.2 including the day on or by which the second event is to occur;
  - 1.3.1.3 excluding any public holiday, Saturday or Sunday the falls on or between the days contemplated in Articles 1.3.1.1 and 1.3.1.2 respectively; and
  - 1.3.1.4 if that day is not a business day then same shall be the first succeeding business day.
- 1.3.2 **“Law”** means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time.
- 1.3.3 **“Writing”** means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and or Regulations.
- 1.4 The words **“include”** and **“including”** mean “include without limitation” and “including without limitation”. The use of the words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.6 Any reference herein to this MOI shall be construed as a reference to this MOI as amended from time to time.
- 1.7 Whenever any person is required to act “as an expert and not as an arbitrator” in terms of this MOI, then:
- 1.7.1 such expert may be a natural natural person or, as far as is practical, a firm or organisation;
  - 1.7.2 the determination of the expert shall (in the absence of manifest error) be final and binding;
  - 1.7.3 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
  - 1.7.4 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
  - 1.7.5 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
  - 1.7.6 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.
- 1.8 Any Schedules attached to this MOI form part of this MOI.
- 1.9 The standard form of memorandum of incorporation for a Non-Profit Company with Members contained in Annexure 1 of the Regulations shall not apply to the Company.
- 1.10 This MOI is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.
- 1.11 Where any provision of this MOI provides that a document, record or statement, other than a notice contemplated in section 6 (10) of the Companies Act, may be published on the Association's website, a notice of availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, in accordance with Regulation 6 of the Regulations, shall be delivered to each intended recipient of the document, record or statement, together with instructions for receiving the complete document, record or statement.

## **Article 2 – Incorporation and Nature of the Company**

### **2.1 Incorporation**

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

The main objects which the company is to carry on, are the managing, controlling and rendering of services related to the Common Facilities of the following properties for the mutual benefit, jointly and severally, of Home Owners in the Estate consisting of the proposed townships to be known as:

(a) Needwood Ext 5; and

(b) Needwood Ext 8

Situated on the remainder of Portion 4 of the farm Witkoppen number 194.

(2) The Company is incorporated in accordance with, and governed by -

(a) the unalterable provisions of the Act, that are applicable to non profit companies;

(b) the alterable provisions of the Act that are applicable to non profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

(c) the provisions of this Memorandum.

## **2.2 Objects and Powers of the Company**

- (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) 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).
- (3) The Company—
  - (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in the Memorandum; and
  - (b) subject to article 2.2(3)(a), may—
    - (i) acquire and hold securities issued by a profit company; or
    - (ii) 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) 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—
  - (a) as reasonable—
    - (i) remuneration for goods delivered or services rendered to, or at the direction of, the company;  
or
    - (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the company;
  - (b) 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;
  - (c) 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
  - (d) in respect of any legal obligation binding on the company.
- (5) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company—

- (a) 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
  - (b) 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 companies or non-profit trusts—
    - (i) having objects similar to the Company's main object; and
    - (ii) as determined—
      - (aa) in terms of the company's Memorandum;
      - (bb) by its Members at or immediately before the time of its dissolution; or
      - (cc) by the court, if the Memorandum, or the Members fail to make such a determination.
- (6) The Company may not
- (a) amalgamate or merge with, or convert to, a profit company; or
  - (b) 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.
- (7) Any proposal to—
- (a) dispose of all or the greater party of the Company's assets or undertaking; or
  - (b) 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.
- (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).
- (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 companies or non-profit trusts having objects similar to its main object.
- (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.
- (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 companies or non-profit trusts having objects similar to its main object.
- (12) The Company may
- (a) make donations provided that no donations may be made to present or former incorporators, Members or Directors; and
  - (b) pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees.

### **2.3 Memorandum and Company rules**

- (1) This Memorandum of the Company may be altered or amended only
- (a) in compliance with a court order in the manner contemplated in section 16(4);
  - (b) at any other time if a special resolution to amend it—
    - (i) is proposed by—
      - (aa) the Board of the Company; or



- (bb) Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution; and
- (cc) is adopted at a Members meeting, or in accordance with section 60;

(c) 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—

- (i) publishing a notice of the alteration, in any manner required or permitted by the Memorandum or the rules of the Company; and

- (ii) filing a notice of the alteration; and

(d) in implementing a business rescue plan pursuant to section 152(6)(b).

## (2) Company Rules

(a) 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—

- (i) publishing a copy of those rules, in any manner required or permitted by the Memorandum, or the rules of the Company; and

- (ii) filing a copy of those rules.

(b) A rule contemplated in article 2.3(2)(a)—

- (i) 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;

- (ii) takes effect on a date that is the later of—

- (aa) 10 (ten) business days after the rule is filed in terms of article 2.3(2)(a)(ii); or
- (bb) the date, if any, specified in the rule; and

- (iii) is binding—

- (aa) 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

- (bb) on a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in article 2.3(2)(b)(ii)(aa).

(c) If a rule that has been filed in terms of article 2.3(2)(a)(ii), is subsequently—

- (i) ratified as contemplated in article 2.3(2)(b)(iii), the Company must file a notice of ratification within 5 (five) business days in the prescribed manner and form; or

- (ii) not ratified when put to a vote—

- (aa) the Company must file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form; and

- (bb) 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.

(d) 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)(b)(iii)(aa).

(3) The Board must publish any rules made in terms of articles 2.3(2) and 2.4 by delivering a copy of those rules to each Member using any of the delivery methods contemplated in Regulation 7.

(4) The Company must publish a notice of any alteration of the Memorandum or the Rules, made in terms of article 2.3(1)(c), by delivering a copy of those alterations or rules to each Member using any of the delivery methods contemplated in Regulation 7.

## 2.4 Other Provisions

- (1) Subject to article 2.3(2), (3) and (4), the Directors 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 of the Company 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 these Articles or the Rules -
- in no way detracting from the generality of the foregoing, the Directors may from time to time make Rules, applicable within the Estate, specifically in regard to -
- (a) the preservation of the natural environment;
  - (b) vegetation and flora and fauna in the Estate;
  - (c) the placing of movable objects upon or outside the buildings included in the Estate, including the power to remove any such objects;
  - (d) the storing of flammable and other harmful substances;
  - (e) the conduct of any Persons within the Estate and the prevention of nuisance of any nature to any Home Owner;
  - (f) the use of Stands and Units within the Estate;
  - (g) the use of roads, pathways and other Common Facilities including appropriate traffic calming measures;
  - (h) the imposition of fines and other penalties to be paid by Members of the Company;
  - (i) the management, administration, control and use of the Common Facilities;
  - (j) restrictions (“architectural guidelines”) with regard to the construction of Units or other buildings on Stands (including exterior decoration) and the architectural design, construction, quality and building materials of any such Unit or building;
  - (k) the maintenance of all buildings, outbuildings, structures;
  - (l) conditions with regard to the use and/or supply of electricity, water, sewerage reticulation on or about the Estate;
  - (m) conditions and restrictions, landscaping of Stands or Units and Common Properties;
  - (n) the keeping of pets;
  - (o) the use by Home Owners of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings; and
  - (p) generally in regard to any other matter which the Directors from time to time considers appropriate.
- (2) The Directors 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 Company. In addition the Directors may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Directors from time to time.
- (3) In the event of any breach of the Rules by any Person, other than the Home Owner, such breach shall be deemed to have been committed by the Home Owner concerned and the Directors shall be entitled to take such Action as they may deem fit against the responsible Member.
- (4) Notwithstanding the foregoing, the Directors may in the name of the Company 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 they may deem fit.
- (5) Any Rules made by the Directors shall be reasonable shall be in the interest of the Company and the Estate.

- (6) The Rules made by the Directors from time to time in terms of the powers granted to them shall be binding on all Members.
- (7) In no way detracting from the generality of any other provisions of these Articles of Company, in the event of the Company and/or Propco incurring any legal costs as a result of any breach of these Articles, the Rules and/or the End User Lease by any Member, the Company 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.

## **2.5 Optional provisions of the Act**

- (1) In terms of section 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) The Company may voluntary elect to appoint a company secretary.
- (3) As the Company will be audited voluntarily, the Company does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditor shall be determined by the Board of Directors.

## **2.6 Members of the Company**

- (1) The Company shall maintain at its registered office a register of Members of the Company as provided in section 24(4)(a) of the Act. The register of Members shall be open to inspection, as provided in section 26 of the Act.
- (2) Membership of the Company
  - (a) Membership of the Company shall be obligatory for a Home Owner.
  - (b) Upon a Person becoming a Home Owner that Person shall automatically be and become a Member of the Company and shall remain a Member of the Company until he ceases to be a Home Owner.
  - (c) A Home Owner may by written notice to the Company nominate any occupant of a Stand or Unit to represent it in all matters relating to the Company.
  - (d) If a Home Owner comprises more than 1 (one) Person such Persons shall nominate one of them to be the Member for purposes of these Articles provided that the joint owners shall be bound by these Articles as if they were Members. Such nomination shall be made in writing to the Company within 7 (seven) days of such joint owners becoming Home Owners.
  - (e) A Member may not resign as a Member of the Company for so long as he remains a Home Owner.

### **(3) Admission of Members**

The right to determine admission to membership of a proposed Member shall vest in the Directors. The Directors shall not refuse any application for membership of a Person or entity who is required to be a Member and/or who automatically becomes a Member in terms of these Articles.

### **(4) Rights of Members**

(a) Subject to the rights of membership as prescribed by the Act, membership of the Company shall confer upon Members, unless otherwise stipulated, the following rights -

- (i) the right to inspect and/or receive copies of the annual financial statements of the Company;
- (ii) the right to vote, either personally or by proxy, at all general meetings of the Company in accordance with and subject to the provisions of these Articles; and
- (iii) the right to receive notices of, attend and speak at all general meetings of the Company, whether ordinary or extra-ordinary, in accordance with the provisions of these Articles.

(b) No Member shall, by reason of membership of the Company, be entitled to share in or receive any profit of the Company.

### **(5) Cessation of Membership**

(a) Membership of the Company shall cease -

- (i) upon a Member ceasing to qualify for membership in accordance with article 2.12(2)(b);
- (ii) upon the issue of a final order of sequestration or liquidation or upon the deregistration of the Member concerned; and
- (iii) upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.

(b) If a Member ceases to be a Member in terms of article 2.12(5)(a)(ii) or 2.12(5)(a)(iii) the trustee or liquidator or other legal representative (as the case may be) of such Member shall, for all purposes, be recognised and be bound as the Member under these Articles.

(6) Certificates

Subject to the provisions of the Act, certificates of membership may be issued under the authority of the Directors in such manner and form as the Directors may determine from time to time.

### **Article 3 – Rights of Members**

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

- (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**

- (1) Pursuant to the provisions of section 26(1), a person who is a Member 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:
- (a) The Company's Memorandum and any amendments to it, and any Rules made by the Company;
  - (b) the records in respect of the Company's Directors;
  - (c) the reports to annual meetings, and annual financial statements;
  - (d) the notices and minutes of annual meetings, and communications; and
  - (e) the Members' register of the Company.
- (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**

- (1) The right of a Member of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a), is restricted by this Memorandum.
- (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 restricted by this Memorandum.
- (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 restricted by this Memorandum.
- (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 restricted by this Memorandum.
- (5) The instrument appointing a proxy shall be -
- (a) under the hand of the appointer and shall be in such form as the Directors shall approve; and

- (b) deposited at the Office of the Company not less than 48 (forty eight) 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 allowed at any Annual General Meeting as well as any Special General Meeting.
- (6) A vote in accordance with the terms of an instrument of proxy shall be restricted, and no intimation in writing or revocation shall allowed at the Office or by the Chairperson of the meeting before the vote is given.
- (7) If a Member is a close corporation, company, trust or other juristic person, such Member shall lodge at the Offices of the Company, a resolution authorising a particular natural Person to represent the Member generally and to exercise the Members vote on its behalf. Such resolution shall be lodged at the Offices of the Association at least 48 (forty eight) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

**3.4 Record date for exercise of Member rights**

- (1) If the board does not determine a record date for any action or event, the record date is—
  - (a) in the case of a meeting, the latest date by which the company is required to give Members notice of that meeting; or
  - (b) the date of the action or event, in any other case, unless the Memorandum or rules of the company provide otherwise.

**Article 4 – Members’ Meetings**

**4.1 Requirement to hold meetings**

- (1) The Company is required to hold Members’ meetings in addition to those specifically required by the Act.
- (2) The company must convene an annual general meeting of its Members—
  - (a) initially, no more than 18 (eighteen) months after the company’s date of incorporation; and
  - (b) 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.
- (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:
  - (a) Presentation of—
    - (i) the directors’ report; and
    - (ii) either
      - (aa) audited annual financial statements or
      - (bb) annual financial statements, which have independently been compiled and reported on by an independent auditor,
      - (cc) for the immediately preceding financial year.
  - (b) Determine the number of Directors;
  - (c) Election of directors when such decision is required in accordance with the provisions of or the company’s Memorandum;
  - (d) Appointment of either an auditor or an independent accounting professional for the ensuing financial year.
  - (e) Any matters raised by Members, with advance notice to the company.

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

- (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—
  - (a) each such demand describes the specific purpose for which the meeting is proposed; and
  - (b) 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% (twenty five percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- (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.
- (3) At any time before the start of a Members' meeting contemplated in article 4.2(1)—
  - (a) a Member who submitted a demand for that meeting may withdraw that demand; and
  - (b) 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**

- (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 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**

- (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.
- (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 auditor, must be sent to each Member with the notice of the annual general meeting.
- (3) A notice may be delivered using any of the methods of delivery as contemplated in Regulation 7.
- (4) A notice may be given by the Company to The "manager " as per section 1.1 personally or by sending it by post by pre-paid letter addressed to The "manager " as per section 1.1 at the following address or such other address as The "manager " as per section 1.1 may from time to time notify the Company in writing –

The "manager" as per section 1.1

Business Address: 1st Andrew Street  
Birdhaven  
Johannesburg  
2196

Telefax Number: (011) 214-5200

- (5) Notice of every general meeting shall be given in any manner authorised -
  - (a) to every Member of the Company;
  - (b) in form of electronic communication;
  - (c) if a Member has not supplied the Company with an electronic address , then it shall be considered sufficient for the Company to serve notice at the address of the Stand forming the subject matter of the Leasehold Rights owned by the Member;
  - (d) the access to the medium or means of electronic information is at the expense of the Member of the Company and not the Company itself;
  - (e) to the auditor for the time being of the Company.

- (6) No other Person shall be entitled to receive notice of general meetings.
- (7) The failure to give notice to any Member, other than The “manager “ as per section 1.1, or the failure of any Member, other than The “manager” as per section 1.1, to receive a notice shall not vitiate any proceedings of the Company.

#### **4.5 Electronic participation in Members’ meetings**

- (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**

- (1) Quorum

(a) Subject to article 4.6(1)(d) a quorum for-

- (i) a general meeting shall be 30 (thirty) Members entitled to vote, personally present, and if a Member is a body corporate, represented;
  - (ii) a general meeting called for the passing of a Special Resolution, Members holding between them, in aggregate, not less than 25% (twenty five percent) of the voting rights in the Company, present, in Person and not by proxy, and entitled to vote.
- (b) If within a 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 a half-an-hour after the time appointed for the meeting, the Members present in person and not by proxy shall be a quorum.
- (c) Where a meeting has been adjourned as aforesaid, the Company may, upon a date not later than 3 (three) days after the adjournment, send written notice to each Member of the Company stating-
- (i) the date, time and place to which the meeting has been adjourned;
  - (ii) the matter before the meeting when it was adjourned; and
  - (iii) the grounds of adjournment.
- (d) Notwithstanding anything to the contrary provided in this article 4.6(1), there shall not be a quorum at any general meeting of Members (whether ordinary or special) unless the following Members are represented at such meeting, whether in person and not by proxy –
- (i) The “manager“ as per section 1.1;
- (e) 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 one Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
- (f) A meeting may not be adjourned beyond the earlier of—
- (i) the date that is 120 (one hundred and twenty) business days after the record date determined in accordance with section 59; or
  - (ii) the date that is 60 (sixty) business days after the date on which the adjournment occurred.

- (2) Chairperson

(a) The chairperson, if any, of the Directors shall preside as chairperson at every general meeting of the Company. If there is no such chairperson, 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 chairperson, the Members shall elect one of their Members to be chairperson. Notwithstanding the foregoing, during the Development Period, the chairperson and vice chairperson shall be nominees of the Developer.

- (b) The chairperson may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of articles 4.6(1)(b), (c) and (d) shall mutatis mutandis apply to the adjourned meeting.

#### **4.7 Members resolutions**

- (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).
- (2) The board may propose any resolution to be considered by Member's, and may determine whether that resolution will be considered at a meeting , or by vote or written consent in terms of section 60.
- (3) Any two Member's -  
(a) may propose a resolution concerning any matter in respect of which the are each entitled to exercise voting rights.  
(b) When proposing a resolution, may require that the resolution be submitted to shareholders for consideration by written vote in terms of section 60.
- (4) Once a resolution has been approved , whether an ordinary or special resolution , it may not be challenged or impugned by any person in any forum on the grounds that it did not satisfy subsection (3) and (4) of the act.
- (5) 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).
- (6) The company's Memorandum of Incorporation permits the following:  
(a) a lower percentage of voting rights to approve and special resolution, or  
(b) one or more lower percentages of voting rights to approve special resolutions concerning one or more particular matters, respectively,  
(c) provided that there must at all times be a margin of at least 10 percent points between the requirements for approval of an ordinary resolution , and a special resolution on any matter.
- (7) 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).
- (8) For the following matters a special resolution must be adopted at a Members' meeting:  
(a) amend the Company's Memorandum to the extent required by section 16(1)(c) and section 36(2)(a);  
(b) ratify a consolidated revision of the Company's Memorandum, as contemplated in section 18(1)(b);  
(c) ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20(2);  
(d) authorise the basis for compensation to Directors of the Company, as required by section 66(9);  
(e) approve the voluntary winding up of the Company, as contemplated in section 80(1);  
(f) approve the winding up of the Company in the circumstances contemplated in section 81(1);  
(g) approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5);  
(h) approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or  
(i) revoke a resolution contemplated in section 164(9)(c).
- (9) At every general meeting  
(a) Votes of Members  
(i) Each Member present at a meeting of Members of the Company, in person and not by proxy, shall be entitled to 1 (one) vote in respect of every Stand or Unit of which it is a Home Owner.  
(ii) Each Member present at a meeting of Members of the Company, voting rights shall be subject to :



(aa) having paid all monies owing to the company

(iii) For purposes of article 4.7(4)(a)(i) the Developer shall be entitled to 1 (one) vote in respect of every Stand comprising the Estate which is not subject to an End-User Lease.

(b) 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.

(c) A poll demanded on at 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.

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

(e) 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.

(f) On a poll, votes may only be given personally and not by proxy.

## **Article 5 – Directors and Officers**

### **5.1 Appointment of the Board of Directors**

(1) The number of Directors shall be determined from time to time by Members in an annual general meeting subject to the following provisions -

(a) during the Development Period, there shall be a minimum of 5 (five) and maximum of 9 (nine) Directors;

(b) a retiring Director shall be eligible for re-election.

(2) Save as is set out in article 5.1(3) and 5.1(8) and the Developer, each Director shall continue to hold such office from the date of his commencement of office until the annual general meeting next following the said appointment, at which meeting each Director shall be deemed to have retired from office as such but shall be eligible for re-election to the board of Directors at such meeting.

(3) If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Directors shall Act promptly to bring the number of Directors up to the required number as specified in these Articles. Any resolutions taken or acts performed by the Directors during a period when the number falls short of that provided in article 5.1(1) above shall not be invalidated by such shortfall.

(4) Any Director may be removed by a majority Directors decision, for any reason whatsoever.

(5) 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.

(6) 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.

(7) 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.

(8) The office of Director, whether elected, appointed or ex officio, or prescribed officer shall be vacated if the Director or prescribed officer -

(a) ceases to be a Director by effluxion of the period of appointment, or

(b) becomes prohibited from being a Director by virtue of any provision of the Act or these Articles; or

- (c) resigns his office by notice in writing to the Company; or
- (d) becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- (e) is found to be a lunatic or of unsound mind; or
- (f) is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence.
- (g) has any criminal record or pending records that may affect the company or its suppliers.

## **5.2 Alternate directors**

- (1) Any Director may for any reason, and at or for any time, appoint an alternate.
- (2) Any Director may obtain leave of absence by a resolution of the majority of the Directors, and the Directors 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 Directors present at the meeting.
- (3) Directors should stand down at every AGM , and can be reappointed by members.

## **5.3 Remuneration of directors**

- (1) A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Company, provided that nothing in these Articles shall prohibit him from reimbursement of all travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Company and which is authorised or approved by the Directors.
- (2) If any Director commits a breach of article 5.3(1) he shall forthwith cease to be a Director and shall not be eligible for re-election.

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

- (1) The business of the Company shall be managed by the Directors who may on behalf of the Company pay all expenses incurred in promoting and incorporating the Company, and may exercise all such powers and functions of the Company, subject to the Act, as are not required by the Act, or by these Articles, to be exercised by the Company in general meeting.
- (2) Without in any way affecting the generality of article 5.4(1), the Directors shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of the Memorandum of the Company.
- (3) The Directors may, pursuant to their rights, obligations and duties in terms of these Articles and as provided for and contemplated under these Articles, 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 of Company.

## **5.5 Board of Directors meetings**

- (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.
- (2) A Director authorised by the Board —
  - (a) may call a meeting of the Board at any time; and
  - (b) must call such a meeting if required to do so by at least—
    - (i) 25% (twenty five percent) of the Directors if the Board has at least 12 (twelve) Members; or
    - (ii) 2 (two) Directors, in any other case.

- (3) The authority of the Company's Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), is not limited or restricted by this Memorandum.
- (4) The Board may determine the form and time for giving notice of its meetings and such notice may be delivered using any of the methods of delivery as contemplated in Regulation 7, but—
  - (a) a Director may on 14 (fourteen) days written notice to all other Directors, at any time, summon a meeting of the Directors ; and
  - (b) no meeting of the Board may be convened without notice to all of the Directors, subject to article 5.3(5).
- (5) Except to the extent that the Company's Memorandum provides otherwise—
  - (a) if all of the Directors of the Company—
    - (i) acknowledge actual receipt of the notice;
    - (ii) are present at a meeting; or
    - (iii) waive notice of the meeting,

the meeting may proceed even if the Board failed to give the required notice of that meeting, or there was a defect in the giving of the notice;
  - (b) a majority of the Directors must be present at a meeting before a vote may be called at a meeting of the Directors;
  - (c) each Director has one vote on a matter before the Board;
  - (d) a majority of the votes cast on a resolution is sufficient to approve that resolution; and in the case of a tied vote the chair person shall have a second or casting vote.
- (6) The quorum necessary for the transaction of the business of the Directors shall be a majority of Directors holding Office at that time.
- (7) If at a meeting neither the chairperson nor the deputy chairperson is present within 10 (ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairperson for that meeting.
- (8) Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise 1 (one) vote. Subject to the foregoing, if there is an equality of votes the chairperson 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 Directors he is representing.
- (9) All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any Person acting as a Director, notwithstanding that it may afterwards be 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 Directors or a committee of Directors has been duly appointed and had qualified to be a Director.
- (10) 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 happen through his own dishonesty, gross negligence or default, breach of duty or breach of trust.

## **5.6 Indemnification of Directors**

- (1) Except to the extent that the Company's Memorandum provides otherwise, the Company—
  - (a) may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - (b) may directly or indirectly indemnify a Director for expenses contemplated in article 5.4(1)(a), irrespective of whether it has advanced those expenses, if the proceedings—

- (i) are abandoned or exculpate the Director; or
  - (ii) arise in respect of any liability for which the Company may indemnify the Director, in terms of article 5.4(2) and (3).
- (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 5.6(3).
- (3) The Company may not indemnify a Director in respect of—
- (a) any liability arising—
    - (i) in terms of section 77(3)(a), (b) or (c); or
    - (ii) from wilful misconduct or wilful breach of trust on the part of the director and as otherwise contemplated in Article 5.5(10) above; or
  - (b) any fine contemplated in article 5.6(4).
- (4) The Company may not directly or indirectly pay any fine that may be imposed on the Director of the Company, or on a director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability.
- (5) Except to the extent that the Memorandum of the Company provides otherwise, the Company may purchase insurance to protect—
- (a) a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with article 5.6(2) or
  - (b) the Company against any contingency including, but not limited to—
    - (i) any expenses—
      - (aa) that the Company is permitted to advance in accordance with subsection (4)(a); or
      - (bb) for which the Company is permitted to indemnify a Director in accordance with article 5.6(1)(a); or
    - (ii) any liability for which the Company is permitted to indemnify a Director in accordance with article 5.6(2).
- (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.

## **5.7 Committees of the Board**

- (1) Except to the extent that the Memorandum of the Company provides otherwise, the Board may—
- (a) appoint any number of sub committees to assist Directors; and
  - (b) delegate to any committee tasks but not any of the authority of the Board.
- (2) Except to the extent that the Memorandum of the Company, or a resolution establishing a committee, provides otherwise, the committee—
- (a) may include persons who are not Directors of the Company, but—
    - (i) any such person must not be ineligible or disqualified to be a director in terms of section 69; and
    - (ii) no such person has a vote on a matter to be decided by the committee;
  - (b) may consult with or receive advice from any person; and
  - (c) has the full authority of the Board in respect of a matter
- (3) The Directors may delegate any of their powers to committees consisting of such Persons as they think fit, the chairperson of which committees may be appointed by the Directors. Any committee so formed shall be in an advisory capacity to the Directors and shall report to and be responsible to the Directors and in the exercise of

the powers so delegated, conform to the Rules that may be imposed on it by the Directors. The chairperson should either have the professional competence or prior board experience to be vote on as chairman. The chairman may not have any conflict of interest within the estate that may affect objective decision making.

- (4) Should the Directors not appoint the chairperson of a committee, the Members of that committee shall elect a chairperson of its meetings. If at any meeting the chairperson 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 chairperson for that meeting.
- (5) A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and in the event of an equality of votes the chairperson shall have a second or casting vote.

#### **5.8 Delegation of powers of Directors**

- (1) The Directors may from time to time entrust to and confer upon the Manager, or any other designated official of the Company or consultant or any other Person or firm, for the time being, such of the powers and authorities vested in it as it 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 it 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 Directors and may from time to time revoke or vary all or any of such powers and authorities.
- (2) The Manager shall in terms of section 66(10) read with Regulation 38 be a prescribed officer of the Company and, as such, the provisions of sections 69, 75, 76, 77 and 78 shall be applicable on the Manager.

#### **5.9 Assignment of powers and functions**

- (1) The Company shall have all powers as are reasonably required by it for purposes of carrying out its functions. Without limiting the generality of the foregoing the Company shall perform such functions and have such powers as are conferred upon a body corporate in terms of Sections 37 and 38 of the Sectional Titles Act No. 95 of 1986, as amended.

#### **5.10 Minutes**

- (1) The Directors shall in terms of the Act cause minutes to be kept -
  - (a) of all appointments of Officers;
  - (b) of names of Directors present at every meeting of the Company and at every meeting of the Directors; and
  - (c) of all proceedings at all meetings of the Company and/or the Directors and/or committees of the Board of Directors.
- (2) Such Minutes once they are approved as a true record of proceedings shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the following meeting.

### **Article 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 such records are not kept as are necessary to accurately and fairly to represent the state of affairs and business of the Company and to explain the transaction and financial position of the trade or business of the Company.
- 6.2 The accounting records shall be kept at the Office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.
- 6.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Members not being Directors, and no Member (not being a Director) shall have any right of inspect of any accounting records or documents of the Company except as conferred by the Act or authorised by the Directors or by the Company in an annual general meeting.

## Article 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 as are referred to in the Act.
- 7.2 A copy of any annual financial statements 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 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.

## Article 8 –Levy fund

- 8.1 The Directors shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Company and of the Estate including the provision of security services for the Estate, garden maintenance services, optic fibre cable networks, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the local or any other authority, any charges for the supply of electrical current, gas, water, fuel and sewage disposal, refuse collection and any other Services to the Estate and any services required by the Company to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Company, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligations of the Company (provided that nothing in these Articles shall be construed as obliging the Company to pay service charges and/or rates and taxes due by Home Owners to the relevant authority).
- 8.2 All levies due by Members shall be payable to the Company immediately as same become due and owing without deduction, demand or set-off.
- 8.3 The proportions in which Members shall make contributions towards the levy fund in terms of Article 8.1 shall be determined by the Directors who in determining such proportions shall have regard to all circumstances prevailing at the time and to equity provided however that the Directors may in any case where they consider it equitable to do so, assign to any Home Owner any greater or lesser share of the costs as may be reasonable in the circumstances.
- 8.4 Levies shall be payable in respect of all Stands or Units whether or not they have been developed with the construction of dwelling houses or other buildings thereon, and additional to normal levies all vacant stand homeowners will pay a surcharge levy that will vary year to year according to approved budget. This surcharge levy will be payable until homeowner has completed the dwelling.
- 8.5 Levies shall be payable only in respect of serviced stands which form part of a proclaimed township.
- 8.6 All contributions received from Members shall forthwith be deposited in a separate account which the Company shall open and keep with a financial institution.
- 8.7 The monies in the levy fund shall be utilised to defray the expenses referred to in article 8.1 above.
- 8.8 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.
- 8.9 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under these Articles, the Rules or the End-User Lease whether to the Company which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of actual payment at a rate of interest equal to that charged by the Company's bankers as its prime overdraft rate plus 3 (three) percentage points, such interest shall be calculated and compounded monthly.
- 8.10 The Directors shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure and/or expenditure that is not been budgeted for and/or if, in the discretion of the Directors, budgeted income of the Company will be insufficient to discharge the liabilities of the Company (whether foreseen or not) and shall determine how such levies are to be paid.
- 8.11 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 8.12 All contributions levied under the provisions of these Articles shall be due and payable by Members on the passing of a resolution to that effect by the Directors and may be recovered by the Company 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.

- 8.13 Should a Member be more than 30 (thirty) 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 Company by such Member (including but not limited to any fine that may be imposed by the Company on any such Member) and remain in arrears notwithstanding demand for payment by the Company, 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 Company. A letter addressed to the chairperson of any such meeting by the chairperson of the Directors dated not more than 14 (fourteen) days prior to any such meeting shall constitute proof of non-payment of any arrear amounts contemplated herein by such Member and shall entitle the chairperson of such meeting of the Members of the Company to prevent such Member or his proxy speaking or voting as such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid letter having been received by the chairperson).
- 8.14 In the event of there being a dispute as to the amount due by the Member, such dispute shall be referred to the Auditors for a decision, whose decision shall be final and binding on the parties.
- 8.15 The Directors may create a levy stabilisation fund to supplement any levies paid by Members in terms of this Article 15. Such levy stabilisation fund shall be funded in such manner as may be determined by the Directors from time to time.
- 8.16 After the expiry of a financial year and until they become liable for contributions in respect of the ensuing financial year, Members are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the expired financial year: provided that the Directors may, if they consider it necessary and by written notice to the Members, increase the contributions due by the Members by a maximum of 10 per cent to take account of the anticipated increased liabilities of the Company.
- 8.17 No Home Owner will be allowed to commence building activity unless all deposits and levies are settled in full, and will be issued with a stop order should the levies be arrears at any given time during the building process.
- 8.18 The Home Owner deposit will be refunded once the estate management has approved the completion of building and issued an Occupation Certificate.
- 8.19 The Home Owner will become liable for a late building penalty if Home Owner does not complete the building within 2 years of transfer date of the property in Home Owners name. This penalty will be revised and calculated yearly at AGM and will be levied separately from normal levies. The penalty will be charged until the building has been fully completed.
- 8.20 The Home Owner is liable to pay the following deposits :
- Pavement deposit is payable to CCHA (calculated yearly per budget), of which 80% will be refunded after project.
  - Scrutiny fee is payable to CCHA (calculated yearly per budget) before plans will be reviewed and approved.
  - Road maintenance levy payable to CCHA not refundable.

The deposits may be amended by the Board of Directors at any time , should it be deemed necessary to do so as a result of financial impact on the Estate.

## **Article 9 – Repair, Upkeep, Administration, Management And Control Of The Estate**

### **9.1 Building and Improvements**

- (1) The Rules (in particular the Conduct Rules read together with the Architectural and Landscaping Guidelines) contain the rules relating to the placement on or attachment of any objects to buildings or other structures on or about the Estate and any improvements of whatever nature. .

### **9.2 Landscaping**

- (1) The Rules (in particular the Conduct Rules read together with the Architectural and Landscaping Guidelines) contain the rules relating to Landscaping on or about the Estate..

### **9.3 Provision of Services**

- (1) The Company may, from time to time, contract with suppliers of Services to provide Services to the Estate.

### **9.4 Open Spaces and Rights of Access**

- (1) Home Owners shall be entitled to use all Common Facilities subject to the Rules from time to time.

#### **9.5 Occupation and use of Stands or Units**

- (1) Occupation and use of Stands or Units shall, at all times, be in compliance with these Articles and the Rules. The Directors may, in their sole discretion, determine that any Person, not being a Member, be denied access to the Estate and be required to leave in the event of such Person breaching these Articles or the Company's Rules made in terms hereof. No Member shall use any Stand or Unit or part or any building or allow any other Person to use such Stand or Unit or part of any building, for purposes not permitted by these Articles and/or the Rules.
- (2) Without limiting the generality of any of the provisions of the Rules the following provisions will apply to every Member, Home Owner and their invitees -
  - (a) the Member or Home Owner will not use the Stand or Unit or permit the same to be used for any illegal or improper purposes or any manner which creates an unlawful nuisance or disturbance to other Persons;
  - (b) no Member or Home Owner will be entitled to object to any application by any third party to any governmental or other authority relating to or in connection with any development to take place on the remainder of the Farm Witkoppen number 194 (or any part thereof) provided that such development is substantially in accordance with the requirements of the Local Authority and/or the Department of Agriculture, Conservation, Environment and Land Affairs and/or any other relevant authority.
  - (c) no Member or Home Owner will be entitled to take occupation unless the estate management has given an signed Occupation Certificate on behalf of Home Owners Association.

#### **9.6 Services**

- (1) In as much as the provision, establishment, maintenance and repair of Services may be required to take place on the Estate, the Members hereby consent to the provision of such Services in such places as the Directors may determine from time to time and to Persons authorising by them entering upon the Estate or any part thereof 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 Home Owners as reasonably possible.

#### **9.7 Security of the Estate**

- (1) The Company will not be liable to any Member or Home Owner or any of their respective invitees for any breach in security and/or by reason of any security provided by the Company not being adequate.

#### **9.8 Maintenance of Open Spaces and Public Road Verges**

- (1) The Company shall be responsible for the maintenance, upkeep and repair of the Common Facilities.

#### **9.9 Contractors deposit payable**

- (1) All contractors are obliged to sign the Home Owners contractors agreement before commencing any project.
- (2) The contractors will be liable to pay a contractors deposit :

Contractor deposit is payable to CCHA, and will be retained in an interest bearing account which will be refunded after project:

  - i) R20 000 for first site
  - ii) R30 000 for two sites
  - iii) R50 000 for three to five sites
  - iv) R75 000 for six to ten sites
  - v) R120 000 for 11 to 20 sites
  - vi) Exceeding 20 sites special directors consideration – Board discussion



The above mentioned deposits may be amended by the Board of Directors at any time , should it be deemed necessary to do so as a result of financial impact on the Estate. Any increases will be communicated to members and contractors before implementation.

#### **Article 10 – Articles binding on invitees**

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

#### **Article 11 – Internal services**

- 11.1 The Local Authority shall not be liable for the malfunction of the servicing of any internal roads and/or storm water drainage systems and/or essential Services forming part of the Estate unless responsibility for such roads, drainage system and/or essential Services is specifically assumed by the Local Authority.
- 11.2 The Company shall be obliged to maintain all internal roads and common areas and storm water drainage system in a good order and condition at its sole cost and expense.
- 11.3 The Company and its Members shall be obliged to consent to the registration of a servitude of right of way for municipal purposes over any area of the Estate in favour of the Local Authority as the Local Authority may require.

#### **Article 12 – Restriction in favour of local authority**

- 12.1 The Company shall not be deregistered without the prior written consent of the Local Authority.
- 12.2 The Company shall allow the Local Authority (acting through any relevant department) access to the Estate at any time for purposes of maintaining and/or installing any facility for which the Local Authority is responsible and for purposes of providing Services to residents of the Estate.
- 12.3 The Articles shall not be amended where it affects the Local Authority without consent of the Local Authority.
- 12.4 The access/park even/portion shall not be alienated or transferred without the written consent of the Local Authority first having been obtained.
- 12.5 Each and every Home Owner of a Stand and/or Unit situated on the Property shall have free access over the access portion/servitude to afford them access to the public road.
- 12.6 The Land shall not be rezoned without the consent of the Local Authority.
- 12.7 The Company shall properly and clearly display the street names and street numbers allocated to the Estate and shall maintain such names and signs to the satisfaction of the Local Authority.

#### **Article 13 – Enforcement of obligations of Members**

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

#### **Article 14 – Determination of disputes**

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

- (1) at Sandton, Johannesburg;

- (2) in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by the Arbitration Act or the Strict rules of Evidence;
- (3) as soon as reasonable practicable in the circumstances and with a view to it being contemplated within 21 (twenty one) business days after it is demanded.

14.3 The Arbitrator shall be a Person agreed to between the parties to the dispute and failing agreement, a Person nominated for such purpose by the president (or failing him, the secretary) for the time being of the Law Society of the Northern Provinces (or its successors in title).

14.4 The Arbitrator shall determine -

- (1) the issues submitted to him according to what he considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to the strict rules of the Law;
- (2) which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.

14.5 The Arbitrator shall be deemed to act as an expert and not as an Arbitrator.

14.6 The decision of the Arbitrator shall be -

- (1) final and binding on all parties;
- (2) carried into effect; and
- (3) capable of being made an Order of any Court of competent jurisdiction.

#### **Article 15 – Disclaimer responsibility**

15.1. The Company shall not be liable for any injury to any Person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Company be responsible for any theft of property occurring on the Estate. Members hereby acknowledge that they shall not, under any circumstances have any claim or right of action whatsoever against the Company for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

15.2 The Company, and/or its agents shall not be liable to any Member or any of the Member's Lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member or any Lessee for any injury or loss 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.

15.3 Members hereby accept responsibility for and indemnify the Company and its employees, servants and agents and lawful invitees against all claims by any Person arising from any injury or loss or damage as contemplated in this article 15.

#### **Article 16 – Conflicting provisions**

16.1 If there is any conflict between any of the provisions of the Articles and any of the provisions of the Rules and/or any End-User Lease then the provisions of the Articles shall prevail.

#### **Article 17 – Conflict of interest**

17.1 A conflict of interest refers to situations in which personal, occupational or financial considerations may affect, or appear to affect, a Director's or Member's objectivity, judgment or ability to act in the best interests of the Company and includes conflicts as described in subsection 17.4 hereof.

17.2 A conflict of interest may be real, potential or perceived in nature.

17.3 A real conflict of interest arises where a Director or Member has a private or personal interest, for example, a close family connection or financial interest.

17.4 A potential conflict of interest may arise when a Director or Member has a private or personal interest such as an identified future commitment.

17.5 A perceived or apparent conflict of interest may arise may exist when a reasonable, well informed person has reasonable belief that a Director or Member has a conflict of interest , even if there is no real conflict.

17.6 Full disclosure, in itself, does not remove a conflict of interest.

17.7 No Member or Director is allowed to cast any votes or give their proxy to another Member or Director if such conflict exists.

-- o O o --