

**Companies and Intellectual Property Commission  
Republic of South Africa**

**Memorandum of Incorporation**

**of**

**MOUNT EDGECOMBE COUNTRY CLUB ESTATE MANAGEMENT ASSOCIATION II**

**(RF) NPC**

**Registration No. 1995/012432/08**

**(which is referred to in the rest of this Memorandum of Incorporation  
as “the Company”)**

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

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

**Adoption of Memorandum of Incorporation**

**This Memorandum of Incorporation was adopted by a Special Resolution of the Members passed on the 1 day of August 2012 and in substitution for the existing Memorandum and Articles of Association of the Company.**

## TABLE OF CONTENTS

1. Definitions and Interpretation	1
2. Incorporation and Nature of the Company	4
3. The Objects of the Company	5
4. Powers of the Company	6
5. Variation of Memorandum	6
6. Membership	7
7. Members of the Company	7
8. Admission of Members	9
9. Rights and Duties of Members	9
10. Cessation of Membership	10
11. Liability of Each Member	11
12. Register of Members	11
13. Application of Optional Provisions of the Act	11
14. Members' Meeting	12
15. Members Acting Other than at a Meeting	16
16. Composition of Board of Directors	17
17. Alternate Directors	19
18. Remuneration of Directors	19
19. Powers and Duties of Directors	19
20. Rules	21
21. Enforcement of Rules	22
22. Minutes	23
23. Disqualification or Resignation of Directors	23
24. Proceedings at Meetings of Directors	24
25. Committee	25
26. Limitation of Liability of Directors and Indemnification of Directors	26
27. Delegation of Powers of Directors	26
28. Assignment of Powers and Functions	26
29. Finance Committee	27
30. Accounting Records	30
31. Annual financial statements	30
32. Notices	31
33. Winding-Up of the Company	31
34. Repair, Upkeep, Administration, Management and Control of the Estate	32
35. Determination of Dispute	35
36. Disclaimer of Responsibility	39

## 1. DEFINITIONS AND INTERPRETATION

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

- 1.1. "Act" means the Companies Act No. 71 of 2008 as amended and any Regulations in force thereunder from time to time;
- 1.2. "Board" means the Board of directors of the Company for the time being;
- 1.3. "Body Corporate" means a body corporate as defined in Section 1 of the Sectional Titles Act;
- 1.4. "Company" means Mount Edgecombe Country Club Estate Management Association II (RF) NPC, Registration No. 1995/012432/08;
- 1.5. "Directors" mean the directors of the Company for the time being;
- 1.6. "Dwelling" means a sectional title unit under the provisions of the Sectional Titles Act or a residential building together with all outbuildings and all other structures used in connection therewith which has been erected on a freehold stand in the estate;
- 1.7. "Electronic Communication" has the meaning set out in Section 1 of the Electronic Communications and Transactions Act, No. 25 of 2002;
- 1.8. "Estate" means the property described as -
  - 1.8.1. Sub 5 of Lot 143 Mount Edgecombe in extent approximately 4,4670 hectares;
  - 1.8.2. Sub 8 of Lot 143 Mount Edgecombe in extent approximately 185,7000 hectares;

- 1.8.3. Portion 43 of Erf 143 Mount Edgecombe in extent 18,6807 hectares;
- 1.8.4. excluding those portions of the properties described in 1.1.7.1 to 1.1.7.3 which comprise the Mount Edgecombe Second Golf Course as defined in the Agreement of Sale between Moreland Developments Proprietary Limited and Clubcorp South Africa Investment Holding Proprietary Limited;
- 1.9. “Finance” Committee” means a committee appointed by the Board whose power shall be delegated to it by the Board and whose function shall be as determined in this Memorandum;
- 1.10. “Manager” means the person, corporation or association appointed by the Company, from time to time, to undertake the management of the Estate;
- 1.11. “Member” means an Owner or the natural person nominated as its duly appointed representative by a juristic person or duly registered trust, which is the registered owner of a Unit;
- 1.12. “Memorandum” means the Memorandum of Incorporation for the time being of the Company;
- 1.13. “Office” means the registered office of the Company for the time being;
- 1.14. “Owner” means any person who is the registered owner of a Unit or an undivided share in a Unit or a Purchaser who has entered into a written contract with the Developer/Seller to purchase a Unit once all suspensive conditions under such purchase contract have been fulfilled provided such contract of sale is still of full force and effect and binding between the parties. For the purpose of this Memorandum, a

reference to a “person” shall include a natural person, a juristic person and a registered trust;

- 1.15. “Property Time Share Control Act” means the Property Time Share Control Act No. 75 of 1983 as amended and any regulations in force thereunder from time to time;
- 1.16. “Scheme” means the Mount Edgecombe Town Planning Scheme in the course of preparation as amended from time to time or any other approved scheme applicable to the Estate, from time to time;
- 1.17. “Sectional Titles Act” means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.18. “services” means water, sewerage, refuse removal, electricity, telecommunications, television aerials, television cables, security, maintenance of common property, garden maintenance and such other utilities or services as are provided by the Company or any other supplier of services to the Estate, from time to time;
- 1.19. “Unit” means in relation to the Estate a sectional title unit under the provisions of the Sectional Titles Act or a subdivision of land capable of individual ownership whether such land is improved or not;
- 1.20. “Village” means a defined portion of the Estate which has been given a distinctive name and is to be developed by the establishment thereon of one or more private townships under the provisions of the Town Planning Ordinance (Natal) 27/1949;
- 1.21. a reference to a Section by number refers to the corresponding Section of the Act;
- 1.22. a reference to a Regulation by number refers to the corresponding Regulation in the Regulations;

- 1.23. words that are defined in the Act bear the same meaning in this Memorandum as in the Act;
- 1.24. an expression which denotes:-
- 1.24.1. any gender includes the other genders;
- 1.24.2. a natural person includes a juristic person and *vice versa*; and
- 1.24.3. the singular includes the plural and *vice versa*;
- 1.25. any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in the manner and form permitted in terms of the Act and/or the Regulations;
- 1.26. any reference to “days” shall be construed as calendar days unless qualified by the word “business” in which instance a “business day” will be any day other than a Saturday, Sunday or public holiday as Gazetted by the Government from time to time.

## 2. INCORPORATION AND NATURE OF THE COMPANY

- 2.1. The Company is a pre-existing non-profit company with Members as defined in item 2(1) of Schedule 5 to the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 2.2. The Company is incorporated in accordance with and governed by –

- 2.2.1. the unalterable provisions of the Act, that are applicable to non-profit companies;
- 2.2.2. the alterable provisions of the Act, that are applicable to non-profit companies, subject to the limitation, extension, variation or substitution set out in this Memorandum; and
- 2.2.3. the provisions of this Memorandum.

### 3. THE OBJECTS OF THE COMPANY

The objects of the Company are:-

- 3.1. to promote, advance and protect the interest of the Members generally and to co-operate with the Local Authority, the KwaZulu-Natal Provincial Government and all other appropriate authorities for the benefit of the Company and its Members;
- 3.2. to represent the interests of Members and to provide a united voice by which such interests may be expressed;
- 3.3. to collect levies and other contributions toward funds of the Company for the attainment of the objectives of the Company or any other of them;
- 3.4. to accept the conservation areas, communal facilities and open spaces on the Estate and to make and enforce regulations governing the use thereof by the Members;
- 3.5. to preserve the natural environment, vegetation and fauna within the conservation areas;
- 3.6. to impose penalties upon Members disobeying the Memorandum or the Rules made in terms thereof;

- 3.7. to maintain public road verges, focal points and street furnishing within the Estate;
- 3.8. to provide security within the Estate and make and enforce regulations in this regard;
- 3.9. to enforce adherence to the Design and Development Rules and Landscaping Philosophy for the Estate;
- 3.10. in particular and in no way detracting from the generality of the aforesaid to ensure that all buildings and other structures erected within the Estate, as well as any external fixtures and fittings thereto, comply with the aforesaid and generally to ensure that the external appearance of all buildings and other structures and all gardens and other areas in the Estate comply with standards set out in the aforesaid documentation.

#### **4. POWERS OF THE COMPANY**

- 4.1. The powers of the Company are limited by its objects referred to in clause 3.
- 4.2. In pursuing its objects, the Company has all the legal powers of an individual that are capable of being exercised by a juristic person. This provision may be amended only with the unanimous written consent of the Members.

#### **5. VARIATION OF MEMORANDUM**

- 5.1. Subject to clause 6 below, this Memorandum may be amended only by Special Resolution adopted at a Members' meeting or in terms of a Court Order.
- 5.2. Amendments to the Memorandum may be proposed by the Board or by Members entitled to exercise at least 10 % of the voting rights.
- 5.3. The Board shall nevertheless have the power to alter this Memorandum to the extent necessary to correct patent errors in spelling, punctuation, reference,



grammar or similar defects as envisaged in Section 17 of the Act. A notice of any such alteration must be sent to each Member at least 10 business days prior to the filing of the notice of alteration with the Commission.

## 6. MEMBERSHIP

- 6.1. Membership of the Company shall be obligatory for an Owner.
- 6.2. An Owner will automatically become a Member upon payment of his share of the Company's Levy Stabilisation Fund, determined by the Directors from time to time.
- 6.3. The provisions of clauses 6.1 and 6.2 of this Memorandum may never be altered by the Members.

## 7. MEMBERS OF THE COMPANY

- 7.1. No Owner shall transfer a Unit unless it is a condition of such transfer that the transferee, in a manner acceptable to the Company, agrees to become a Member and is admitted as a Member in terms of clause 8.1.
- 7.2. In order to procure compliance with the provisions of this Memorandum, it shall be registered as a Condition of Ownership of the Unit that no Unit shall be alienated without the written consent of the Company first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a Member of the Company and the transferor has complied with all his obligations to the Company. For the purposes of this clause "alienate" means to alienate any Unit or part thereof, and includes by way of sale, exchange, and donation, deed, intestacy, will, cession, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition.
- 7.3. In the event of any Unit being owned in undivided shares by more than one Owner such co-owners shall nominate one of them to be the Member for the purposes of this Memorandum provided that all joint owners shall be bound by this Memorandum as if they were Members.

- 7.4. In the event of any Unit being owned by a close corporation, a company or a trust, such close corporation, company or trust shall nominate one natural person to be the Member for the purposes of this Memorandum, provided that all Members / directors and shareholders / trustees and beneficiaries shall be bound by this Memorandum as if they were Members. Where the Membership in a close corporation or the shares in the company, or the beneficial interest in a trust already owning a Unit is transferred, Membership of the Company in respect of the natural person already nominated by the close corporation / company / trust shall cease and a new natural person shall be nominated by the close corporation / company / trust and all requirements for the first time Membership of the Company shall be applicable.
- 7.5. In the event of the transfer arising out of a deceased estate (whether testate or intestate) and the heir is the spouse (including common law spouse), the requirements for the first time Membership shall not be applicable.
- 7.6. In the event of a divorce, the spouse receiving the property (whether in part or the whole property) in a settlement, the requirements for the first time Membership shall not be applicable.
- 7.7. A certificate signed by the chairperson of the Board or his nominee shall be prima facie proof that a transfer in the Membership of the Company has taken place.
- 7.8. Where a Unit is owned by a juristic person including but not restricted to a company, association with or without a constitution, close corporation or trust, such juristic person shall be obliged to provide the Company with a list of registered Members and the details of their Members interest if the juristic person is a close corporation, association with or without a constitution or a list of directors and shareholders and the details of their shareholding if the juristic person is a company or a list of trustees and beneficiaries if the juristic person is a trust. The juristic person shall be liable to notify the Company in the event of a transfer in Members interest/shareholding or interest in a trust and to make such payments as would be applicable for first time Membership within 30 (thirty) days of the occurrence of such transfer, failing which interest shall accrue on the outstanding amounts due

from the date of transfer to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited at its prime overdraft rate plus 3 (three) percentage points, such interest shall be calculated and compounded monthly.

- 7.9. A Member may not tender resignation of his Membership of the Company, save in respect of the founder Members who are Members merely as subscribers to the Memorandum of Incorporation, who shall be entitled to resign.

## 8. ADMISSION OF MEMBERS

- 8.1. The Members of the Company shall be those persons who, from time to time, become Members in accordance with the provisions of this Memorandum.
- 8.2. The admission to Membership of a proposed acquirer of a Unit is hereby conferred upon the Board.

## 9. RIGHTS AND DUTIES OF MEMBERS

- 9.1. Subject to the rights of Membership as prescribed by the Act, Membership of the Company shall confer upon each Member, unless otherwise stipulated, the following rights:-
- 9.1.1. the right to inspect and/or receive copies of the annual financial statements of the Company;
- 9.1.2. the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Company as listed in Section 26 of the Act which, which it is recorded includes the following, namely:
- 9.1.2.1. the Memorandum and any amendments to it and any Rules made by the Company;

- 9.1.2.2. the records in respect of the Company's directors;
- 9.1.2.3. the reports to Members' meetings and annual financial statements;
- 9.1.2.4. the notices and Minutes of Members' meetings and any communications to the Members; and
- 9.1.2.5. the register of Members;
- 9.1.3. the right to vote, either personally or by proxy, at all general meetings of the Company in accordance with the provisions of this Memorandum;
- 9.1.4. the right to receive notices of, attend and speak at all general meetings of the Company, whether ordinary or extra-ordinary, in accordance with and subject to the provisions of this Memorandum;
- 9.1.5. should Members holding between them, in aggregate, not less than 10 % (ten percent) of the voting rights in the Company, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.
- 9.2. Every Member must become a Member of Mount Edgecombe Country Club and remain a Member thereof during the period of his Membership of the Company.
- 9.3. No Member shall, by reason of Membership of the Company, be entitled to share in or receive any profit of the Company.
- 9.4. No Member shall be permitted to conduct a property time sharing scheme in terms of the Property Time Share Control Act, in respect of his Unit.

## 10. CESSATION OF MEMBERSHIP

- 10.1. Membership of the Company shall cease:

- 10.1.1. upon a Member ceasing to be an Owner;
  - 10.1.2. upon the issue of a final order of sequestration or liquidation of the Member concerned;
  - 10.1.3. upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.
- 10.2. In the event of a Member ceasing to be a Member in terms of 10.1.2 or 10.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this Memorandum.
- 10.3. In the event of a Member in any way disposing of a Unit, such Member shall ensure that the new owner of such Unit becomes a Member of the Company and undertakes to be bound and comply with all the terms and conditions contained in the Memorandum and Rules made in terms thereof, in such manner as prescribed by the Directors from time to time.

## 11. LIABILITY OF EACH MEMBER

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

## 12. REGISTER OF MEMBERS

The Company shall maintain at its Office a register of Members as provided in Section 24 of the Act. The register of Members shall be open for inspection as provided in Section 26 of the Act.

## 13. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

- 13.1. The Company elects to comply voluntarily with the requirement to have its Annual Financial Statements audited as contemplated in Section 30(2)(b)(ii)(aa) of the Act.

- 13.2. The Company elects to be subject to Part C of Chapter 3 of the Act as regards the appointment of a registered auditor, auditor resignation, rotation of auditors and the rights and restricted functions of auditors.

#### **14. MEMBERS' MEETINGS**

##### **14.1. Annual General Meeting**

14.1.1. The Company shall hold a general meeting in every year as its annual general meeting on such date and at such time and place as may be determined by the Board, and shall specify the meeting as such in the notice calling it, provided, however, that the annual general meeting shall be held not later than 6 (six) months after the end of each financial year of the Company, and provided that not more than 15 (fifteen) months shall elapse after the holding of the last preceding annual general meeting.

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

14.1.3. All general meetings, other than annual general meetings shall be called extraordinary general meetings.

##### **14.2. Notice of General Meeting**

14.2.1. A notice of a Members' meeting (both annual general meeting and extraordinary general meeting) shall be delivered to each Member at least 15 (fifteen) business days before the meeting is to begin.

- 14.2.2. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting.

#### 14.3. **Quorum and adjournments**

- 14.3.1. No business shall be transacted in any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. The quorum for a general meeting of the Company shall be 50 (fifty) Members entitled to vote, personally present, or if a Member is a juristic person or trust represented by its/their duly appointed nominee.

- 14.3.2. If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the request of Members, shall be dissolved; in any other case it shall stand adjourned to a date not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person shall be a quorum.

- 14.3.3. Where a meeting has been adjourned as aforesaid, the Company shall, upon a date not later than 3 (three) days after the adjournment, deliver written notice to each Member of the Company, stating:-

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

14.3.3.2. the matter before the meeting when it was adjourned; and

14.3.3.3. the grounds for the adjournment.

#### 14.4. **Chairperson of meeting**

- 14.4.1. The chairperson, if any, of the Board 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, subject always to the provisions of clause 16.10.

- 14.4.2. 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 clauses 14.3.2 and 14.3.3 shall *mutatis mutandis* apply to such adjournment.

#### 14.5. **Members' Meetings by electronic communication**

- 14.5.1. The Company may conduct a Members' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in Section 63, and the power of the Company to do so is not limited or restricted by this Memorandum. Accordingly-

14.5.1.1. any Members' meeting may be conducted entirely by Electronic Communication; or

14.5.1.2. one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any Members' meeting that is being held in person,

14.5.1.3. so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

- 14.5.2. Any notice of any meeting of Members at which it will be possible for Members to participate by way of Electronic Communication shall inform



Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Members or proxy concerned.

#### 14.6. **Voting**

At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by any 5 (five) Members, and unless a poll is so demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried (by a particular majority) or negatived, and an entry to that effect in a book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

#### 14.7. **Representation by Proxies**

14.7.1. The instrument appointing a proxy shall be in writing, dated and signed by the Member and shall be in such form as the Board may approve.

14.7.2. The instrument appointing a proxy shall be delivered to the Company at any time prior to the commencement of the vote of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from date of its execution, unless the proxy specifically otherwise provides.

14.7.3. A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided no intimation in writing of the death or revocation shall have been received at the Office or by the chairperson of the meeting before the vote is given.

14.7.4. In the event of a Member being a juristic person, such as a close corporation, company or trust, such Member shall deliver to the Company a resolution authorizing a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such resolution shall be delivered prior to the commencement of the vote at the meeting at which a Member wishes to be represented and/or vote.

#### 14.8. **Votes of Members**

Each Member present at a meeting of the Company, in person or by proxy, shall be entitled to one vote, in respect of any resolution proposed at a meeting.

#### 14.9. **Resolutions of Members**

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

14.9.2. For a special resolution to be approved of by Members, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution.

### 15. MEMBERS ACTING OTHER THAN AT A MEETING

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

- 15.1.1. submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and
- 15.1.2. voted on in writing by such Members within a period of 20 (twenty) business days after the resolution was submitted to them.
- 15.2. A resolution contemplated in clause 15.1 -
  - 15.2.1. will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Members' meeting; and
  - 15.2.2. if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 15.3. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this clause 15, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution.

## 16. COMPOSITION OF BOARD OF DIRECTORS

- 16.1. The Board must comprise at least 4 (four) and not more than 7 (seven) Directors. The Members shall be entitled to determine such maximum number of Directors as they from time to time shall consider appropriate.
- 16.2. Only Members are entitled to become Directors.
- 16.3. All Directors shall be elected by an ordinary resolution of the Members in general meeting.
- 16.4. Each nomination for a new Director together with his curriculum vitae ("CV") must be delivered to the Manager at the Office not less than 15 (fifteen) business days

- before the required date of notification of a general meeting or an annual general meeting.
- 16.5. No Director shall be appointed for life or for an indefinite period and the Directors shall rotate in accordance with the following provisions:-
- 16.5.1. save for 3 (three) Directors, all the other Directors shall retire from office at each annual general meeting;
- 16.5.2. the Directors to retire by rotation in every year shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree amongst themselves, be determined by lot;
- 16.5.3. a retiring Director shall be eligible for re-election.
- 16.6. If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this Memorandum. The validity of any resolutions taken or acts performed by the Board during a period when the number falls short of that provided in 16.1 above shall not be prejudiced by such shortfall.
- 16.7. Any Director may be removed by a majority Board decision, for any reason whatsoever.
- 16.8. 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.
- 16.9. The Directors shall have the power to co-opt persons for the purposes of assisting the directors in carrying out any of their functions. Any person so co-opted shall be entitled to attend Board meetings but shall not be a director and shall not be entitled to vote on any matter which comes up for consideration by the Board.

- 16.10. The chairperson and deputy chairperson shall be elected by the Directors at their first meeting in the financial year.

## 17. ALTERNATE DIRECTORS

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

## 18. REMUNERATION OF DIRECTORS

- 18.1. A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Company, provided that nothing in this Memorandum 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 Board.
- 18.2. If any Director commits a breach of clause 18.1 he shall forthwith cease to be a Director and shall not be eligible for re- election.

## 19. POWERS AND DUTIES OF DIRECTORS

- 19.1. 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 of the Company as are not required by the Act, or by this Memorandum, to be exercised by the Company in general meeting. Without in any way derogating from the generality of the foregoing; the Directors shall be entitled to exercise on behalf of the Company all and any of the common powers subject only to any contrary stipulation contained from time to time in the Memorandum.

- 19.2. Without in any way affecting the generality of clause 19.1 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.
- 19.3. The Directors may, pursuant to their rights, obligations and duties in terms of this Memorandum and as provided for and contemplated under this Memorandum, 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.
- 19.4. The Company in a general meeting shall have the right to limit and restrict the powers of the Directors provided that no resolution of the Company shall invalidate any prior act of the Directors which would otherwise have been valid.
- 19.5. Appointment of Manager/Officials/Consultants**
- The Board 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 it 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 such powers and authorities.

## 20. RULES

- 20.1. 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 purpose of giving proper effect to the provisions of the Memorandum and for any other purpose which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this Memorandum or the rules.

- 20.2. Subject to any restrictions imposed or directions given at a general meeting of the Company, the Directors may from time to time make rules, applicable within the Estate, in regard to:
- 20.2.1. the preservation of the natural environment;
  - 20.2.2. the conduct of Members and persons within the Estate and the prevention of nuisance of any nature to any Owner in the Estate;
  - 20.2.3. the use and maintenance of land, common open spaces, recreational areas, roads, etc.;
  - 20.2.4. the design and development rules for the erection of all buildings and other structures;
  - 20.2.5. the design and development rules and the conduct rules for the establishment, installation and maintenance of gardens, both public and private;
  - 20.2.6. the use, upkeep, aesthetics and maintenance of residences and public buildings;
  - 20.2.7. the right to keep and control of pets;
  - 20.2.8. the maximum number of residents allowed to reside in any Dwelling;
  - 20.2.9. the use by co-owners or corporate owners, of a residence;
  - 20.2.10. any other matter as may in the opinion of the Directors require to be regulated.
- 20.3. The Board must publish any proposed rule to be made in terms of this clause 20 by delivering a copy of that proposed rule to each Member.
- 20.4. Any rule proposed by the Board will take effect on a date specified in the rule.

- 20.5. Any rule that takes effect as contemplated in clause 20.4 above will remain binding on an interim basis until put to the vote at the next general meeting of the Company and will become permanently binding if ratified by special resolution of the Members.

## 21. ENFORCEMENT OF RULES

- 21.1. 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 a Member may be guilty and debit the costs of so doing to the Member concerned which amounts shall be deemed to be a debt owing by the Members to the Company. In addition the Directors may impose a system of penalties. The amounts of such penalties shall be determined by the Board from time to time.
- 21.2. In the event of any breach of the conduct rules for residents by any Lessees of Units, guests or invitees, authorised representatives or any other duly authorised person such breach shall be deemed to have been committed by the Member and the Directors shall be entitled to take such action as they may deem fit against the responsible Member.
- 21.3. 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.
- 21.4. Any rules made by the Board shall be reasonable and shall be in the interest of the Company and, where applicable, shall apply equally to all Members.
- 21.5. The rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.
- 21.6. In no way detracting from the generality of any other provision of this Memorandum, in the event of the Company incurring any legal costs as a result of any breach of this Memorandum 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.

## 22. MINUTES

22.1. The Directors shall in terms of the Act cause Minutes to be kept:

22.1.1. of all appointments of officers;

22.1.2. of names of Directors present at every meeting of the Company and at every meeting of the Directors, and

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

22.2. 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

## 23. DISQUALIFICATION OR RESIGNATION OF DIRECTORS

The office of Directors shall be vacated if the Director:-

23.1. ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of this Memorandum; or

23.2. resigns his office by notice in writing to the Company and the Commissioner or

23.3. becomes insolvent or assigns his Estate for the benefit of or compounds with his creditors; or

23.4. is found to be a lunatic or of unsound mind; or

23.5. is absent for three consecutive meetings of the Directors without obtaining prior leave of absence; or

23.6. is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.

## **24. PROCEEDINGS AT MEETINGS OF DIRECTORS**

- 24.1. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (four) times during a financial year.
- 24.2. A Director may at any time on 7 (seven) day's written notice to all the other Directors, summon a meeting of the Directors.
- 24.3. The quorum necessary for the transaction of business of the Directors shall be at least 50% (fifty percent) of the total number of Directors.
- 24.4. 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 subject to the provisions of clause 16.10.
- 24.5. Questions arising at any meeting of 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. In the event of 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.
- 24.6. 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 be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Directors or a committee of Directors has been duly appointed and had qualified to be a Director.

- 24.7. A resolution signed by all of the Directors shall be a valid resolution notwithstanding that such resolution may not have been passed at a meeting of the Board.
- 24.8. A meeting of the Board of Directors may be conducted by electronic communication or one or more Directors may participate in a meeting by electronic communication, as contemplated, and subject to the provisions of Section 73(3) of the Act.

## 25. COMMITTEES

- 25.1. The Board may delegate any of their powers to committees consisting of such persons as they think fit, the chairperson of which committees may be nominated by the Directors. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Directors.
- 25.2. Should the Board not nominate 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.
- 25.3. A committee may meet and adjourn as it thinks fit. Questions arising at that meeting shall be determined by the 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.

## 26. LIMITATION OF LIABILITY OF DIRECTORS AND INDEMNIFICATION OF DIRECTORS

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

26.2. The Company may:-

26.2.1. advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

26.2.2. indemnify a Director in respect of liability as set out in section 78(5); and/or

26.2.3. purchase insurance to protect the Company or a Director as set out in section 78(7),

and the power of the Company in this regard is not limited, restricted or extended by this Memorandum.

26.3. The provisions of clause 26.1 shall apply mutatis mutandis in respect of any former Director or Member of any committee of the Board.

## **27. DELEGATION OF POWERS OF DIRECTORS**

The Board 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.

## **28. ASSIGNMENT OF POWERS AND FUNCTIONS**

The Company shall carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Company may require to be delegated to it by the relevant Body Corporate, in relation to any Sectional Title Scheme on the Estate. In addition to the foregoing any

controlling body of any Sectional Title Scheme, shall assign such powers and functions to the Company as may be required of it by the Company.

## 29. FINANCE COMMITTEE

- 29.1. There shall be established under clause 25 a Finance Committee which shall consist of 3 (three) Members.
- 29.2. The Finance Committee 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, 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 electric current, gas, water, fuel and sewage disposal, refuse collection and any other services to the Estate including any matter arising from the provisions of clause 28, and any services required by the Company to enable it to carry out its 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 obligation of the Company.
- 29.3. Before every annual general meeting, the Finance Committee shall cause to be prepared an itemised estimate of the anticipated income and expenditure of the Company for the ensuing financial year together with the consequent levies required, which shall be laid before the annual general meeting for consideration.
- 29.4. All levies due by Members shall be payable to the Company immediately same become due and owing without deduction, demand or set-off.
- 29.5. At every annual general meeting the Members present shall approve, with or without amendment, the estimate referred to in clause 29.3 of income and expenditure and the estimated amount to be levied upon the Members during the ensuing financial year.

- 29.6. The proportions in which Members shall make contributions towards the levy fund established in terms of clause 29.2 shall be determined by the Finance Committee, who in determining such proportions shall have regard to all circumstances prevailing at the time and to equity and shall be guided by the following:-
- 29.6.1. they shall assign those costs arising directly out of the Unit itself to Member owning such Unit;
- 29.6.2. they shall assign those costs relating to the Estate generally, including all common property, to the Owners of all Units equally;
- 29.6.3. they may draw a distinction between the services rendered by the Company to a particular Body Corporate for a particular type of scheme, again taking into account the nature and the extent of the services rendered to that Body Corporate and the owners of that Body Corporate; provided however that the Finance Committee may in any case where they consider it equitable to do so, assign to any owner any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any replacement or other reserves shall be determined by the Finance Committee.
- 29.7. All contributions received from Members shall forthwith be deposited in a separate account which the Company shall open and keep with a financial institution.
- 29.8. The monies in the levy fund shall be utilised to defray the expenses referred to in clause 29.2 above.
- 29.9. 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.
- 29.10. Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South

- Africa Limited at its prime overdraft rate plus 3 (three) percentage points, such interest shall be calculated and compounded monthly.
- 29.11. The Directors shall on the recommendation of the Finance Committee have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid.
- 29.12. Members still in arrears after 14 (fourteen) days may have their overdue account and the full interest thereon, handed over for collection and possible legal action, and/or their access discs suspended. Any costs incurred in these proceedings and all additional interest up to the date of final settlement shall be for the Member's account.
- 29.13. A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 29.14. All contributions levied under the provisions of this Memorandum shall be due and payable 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.
- 29.15. Should a Member be in arrears with the payment of any levies due in terms of this clause and remain in arrears notwithstanding demand for payment then in that event such Member shall not be entitled either in person or by proxy to speak or vote at any meeting of Members of the Company. A letter addressed to the chairperson of any such meeting by the chairperson of the Finance Committee shall constitute proof of non-payment of any arrears levies by such Member and shall entitle the chairperson of such meeting of the Company to prevent such Member or his proxy speaking or voting at such meeting.
- 29.16. The Company may establish a levy stabilisation fund for the purpose of meeting any extraordinary expenditure and expenditure of a capital nature to be incurred by the Company in carrying out its objects and the provisions of this Memorandum, contributions to which shall become due and payable on the date the Member

occupies the Unit or becomes the registered owner of the Unit whichever date occurs first.

29.17. It shall be a condition of Membership that each new Member (including a natural person nominated as a Member by a close corporation, company or trust), shall on being admitted as a Member, become liable to contribute an amount as determined by the Finance Committee from time to time, towards the levy stabilisation fund which amount shall be due and payable from the date referred to in this clause.

29.18. Members shall not be entitled to any refund in respect of any amounts paid towards the levy stabilisation fund.

### **30. ACCOUNTING RECORDS**

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

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

### **31. ANNUAL FINANCIAL STATEMENTS**

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

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



## 32. NOTICES

- 32.1. All notices shall be given by the Company to each Member in writing in any manner authorised by the Act and the Regulations, and particularly Table CR3 annexed to the Regulations.
- 32.2. Any notice sent by any means permitted in Table CR3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 32.3. Each Member of the Company:-
- 32.3.1. shall notify in writing to the Company an address within the Republic of South Africa for the purposes of receiving written notices from the Company by post and if he has not named such an address, it shall be considered sufficient for the Company to serve notice at the Unit owned by the Member; and
- 32.3.2. may notify in writing to the Company an email address and/or facsimile number; which address shall be his address for the purposes of receiving notices by way of electronic communication.
- 32.4. The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Company.

## 33. WINDING-UP OF THE COMPANY

In the event of the Company being wound-up, its assets shall devolve upon such other company as the Members in such winding-up order determined, provided that such company has aims and objects similar to those of the Company.

## **34. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE ESTATE**

### **34.1. Amenity of Estate**

In order to procure compliance with the nature and amenity of the Estate no Dwelling or other structure shall be built or erected on any Estate property and no thing shall be placed on or attached to a Dwelling or any other structure, visible from outside of the Dwelling or such other structure, other than in accordance with plans approved by the Board or where appropriate with a written approval given by the Board and signed by the chairperson who, before giving such approval, may require that there be lodged with them such description and/or drawing and/or plan as may be necessary, in the opinion of the Directors, to enable them to consider the matter. Any approval as contemplated herein may be subject to such condition as the Directors may deem fit. This clause shall in no way alter or supersede any requirements of or obligations to the Local Authority.

### **34.2. Leased Areas**

It is recorded that the Company, in so far as Sectional Title Developments are concerned, will be entering into leases with owners in respect of that portion of the owners property not covered by buildings or enclosed by walls or screens. The Company shall be obliged to maintain such leased areas as if they formed portion of the common property of the Estate subject to such other arrangements as may be entered into between the Company and the owners of such leased area.

### **34.3. Landscaping**

Save as may otherwise be agreed by the Directors any landscaping on the Estate shall be undertaken by the Company or on behalf of the Company and notwithstanding anything to the contrary herein or elsewhere contained no Member shall have any right to plant any tree, shrub, grass, flower or to remove or cut same or attempt to erect any fence or wall or any other structure or remove same on the Estate without the prior written consent of the Board.

#### **34.4. Provision of services**

The Company may, from time to time, contract with suppliers of services or itself provide services to the Estate.

#### **34.5. Private roads and open spaces**

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

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

#### **34.6. Maintenance of Dwelling**

Save where such work is carried out by the Company the exterior of every Dwelling shall be maintained and kept in a clean, tidy and neat condition and no Owner shall be entitled to apply paint or any similar material to any exterior part of his Dwelling without the prior written consent of the Directors. An Owner shall, on receipt of a notice given by the Directors and signed by the chairperson, undertake such work as may be specified in such notice relative to such Owner's Dwelling. Should an Owner fail to carry out any work as required by the Company after the Company has given the owner due notice so to comply the Company shall be entitled to carry out such work and to recover the reasonable cost thereof from the Owner which amount shall be deemed to the part of the levy due by the Owner.

#### **34.7. Occupation of Dwelling**

Occupation and use of a Dwelling shall, at all times, be in compliance with the Scheme. The number of persons occupying a Dwelling may be determined, in the

opinion of the Directors, from time to time. 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 Owners wishing to hire out their Dwelling they shall do so in consultation with and subject to such rules as the Company may, from time to time, lay down with regard to the number of persons occupying the Dwelling and access to the Dwelling by intended lessees and subject further to any intended lessees signing such undertaking as may be required by the Directors whereby the lessees agree to be bound by the provisions of this Memorandum and any other provisions which the Member may be subject to from time to time.

#### **34.8. Services**

Inasmuch as the provision, establishment, maintenance and repair of services may be required to take place on the Estate or Units owned by Owners, the Owners hereby consent to the provision of such services being laid across such property, in such places as the Company determines, from time to time and to the Board or persons authorised by it, entering upon such property for the purpose of providing, establishing, maintaining and/ or repairing the services, provided that such work shall be carried out with as little inconvenience to the affected party as possible.

#### **34.9. Security of Estate**

The Company shall be obliged to provide such security in the Estate as it deems appropriate, from time to time, including such security as may be required to control egress and ingress to the Estate, so that only Members, Lessees of Units, guests or invitees, authorised representatives, employees of the Company and any other duly authorised persons may be admitted.

#### **34.10. Estate Agents**

The Company shall be entitled, but not obliged, to grant firms of estate agents mandates to sell the Units within the Estate (hereinafter referred to as the "Appointed Agents"). Should the Company grant such mandates, they will be on the following terms and conditions:

34.10.1. In the event of any Member wishing to dispose of any Unit within the Estate, to the extent that such Member requires the services of an estate agent with regard to such disposal, such Members shall be obliged to do so through the Appointed Agents.

34.10.2. The fee charged by such Appointed Agents shall not exceed the fee as laid down by the appropriate estate agent's tariff.

34.10.3. The Appointed Agents shall advise any other estate agents whose names are supplied to them by Members that such Members' Units are for sale on the basis that that agent will refer any prospective purchasers to the Appointed Agent, who will conclude the sale with such purchaser on the basis of sharing the commission with the referring agent.

34.10.4. The length of such mandate shall be at the discretion of the Directors, however shall not exceed a period of 5 (five) years.

#### **34.11. Enforcement of obligations of Owners**

Should any Owner or any lessee of an Owner, guest or invitee, authorised representative or other duly authorised person of an Owner or Lessee fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Company shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Company, necessary and/ or requisite to procure compliance. The costs thereby incurred by the Company shall be a debt due by the Owner concerned, which shall be payable on demand.

### **35. DETERMINATION OF DISPUTES**

35.1. Subject to clause 29.12 above, in the event of any dispute or difference arising between the Members inter se or between a Member and the Company as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Company or any Member in terms of this Memorandum, the parties shall forthwith meet to attempt to settle such dispute or

difference and failing such settlement within a period of 90 (ninety) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.

35.2. The arbitrator shall be if the question in issue is:

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

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

35.2.3. any other matter, an independent person agreed upon between the parties and, failing agreement, as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) regard being had to the needs of the dispute and the qualifications required therefor.

35.3. If agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under 35.2.1, 35.2.2 or 35.2.3, then a practising Advocate of not less than 10 (ten) years standing or alternatively practising attorney of not less than 15 (fifteen) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.

35.4. The arbitration referred to in 35,1 shall be held:

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

35.4.1.1. the usual formalities or procedure, which may be otherwise be prescribed in terms of the laws referred to in clause 35.4.3 below, or

35.4.1.2. the strict rules of evidence;

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

arbitration proceedings shall then terminate and the wasted costs is borne by the party against whom the award is made, and the decision of the arbitrator as to such costs shall be final and binding upon the relevant parties;

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

35.5. The arbitrator shall:

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

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

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

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

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

35.7. Notwithstanding anything to the contrary contained in this clause 35, the provisions hereof shall not preclude any party hereto from taking any action against any other party or parties to the dispute in any competent Court having jurisdiction where such action is reasonably required either to restrain temporarily pending the outcome of any arbitration proceedings as hereinbefore provided for, any party



hereto from commencing or continuing any action or course of action or likewise to enforce temporarily pending such arbitration proceedings any omission by any party, which action, course of action or omission is or is likely to materially prejudice any party hereto, and regard being had to all the circumstances, is of such an urgent nature that it would not be appropriate merely to have recourse to arbitration proceedings, the parties agreeing that the test to be generally applied being that which would otherwise entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.

### **36. DISCLAIMER OF RESPONSIBILITY**

- 36.1. 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.
- 36.2. The Company and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any Member of the public dealing with the Member or any lessee for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.
- 36.3. The Members hereby indemnify the Company and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this clause 36.