

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

MEMORANDUM OF INCORPORATION

of

**THE GARDENS LA LUCIA RIDGE MANAGEMENT ASSOCIATION
REGISTRATION NUMBER 1998/025259/08**

("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 12th day of October 2017 and in substitution for the existing Memorandum of Incorporation of the Company.

The Memorandum of Incorporation is as follows:

1. INTERPRETATION

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

- 1.1.1 “Act” means the Companies Act 71 of 2008 as amended from time to time;
- 1.1.2 “MOI” means the Memorandum of Incorporation for the time being of the Association;
- 1.1.3 “Association” means the Gardens, La Lucia Ridge Management Association NPC;
- 1.1.4 “Beneficial Interest” means, in the event of the Member being:
 - 1.1.4.1 a close corporation, the entire member’s interest in the close corporation;
 - 1.1.4.2 a company, all the issued shares in that company; or
 - 1.1.4.3 a trust, the entire beneficial interest in that trust (as the case may be).
- 1.1.5 “Board” means the Board of Directors of the Association for the time being;
- 1.1.6 “Body Corporate” means a body corporate as defined in Section 1 of the Sectional Titles Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act;
- 1.1.7 “Community Conservation Area” means:
 - 1.1.7.1 Erf 2705 La Lucia, Registration Division FU, Province of KwaZulu-Natal, in extent 3135 (THREE THOUSAND ONE HUNDRED AND THIRTY FIVE) square metres; and
 - 1.1.7.2 Erf 2706 La Lucia, Registration Division FU, Province of Kwazulu-Natal, in extent 6,9754 (SIX COMMA NINE SEVEN FIVE FOUR) hectares;
- 1.1.8 “Directors” means the Directors of the Association for the time being;
- 1.1.9 “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 Township;
- 1.1.10 “eThekweni Municipality” means the eThekweni Municipality, its successors in title or assigns;

- 1.1.11 "Levy Contribution" means the levy contributions, as determined from time to time and referred to in Section 14 and includes special contributions, as and levy stabilization fund as referred to in Section 15;
- 1.1.12 "Manager" means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Township;
- 1.1.13 "Member" means an Owner;
- 1.1.14 "office" means the registered office of the Association for the time being;
- 1.1.15 "Owner" means any person who is the registered owner of Land or an undivided share in Land;
- 1.1.16 "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;
- 1.1.17 "Rules" mean the rules made by the Board in accordance with the provisions of Article 8.5 hereof;
- 1.1.18 "Scheme" means the Consolidated North Scheme of the eThekweni Municipality in the course of preparation as amended from time to time or any other Town Planning scheme applicable to the Township, from time to time;
- 1.1.19 "Sectional Titles Act" means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.1.20 "services" means water, sewerage, refuse removal, electricity, telecommunications, security, maintenance of common property and such other utilities or services as may be provided by the Association or any other supplier of services to the Township, from time to time;
- 1.1.21 "Share Blocks Control Act" means the Share Blocks Control Act No. 59 of 1980 as amended and any regulations in force thereunder from time to time;
- 1.1.22 "Township" means the Land:
 - 1.1.22.1 Included in the township laid out on Portion 63 of the Farm Lot La Lucia No. 14634 and as shown on General Plan SG No. 3425/1997; and
 - 1.1.22.2 Erf 2608 and 2609 La Lucia as shown on General Plan SG No. 299/1997;

1.1.22.3 Erf 2632 La Lucia as shown on General Plan SG No. 3425/1997.

1.1.23 "Land" means, in relation to the Township, 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;

1.1.24 Words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act.

1.1.25 Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include Bodies Corporate, and vice versa in each instance.

1.1.26 The heading above any of this Memorandum of Incorporation is intended for reference purposes only and shall not influence the interpretation of the Articles.

1.1.27 In interpreting this Memorandum of Incorporation, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule.

2. MEMBERSHIP

2.1 Membership of Association

2.1.1 Membership of the Association shall be obligatory for an Owner.

2.1.2 No Land shall be transferred unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of Article 2.2.1;

2.1.3 In order to procure compliance with the provisions of this Memorandum of Incorporation, it shall be registered as a Condition of Ownership of Land that no Land shall be alienated without the prior written consent of the Association first being had and obtained which consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor); and

2.1.3.1 For the purposes of this clause "alienate" means to alienate any Land or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgagee, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or

involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolute condition.

2.1.4 In the event of Land being owned in undivided shares by more than one Owner, such co-owners shall nominate one of them to be the Member for the purposes of this Memorandum of Incorporation provided that all joint owners shall be bound by this Memorandum of Incorporation as if they were Members. Such nomination shall be made in writing to the Association within 7 (Seven) days of such parties becoming Owners.

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

2.2 Admission of Members

2.2.1 The members of the Association shall be those persons who, from time to time, become a member in accordance with the provisions of this Memorandum of Incorporation.

2.2.2 The right to determine admission to membership of a proposed acquirer of Land is hereby conferred upon the Board. The Board shall not unreasonably decline to admit to membership an applicant in the event of the applicant having undertaken to comply with and abide by this Memorandum of Incorporation and all the Association's requirements, rules and regulations and the party from whom the applicant is taking transfer of Land, has complied with this Memorandum of Incorporation and all the Association's requirements, rules and regulations (and in no way detracting from the generality of the aforesaid), has made payment of any amounts due by such transferor to the Association.

2.2.3 Members shall all be of a single class, being voting members, each of whom shall have a vote, the value of which shall be calculated in accordance with the provisions of Article 3.3.6 hereof;

2.3 Rights and duties of Members

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

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

2.3.1.2 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:

- 2.3.1.2.1 Company's Memorandum of Incorporation and any amendments to it and any Rules made by the Company;
 - 2.3.1.2.2 the records in respect of the Company's directors;
 - 2.3.1.2.3 the reports to annual meetings and annual financial statements;
 - 2.3.1.2.4 the notices and Minutes of annual meetings and any communications to the members; and
 - 2.3.1.2.5 the register of members.
- 2.3.1.3 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum of Incorporation;
- 2.3.1.4 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with and subject to the provisions of this Memorandum of Incorporation;
- 2.3.1.5 should Members holding between them, in aggregate, not less than 5% (Five Percent) of the voting rights in the Association, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.
- 2.3.2 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

2.4 Cessation of Membership

- 2.4.1 Membership of the Association shall cease:
- 2.4.1.1 upon an Owner of Land ceasing to be an Owner;
 - 2.4.1.2 upon the issue of a final order of sequestration or liquidation of the Member concerned;
 - 2.4.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs;
- 2.4.2 In the event of a Member ceasing to be a Member in terms of Article 2.4.1.2 or 2.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this Memorandum of Incorporation.

2.5 Liability of each Member

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

2.6 Register of Members

The Association shall maintain at its office a register of Members as provided in Section 24 of the Act. The register of Members shall be open to inspection as provided in Section 26 of the Act.

3. GENERAL MEETINGS

3.1 Annual General Meeting

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

3.2 Notice of General Meeting

The annual general meeting and any meeting called for the passing of a Special Resolution shall be called by not less than 21 (Twenty One) clear business days' notice in writing and any other general meeting shall be called by not less than 15 (Fifteen) clear business days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this Memorandum of Incorporation, entitled to receive such notices from the Association: Provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.

3.3 Proceedings at General Meetings

3.3.1 Business

The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the audited annual financial statements, a decision on the number of directors; and election of

directors when such decision is required in accordance with the provisions of this Memorandum of Incorporation, 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.

3.3.2 Quorum

3.3.2.1 A quorum for a general meeting shall be Members holding between them, in aggregate, not less than 5% (Five Percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote (subject to a minimum of 3 (Three) Members personally present);

3.3.2.2 If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting, 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.

3.3.2.3 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 3 (Three) days after the adjournment, send written notice to each Member of the Association and publish a notice in two recognised newspapers circulating in the La Lucia area, stating:

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

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

3.3.2.3.3 the grounds for the adjournment.

3.3.3 Chairman

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

3.3.3.2 The chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 3.3.2.2 and 3.3.2.3 shall *mutatis mutandis* apply to such adjournment.

3.3.4 Voting

3.3.4.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by the Chairman or by any Member, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or negative, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution.

3.3.4.2 A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

3.3.5 Proxy

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

3.3.5.2 The instrument appointing a proxy shall be deposited at the office of the Association 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 be valid after the expiration of twelve months from the date of its execution, unless the proxy specifically otherwise provides.

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

3.3.5.4 In the event of a Member being a juristic person, such as a close corporation, company or trust, such Member shall lodge at the offices of the Association, a resolution authorising a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such Resolution shall be lodged at the offices of the Association at least 48 (Forty Eight) hours before the time for the

holding of any meeting at which a Member wishes to be represented and/or vote.

3.3.6 Votes of Members

On a show of hands, each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote. On a poll, which may be called for by any Member or his proxy or the Chairman of the meeting, each member (or Owner of which he is a nominee) shall be entitled to one vote for every piece of Land he owns.

3.4 RESOLUTIONS OF MEMBERS

3.4.1 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.

3.4.2 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.

4. INSPECTION OF MINUTES

The minutes kept of every general meeting and annual general meeting of the Association under Section 24 of the Act, may be inspected and copied as provided in Section 26 of the Act.

5. DIRECTORS (TERMS OF OFFICE)

5.1 The number of Directors and the election thereof shall be determined from time to time by the Members in general meeting;

5.2 A retiring Director shall be eligible for re-election;

5.3 Save as is set out in Article 5.4 and Article 10, each Director shall continue to hold such office from the date of his commencement of office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board at such meeting.

5.4 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 of Incorporation.

5.5 Any Director may be removed by a majority Board decision, for any reason whatsoever.

5.6 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 occur.

5.7 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.

5.8 The chairman and deputy chairman shall be elected by the Directors at their first meeting in the financial year.

6. ALTERNATE DIRECTORS

Any 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.

7. REMUNERATION OF DIRECTORS

7.1 A Director shall not directly or indirectly receive any remuneration for his services as a director of the Association, provided that nothing in this Memorandum of Incorporation shall prohibit him from reimbursement of any travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Association and which is authorised or approved by the Board.

7.2 If any Director commits a breach of Article 7.1 he shall forthwith cease to be a Director and shall not be eligible for re-election.

8. POWERS AND DUTIES OF DIRECTORS

8.1 The business of the Association shall be managed by the Board, who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not specifically required by the Act, or by this Memorandum of Incorporation, to be exercised by the Association in general meeting.

8.2 Without in any way affecting the generality of Article 8.1 the Board shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum of Incorporation.

8.3 The Board may, pursuant to their rights, obligations and duties in terms of this Memorandum of Incorporation and as provided for and contemplated under this Memorandum of Incorporation, 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 Incorporation of the Association.

8.4 The Association in general meeting, shall have the right to limit and restrict the powers of the Board, provided that no resolution of the Association shall invalidate any prior act of the directors which would otherwise have otherwise been valid.

8.5 Conduct Rules

8.5.1 The Board shall have the power to make conduct 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 Community Conservation Area and the Township as a whole, for the purposes of giving proper effect to the provisions of the Memorandum of Incorporation and for any other purpose which the Board deems appropriate.

8.5.2 In no way detracting from the generality of the aforesaid, the Board may from time to time make conduct rules, applicable within the Township, specifically in regard to:

8.5.2.1 the preservation of the natural environment;

8.5.2.2 vegetation and flora and fauna in the Township;

8.5.2.3 the regulation and control of the keeping of animals, reptiles and birds within the Township;

8.5.2.4 the placing of movable objects upon or outside the buildings included in the Township, including the power to remove any such objects;

8.5.2.5 the storing of flammable and other harmful substances within the Township;

8.5.2.6 the maintenance of gardens, open spaces and recreational amenities within the Township;

8.5.2.7 the conduct of any persons within the Township and the prevention of nuisance of any nature to any Owner in the Township;

8.5.2.8 the use of Land within the Township including the use of roads (including verges), pathways and open spaces within the Township;

8.5.2.9 the imposition of fines and other penalties to be paid by Members of the Association;

8.5.2.10 the admission of non-members to the Community Conservation Area and the determination of admission fees to

be paid by such non-members provided that only persons who are members of recognised clubs and societies engaged in bird watching and other nature awareness activities may be granted access to the Community Conservation Area;

- 8.5.2.11 the enforcement of prescribed standards, conditions and guidelines as laid out in the design guidelines for The Gardens, La Lucia Ridge (a copy of which is Annexure "A" hereto and a full copy of which is available for inspection from the offices of the Association) for the erection, layout, maintenance and design of any buildings, outbuildings and external fixtures and fittings thereto, including aerials of any description, erected or to be erected in the Township and any improvements thereto and structures thereon and thereby to exercise control of the external appearance of all buildings, structures, erections, Land and garden areas within the Township.
- 8.5.2.12 the imposition of a "verge deposit", that is a deposit payable by any person building anywhere in the Township as security for any damage that may be caused to any of the Township's infrastructure (including but in no way limited to roads, verges, the gate house or traffic islands) during the course of such construction; and
- 8.5.2.13 any other matters as may be in the opinion of the Board required to be regulated.

8.5.3 Enforcement of Conduct Rules

- 8.5.3.1 The Board may take or cause to be taken such steps as they may consider necessary to remedy the breach of any conduct rules of which the Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member to the Association. In addition the Board may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.
- 8.5.3.2 In the event of any breach of the conduct rules by any tenant or occupier of any Land owned by the Member, such breach shall be deemed to have been committed by the Member and the Board shall be entitled to take such action as they deem fit against the responsible Member.
- 8.5.3.3 Notwithstanding the foregoing, the Board may in the name of the Association enforce the provisions of any conduct rules by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or Counsels they may deem fit.

8.5.3.4 Any conduct rules made by the Board shall reasonably be in the interest of the Association and the Township and, where applicable, shall apply equally to all Members as the case may be.

8.5.3.5 The conduct rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.

8.5.3.6 In no way detracting from the generality of any other provision of this Memorandum of Incorporation, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum of Incorporation by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

9. MINUTES

9.1 The Board shall, as provided for in the Act, cause Minutes to be kept:

9.1.1 of all appointments of officers;

9.1.2 of names of Directors present at every meeting of the Association and at every meeting of the Directors; and

9.1.3 of all proceedings at all meetings of the Association and/or the Directors.

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

10. DISQUALIFICATION OR RESIGNATION OF DIRECTORS

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

10.1.1 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 the Act or this Memorandum of Incorporation; or

10.1.2 resigns his office by notice in writing to the Association and the Registrar; or

10.1.3 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or

10.1.4 is found to be a lunatic or of unsound mind; or

10.1.5 is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence.

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

11. PROCEEDINGS AT MEETINGS OF DIRECTORS

- 11.1 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.
- 11.2 Director may, on 7 (Seven) day's written notice to all other Directors, at any time, summons a meeting of the Directors.
- 11.3 The quorum necessary for the transaction of the business of the Directors shall be at least 50% of the total number of Directors
- 11.4 If at a meeting neither the chairman nor the deputy chairman is present within 10 (Ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman for that meeting subject to the provisions of Article 5.8.
- 11.5 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.
- 11.6 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 had been duly appointed and had qualified to be a Director.
- 11.7 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.
- 11.8 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.
- 11.9 **Committees**

11.9.1 The Board may delegate any of their powers to committees consisting of such persons as they think fit, the Chairman of which committees may be appointed by the Board. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Board.

11.10 Should the Board not appoint the chairman of a committee, the members of that committee shall elect a chairman of its meetings. If at any meeting the chairman is not present within 10 (Ten) minutes after the time appointed for holding the same, the committee members present may elect one of their number to be chairman for that meeting.

11.11 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee Members present and in the event of an equality of votes the chairman shall have a second or casting vote.

11.12 Limitation of Liability of Directors

11.12.1 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.

12. 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 Association 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.

13. ASSIGNMENT OF POWERS AND FUNCTIONS

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

addition to the foregoing any controlling body of any Share Block Scheme or Sectional Title Scheme, shall assign such powers and functions to the Association as may be require of it by the Association (provided that nothing in this Memorandum of Incorporation shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).

14. LEVY FUND

- 14.1 The Board shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association, the Community Conservation Area and for the Township as a whole, (including but in no way limited to, maintenance of the club house (if any), community swimming pool (if any) gatehouse (if any), change room (if any), the Township boundary fence and other Township security provisions), garden maintenance services, insurance premiums, the payment of rates and taxes and other charges on the Community Conservation Area 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 Community Conservation Area and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Community Conservation Area and for the discharge of any other obligation of the Association.
- 14.2 Before every annual general meeting, the finance committee shall cause to be prepared an itemised estimate of the anticipated income and expenditure of the Association for the ensuing financial year together with the consequent levies required, which shall be laid before the annual general meeting for consideration.
- 14.3 All levies due by members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.
- 14.4 At every annual general meeting the Association shall approve, with or without amendment, the estimate referred to in Article 14.2 of income and expenditure and the estimated amount to be levied upon the Members during the ensuing financial year.
- 14.5 The proportions in which Members shall make contributions towards the levy fund established in terms of Article 14.1 shall be determined by the Board, who in determining such proportions shall have regard in all circumstances prevailing at the time and to equity and shall be guided by the following:
 - 14.5.1 they shall assign those costs arising directly out of the Land itself to the member owning such Land;

- 14.5.2 they may draw a distinction between services rendered by the Association to a particular Body Corporate again taking into account the nature and extent of the services rendered to that Body Corporate and the Owners of that Body Corporate;
- 14.5.3 they shall assign those costs relating to the Township (including the Conservation Amenity Area) generally to all Owner's Land equally;
- 14.5.4 Provided that the Board may in any case, where they consider it equitable to do so, assign to any Owner any greater or lesser share of the costs as may be reasonable in the circumstances and provided further that any replacement or other reserve shall be determined by the Board.
- 14.6 All contributions received from Members and the Board shall forthwith be deposited in a separate account which the Association shall open and keep with a bank.
- 14.7 The monies in the levy fund shall be utilised to defray the expenses referred to in Article 14.1 above.
- 14.8 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.
- 14.9 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this MOI, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited at its prime overdraft rate plus 3 (THREE) percentage points, such interest shall be calculated and compounded monthly.
- 14.10 Subject to the provisions of Article 14, the Board 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.
- 14.11 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 14.12 All contributions levied under the provisions of this MOI shall be due and payable on the passing of a resolution to that effect by the Board and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due.

- 14.13 Should a Member be in arrears with the payment of any levies due in terms of this MOI 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 Association. A letter addressed to the Chairman of any such meeting by the Chairman of the Finance Committee shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Association to prevent such Member or his proxy speaking or voting at such meeting.

15. LEVY STABILIZATION FUND

The Directors shall establish and maintain a levy fund sufficient in their opinion to enable the Association to meet any matter arising from the provisions of this Memorandum of Incorporation, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Development and for the discharge of any other obligations of the Association (provided that nothing in this Memorandum shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).

In the event of any Land being sold, alienated or otherwise disposed of, the new Member shall be obliged to pay the levy stabilization fund contribution applicable at that time which is not refundable in the event of any land being sold, alienated or otherwise disposed of.

16. ACCOUNTING RECORDS

- 16.1 The Board shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 16.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Board think fit, and shall always be open to inspection by the Members.

17. ANNUAL FINANCIAL STATEMENTS

- 17.1 The Board shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are prescribed by the Act.
- 17.2 A copy of any annual financial statements shall be laid before the Association in annual general meeting. A copy of the aforesaid financial statements shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to

every Member of the Association: provided that this Memorandum of Incorporation shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

18. AUDITOR

An auditor shall be appointed in accordance with the Act.

19. NOTICES

19.1 A notice may be given by the Association to any Member either by advertisement or personally, or by sending it by post by prepaid letter addressed to such Member at his registered address, or if he has no registered address in the Republic at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him. Any notice which may be given by advertisement shall be inserted in such newspaper as the Board may from time to time determine.

19.2 Notice of every general meeting shall be given in any manner authorised:

19.2.1 to every Member of the Association. If a Member has not supplied the Association with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the Association to serve notice at the address of the Land owned by the Member;

19.2.2 to the auditor for the time being of the Association.

19.3 No other person shall be entitled to receive notice of general meetings.

19.4 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

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

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

20. WINDING-UP OF ASSOCIATION

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

21. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE COMMUNITY CONSERVATION AREA

The Association shall be obliged to maintain, control, administer and manage the Community Conservation Area in accordance with the provisions of the Conservation Management Plan, Annexure "CM" hereto.

22. SECURITY OF COMMUNITY CONSERVATION AREA AND THE TOWNSHIP

22.1 The Association shall be obliged to provide such security in the Community Conservation Area as it deems appropriate from time to time including such security as may be required to control egress and ingress to the Community Conservation Area so that only members, lessees of units, guests or invitees, or any other authorised persons (as specified in paragraph 8.5.1.10 hereof) may be admitted

22.2 The Association may, if requested by a majority of Members, provide and maintain such security in the Township as such Owners may require subject to the approval of members in General Meeting.

23. ENFORCEMENT OF OBLIGATIONS OF OWNERS

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

24. DETERMINATION OF DISPUTES

24.1 In the event of any dispute or difference arising between the members inter se or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Association or any Member in terms of this Memorandum of Incorporation, 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.

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

24.2.1 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;

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

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

24.2.4 If agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under 23.2.1, 23.2.2 or 23.2.3, then a practising Advocate of not less than 10 (ten) years standing or alternatively practising attorney of not less than 15 (fifteen) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or anybody enacted to replace such Society) as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.

24.2.4.1 The arbitration referred to in 23.1 shall be held:

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

24.2.4.1.2 the usual formalities or procedure, which may be otherwise be prescribed in terms of the laws referred to in Article 23.4.3 below, or

24.2.4.2 the strict rules of evidence;

24.2.5 immediately and with a view to it being completed within 30 (thirty) days of the appointment of the arbitrator having particular regard to any urgency regarding the matter in issue, provided that should any party to

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

24.2.6 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.

24.3 The arbitrator shall:

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

24.3.2 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.

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

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

24.4.2 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.

24.5 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, 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.

25. DISCLAIMER OF RESPONSIBILITY

25.1 The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Township regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within the Township. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

25.2 The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member 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 Township, regardless of the cause thereof.

25.3 Members hereby indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this Article 24.

26. AMENDMENT TO THE MEMORANDUM OF INCORPORATION

- 26.1 Subject to Section 27, this Memorandum may only be amended or varied by way of a Special Resolution adopted at a Members' meeting or in terms of a court order.
- 26.2 Amendments to the Memorandum may be proposed by the Board or by Members entitled to exercise at least 10 % of the voting rights.
- 26.3 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.

27. RESTRICTIONS ON AMENDMENT TO MEMORANDUM

This clause and clauses 2.1.1, 2.1.2, 2.1.3 and 2.1.4 may never be altered by the Members.

28. PROHIBITION AGAINST THE SUBDIVISION AND CONSOLIDATION OF ANY LAND

No Land shall be subdivided or consolidated without the consent of the Association which consent the Association may in its sole and absolute discretion grant or refuse.
