

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

STONEFORD HOMEOWNERS' ASSOCIATION

Registration No. 2006/026511/08

(which is referred to in this Memorandum of Incorporation

as "the HOA")

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 _____ and in substitution for the existing Memorandum and Articles of Association of the Company

1

1. DEFINITIONS AND INTERPRETATIONS

In these Articles:

- 1.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
- 1.1.1 “**Act**” means the Companies Act No.71 of 2008;
 - 1.1.2 “**Architect**” means the Architect selected by the Member from the Developer’s panel of Architects for the time being;
 - 1.1.3 “**Architectural Design Principles and Guidelines**” means the requirements and guidelines compiled by Walker Smith Architects, a copy of which is available from the offices of the Association;
 - 1.1.4 “**Articles**” means these Articles of Association and any amendment thereto by the Association;
 - 1.1.5 “**Association**” means the Stoneford Homeowners Association NPC, Registration Number 2006/026511/08 or any other name assigned to the Association, appointed to manage generally the affairs of Stoneford;
 - 1.1.6 “**Auditors**” means the Auditors appointed to the Association under the Act;
 - 1.1.7 “**Board**” means the Board of Directors of the Association for the time being;
 - 1.1.8 “**Body Corporate**” means the Body Corporate established in terms of Law in respect of any Sectional Title Scheme in Stoneford, which Body Corporate shall cede and assign its powers to the Association to the extent that the Association may require such powers to be ceded and assigned to it;
 - 1.1.9 “**Building Code**” means the building guidelines, rules, regulations and procedures, as set out in the document so named, as formulated and amended by the Developer from time to time, for the building of residential dwellings on any Erf or any alterations or extensions to existing Units or completed residential dwellings which the Member accepted as fair and reasonable and binding;

- 1.1.10 **“Chairman”** means the Chairman of the Board of Directors of the Association for the time being;
- 1.1.11 **“Common Property”** means erven 516, 518, 487 and 561 owned or to become owned by the Association, to be utilized for the common benefit of all Members and lawful occupiers of Property in Stoneford and includes all servitudes in favour of the Association subject to any applicable restrictions;
- 1.1.12 **“Conditions of Establishment”** means the conditions for the establishment of the Estate, imposed by the Development Board in the Tribunal Judgement dated 23 June 2006, as amended from time to time;
- 1.1.13 **“Conservation Areas”** means erven 512, 517 and 553 in the Estate, to be administered by the **Association**;
- 1.1.14 **“Design Review Committee / DRC”** means a committee established by the Developer or Association to review and approve all Building Plans and any extensions and alterations in accordance with the Building Code and any Landscaping Plans in accordance with the LDC and EMP;
- 1.1.15 **“Developer”** means Copper Moon Trading 93 (Pty) Ltd, Registration No. 2004/01464/07, its successors in title and assigns;
- 1.1.16 **“Development Period”** means the period from opening of the Township Register for the freehold conventional estate within the Development, up until any time, at the Developer’s discretion, provided that the Development Period shall not extend past the date of issue of the last beneficial occupation certificate by the Local Authority for the last Residential Dwelling to be constructed on any Erf within the Development;
- 1.1.17 **“Director”** shall mean a Director of the Board of the Association;
- 1.1.18 **“Electronic Communication”** shall mean
- 1.1.19 **“Environmental Management Plan / EMP”** means the document under this name prepared by Indiflora and referred to in the Conditions of Establishment, setting out the terms and conditions and the 100% indigenous theme as mandated in the Record of Decision issued by the KZN Agricultural and Environmental Affairs (Ref EIA/5936), including any amendments thereto, relating to all Property and Common Property in the Development, which the Member warrants that it has had sight of and has read and considers it fair and reasonable and binding;
- 1.1.20 **“Erf”** means any freehold erf in the Estate, whether or not there are any improvements on such erf;
- 1.1.21 **“Estate”** means Stoneford Country Estate, situate on Erf 486 Assagay, in extent approximately 85 (Eighty Five) hectares, the current boundaries

of which are shown on the Layout Plan No 2480/06 and any permitted amendments thereto;

- 1.1.22 **“Financial Year”** shall mean the Financial Year of the Association, which shall run from the first day of **March** in any year to the last day in **February** in the subsequent year;
- 1.1.23 **“Equestrian Centre”** means the Stoneford Equestrian Centre, a private equestrian and recreational centre, including the paddocks, owned by the Proprietor and to be operated by it or its agents, and to be laid out on Erven 559, 513, 514 and 522 Assagay;
- 1.1.24 **“in writing”** shall mean written, printed or lithographed or partly one and partly the other, and other modes of representing or producing words in visible form;
- 1.1.25 **“the Land”** shall mean Erf 486 Assagay, in extent approximately 85 hectares;
- 1.1.26 **“Landscape Design Code / LDC”** means the document with this title, setting out the landscape and planning guidelines and rules prepared by the experts appointed by the Developer for this purpose;
- 1.1.27 **“Local Authority”** means the local authority having jurisdiction over Stoneford;
- 1.1.28 **“Managing Agent”** shall mean any person or body appointed by the Developer or Association as an independent contractor to undertake routine management of the Development and generally the affairs of the Association;
- 1.1.29 **“Member”** means a member of the Association, by virtue of Clause 6 hereof;
- 1.1.30 **“Memorandum”** means the Memorandum of Incorporation for the time being of the Association;
- 1.1.31 **“Municipal Services”** means the provision of water, sewerage, electricity, storm-water drainage, roads and refuse removal and such other utilities and amenities as may be provided by the Local Authority to the Estate from time to time;
- 1.1.32 **“Property”** shall mean any Unit as defined in terms of the Sectional Titles Act or any Erf or Erven situated within Stoneford;
- 1.1.33 **“Proprietor”** means the owner of the Equestrian Centre and paddocks, being erven 559, 513, 514 and 522, it being recorded that the Proprietor as at the date of registration of this Memorandum, is the Developer which may, in its sole and absolute discretion, transfer ownership of the Equestrian Centre and paddocks to a third party in due course, which third party will then assume the position of the Proprietor.

- 1.1.34 **“roads”** shall mean the private roads which have been, or are to be, constructed on the Land on erven 487, 518 and 561;
- 1.1.35 **“Rules / Conduct Rules”** means the Rules referred to in the Conditions of Sale, governing inter alia the conduct of the Member. The Member warrants it has read and understands the content of the Rules and agrees that they are fair and reasonable and binding;
- 1.1.36 **“Sale Agreement”** means each of the sale agreements concluded between the Developer and each Member, or in the case of a re-sold erf, the purchaser and the seller of that erf;
- 1.1.36 **“Sectional Titles Act”** means the Sectional Titles Act No. 95 of 1986 (as amended) and any regulations in force thereunder from time to time;
- 1.1.37 **“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.
- 1.1.38 **“the office”** shall mean the registered office of the Association;
- 1.1.39 **“town planning scheme”** shall mean the Town Planning scheme applicable to the Land;
- 1.1.40 **“township”** shall mean the conventional township to be developed on the Land;
- 1.1.41 **“vice-Chairman”** shall mean the vice-Chairman of the Board of Directors;
- 1.2 Unless the context otherwise requires, any words importing the singular number shall also include the plural number and vice versa and words importing any one gender shall include the other two genders;
- 1.3 Subject as aforesaid, any words or expressions defined in the Act or in the Sectional Titles Act or any statutory modifications of such Act in force at the date on which these Articles become binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in these Articles;
- 1.4 The headings contained in this Memorandum are intended for reference purposes only and shall not influence the interpretation;
- 1.5 Should the provisions of this Memorandum conflict in any way with the provisions of:
- 1.5.1 the Sale Agreement; or
- 1.5.2 the Rules; or
- 1.5.3 the Architectural Design Principles and Guidelines,
- The provisions of this Memorandum shall prevail.

- 1.6 Where an expression has been defined and such definition contains provisions conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in this Memorandum.
- 1.7 Where any time period is referred to it shall be computed according to the civil method of computation, being exclusive of the first day and exclusive of the last.
- 1.8 Where a member is required to make payment on a particular day, and such day is not a business day, then he shall be required to make such payment on the next business day thereafter.
- 1.9 Any relaxation, indulgence or extension of time given by the Association to any Member shall not be regarded as a waiver of the Association's rights under this Memorandum.

2. INCORPORATION AND NATURE OF THE COMPANY

- 2.1 The Association is a pre-existing non-profit company with Members as defined in 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 the supersedes the Memorandum and Articles of Association of the Association applicable immediately prior to the filing hereof.
- 2.2 The Association 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 ASSOCIATION

The objects of the Association 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 Association 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 Association for the attainment of the objectives of the Association 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 fines and other 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 Building Code, Environmental Management Plan, Landscaping Design Code and the Rules;
- 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 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 ASSOCIATION

- 4.1 The powers of the Association are limited by its objects referred to in clause 3.
- 4.2 In pursuing its objects, the Association has all the legal powers of an individual that are capable of being exercised by a juristic person.

5. VARIATION OF MEMORANDUM

- 5.1 After the Development Period, the provisions of this Memorandum may only be amended or varied by way of a Special Resolution of Members. During the Development Period, the provisions of this Memorandum may be varied or amended by the Developer in its sole and absolute discretion.
- 5.2 After the Development Period, the Architectural Design Principles and Guidelines and Landscape Design Code shall only be amended by way of special resolution of Members, and with the prior written consent of the Developer.
- 5.3 The obligations imposed on the Association and its Members in terms of the Environmental Management Plan are statutory and therefore no amendment to such Plan is permissible.
- 5.4 Notwithstanding anything contained herein or elsewhere, no amendment shall be made to the provisions of this Memorandum which materially affects the rights of the Developer or the Proprietor, without the prior written consent of the Developer or the Proprietor (as the case may be). In the event of there being any dispute as to whether the Developer's or Proprietor's rights will be materially affected by a proposed amendment to the provisions of this Memorandum, the matter shall be referred to arbitration as contemplated in clause 35 hereof.

- 5.5 The Board shall nevertheless have the power to alter this MOI 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.
- 5.6 The Board must publish a notice of any alteration of the MOI or the Rules, made in terms of section 17(1) of the Act, by delivering a copy of those alterations to each Member using any of the delivery methods contemplated in section 6 of the Act.

6. MEMBERSHIP

6.1 Membership of Association

- 6.1.1 Membership of the Association shall be obligatory for and limited to the Developer in its capacity as such, and to any person, including the Developer, who is in terms of the Deeds Registry Act reflected in the records of the Deeds Office concerned as the registered owner of any Property in the Development.
- 6.1.2 Notwithstanding the provisions of article 6.1 above, purchasers of erven in the Estate shall become Members of the Association automatically upon registration of transfer of their erf to them.
- 6.1.3 No Member shall in any manner alienate his erf or any share in any erf unless:
- 6.1.3.1 the transferee agrees to become a Member of the Association upon transfer of the Erf to him and the Association accepts him as a Member;
 - 6.1.3.2 upon registration of transfer of that Erf into the name of the transferee, he shall *ipso facto* become a Member of the Association; and
 - 6.1.3.3 the agreement on alienation records this.
- 6.1.4 In order to procure compliance with the provisions of this Memorandum, it shall be registered as a condition of ownership of the Property that no Property shall be alienated without the prior written consent of the Association, which consent shall be given if the Association is prepared to admit the proposed transferee as a Member of the Association and the transferor has complied with all his obligations to the Association and has paid all amounts due to the Association by him.
- 6.1.5 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 alienation by way of sale, exchange, donation, deed, inheritance, cession, mortgage, assignment, court order or insolvency, irrespective of whether such

alienation is subject to a suspensive or resolutive condition. In the case of an artificial person, such as a company, close corporation or trust, any material change in the beneficial ownership or in the controlling interest thereof, shall be deemed to constitute an alienation for the purposes of these Articles and, in the event of there being any dispute as to whether there has been a material change in beneficial ownership [or controlling interest], this shall be resolved by a partner of the Auditors acting as expert, not arbitrator, whose decision shall be final and binding.

6.1.6 Where any Property is owned by more than one person, all the registered owners of that Property shall together be deemed to be one Member of the Association. Co-owners shall nominate one of their number to be their representative for all purposes under these Articles and the Rules, and all communications from the Association shall be addressed to that Member only. Such nomination shall be made in writing to the Association within 7 (seven) days of such co-owners becoming Members of the Association in terms of these Articles.

6.1.7 The registered owner of Property may not resign as a Member of the Association for as long as he owns property in the Estate.

6.2 Admission of Members

6.2.1 The initial Members of the Association shall be persons nominated by the Developer and those persons who become owners of erven in the Estate, who shall *ipso facto* become Members upon registration of transfer of an erf to them.

6.2.2 When signing an agreement to purchase an erf in the estate, the Purchaser shall complete an application form for admission as a Member of the Association and shall agree in writing to comply with and abide by these Articles and all the Association's requirements, rules and regulations. The board has the sole discretion to admit or decline a proposed member, on reasonable grounds.

6.3 Rights and Duties of Members

6.3.1 The rights and obligations of a Member shall not be transferable and every Member shall:

6.3.1.1 to the best of his ability further the objects and interests of the Association; and

6.3.1.2 observe all rules made by the Association;

Provided that nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms hereof, as security to the mortgagee of that Member's Property.

6.3.2 During the Development Period the Association shall be administered and controlled solely by the Developer and only the Developer shall be entitled to vote, to appoint Directors and the Chairman, and to attend meetings of the Association during this period.

- 6.3.3 During the Development Period, each Member appoints the Developer as his duly authorised agent *in rem suam* to exercise all and any rights of membership on his behalf.
- 6.3.4 After the Development Period, membership of the Association shall, subject to the rights of membership as prescribed by the Act, confer upon a Member, the following rights:-
- 6.3.4.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
 - 6.3.4.2 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 Association as listed in Section 26 of the Act which it is recorded includes the following, namely :
 - 6.3.4.2.1 the Memorandum and any amendments to it and any Rules made by the Association;
 - 6.3.4.2.2 the records in respect of the Association's Directors;
 - 6.3.4.2.3 the reports to Members' meetings and annual financial statements;
 - 6.3.4.2.4 the notices and Minutes of Members' meetings and any communications to the Members; and
 - 6.3.4.2.8 the register of Members;
 - 6.3.4.3 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum;
 - 6.3.4.4 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;
 - 6.3.4.5 should Members holding between them, in aggregate, not less than 50% (Fifty Percent) of the voting rights of the Association, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.
- 6.3.5 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.
- 6.3.6 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 Property.

6.3.7 The rights and obligations of a Member shall not be transferable and every Member shall:

6.3.7.1 to the best of his ability further the objects and interests of the Association;

6.3.7.2 observe all Rules made by the Association or the Directors

6.4 **Cessation of Membership**

6.4.1 Membership of the Association shall *ipso facto* cease:

6.4.1.1 upon a Member ceasing to be an owner of an erf in the Estate;

6.4.1.2 upon the issue of a final order of sequestration or liquidation of the Member concerned; or

6.4.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.

6.4.2 In the event of a Member ceasing to be a Member in terms of clauses 6.4.1.1, 6.4.1.2 and 6.4.1.3, the trustee, liquidator or executor, as the case may be, shall for all purposes be recognised and be bound as the Member under this Memorandum.

6.4.3 No member, nor their executor, curator, trustee or liquidator, ceasing to be a member of the Association for any reason shall have any claim upon or interest in or rights to the funds or other property of the Association.

6.4.4 The Association may claim from any Member or his estate any levies, interest, costs, fines, or penalties or other sums due by him to the Association at the time of his ceasing to be a Member.

6.4.5 No owner of Property shall transfer his Property 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 Member in terms of the provisions of these Articles.

6.5. **The Liability of Each Member**

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

6.6. **Register of Members**

6.6.1 The Directors may by regulation, provide for the issue of a Membership certificate which certificate shall be in such form as may be prescribed by the Directors.

6.6.2 The Association shall maintain at its Office a register of Members.

7. SALE OF DEVELOPER'S RIGHTS

- 7.1 If the Developer, in one transaction alienates all its rights and all undeveloped Land vested in it on the Land and/or the Additional Properties, it shall be entitled to cede to the transferee all its rights in terms of these Articles and the transferee shall be entitled to exercise all such rights.
- 7.2 The Developer shall, at its sole discretion and option, and on written notice to the Association, cease to be a Member of the Association.

8. SALE OF PROPERTY

- 8.1 A Member shall not in any manner transfer any Property unless it is a condition of the applicable agreement that:
- 8.1.1 the proposed transferee has bound himself, to the satisfaction of the Association, as a contract for the benefit of the Association, to become a Member of the Association, upon transfer of the Property to him;
 - 8.1.2 registration of transfer of that Property into the name of the transferee shall *ipso facto* constitute the transferee as a Member of the Association.
- 8.2 The provisions of clause 8.1 shall apply *mutatis mutandis* to any transfer of an undivided share of any Property.

9. GENERAL MEETINGS

9.1 Annual General Meeting

- 9.1.1 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.
- 9.1.2 The annual general meeting shall be held not later than **6 (Six) months** after the end of each Financial Year.
- 9.1.3 All general meetings, other than Annual General Meetings, shall be called extraordinary general meetings.
- 9.1.4 The Directors may, whenever they think fit, convene an extraordinary general meeting.

9.2 Notice of General Meeting

- 9.2.1 A notice of Members' meeting and any meeting called for the passing of a Special Resolution, shall be delivered to each Member at least 21 (Twenty One) days before the meeting is to begin.

- 9.2.2 Any other general meeting shall be called by not less than 14 (Fourteen) days' notice in writing.
- 9.2.3 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.
- 9.2.4 The notice shall stipulate any resolutions and special resolutions which are to be tabled at the meeting, and shall specify the place, the date and the time of the meeting and shall be given in the manner prescribed in the Memorandum.
- 9.2.4 If a meeting is called by shorter notice than that specified in this article, it shall be deemed to have been duly called if it is so agreed by all the Members having a right to attend such meeting.
- 9.2.5 The accidental omission to give notice of a meeting or of any resolution or to give any other notification or present any document required to be given or sent in terms of these Articles or in terms of the Act or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings or any resolution passed at any meeting.

9.3 **Venue of Meetings**

- 9.3.1 General meetings of the Association shall take place at such place as shall be determined by the Directors from time to time; provided, however, that such a place shall be within 10 (TEN) kilometres of Stoneford.
- 9.3.2 The Chairman may, with the consent of any general meeting at which a quorum is present (or shall, if so directed by the meeting) adjourn a meeting to a different time and place, provided that no business shall be transacted at any adjourned meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

10. **PROCEDURE AT GENERAL MEETINGS**

10.1 **Agenda**

The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including consideration of the following matters which shall be dealt with at every annual general meeting:

- 41.1 the consideration of the Chairman's Report to the Directors;
- 41.2 the election or re-election of Directors;

- 41.3 the consideration of the audited financial statements of the Association for the last Financial Year of the Association preceding the date of such meeting;
- 41.4 the consideration of the report of the Auditors;
- 41.5 the noting of the levy for the Financial Year during which such Annual General Meeting takes place;
- 41.6 the consideration and fixing of the remuneration of the Auditors for the Financial Year of the Association preceding the annual general meeting;
- 41.7 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions.

10.2 **Quorum**

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. During the Development Period the quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote, which shall be solely the Developer.

10.2.1 After the Development Period, a quorum for:

10.2.1.1 a general meeting, shall be Members holding between them, in aggregate, not less than 10% (Ten Percent) of the voting rights in the Association, present in person or by proxy, and entitled to vote;

10.2.2 a general meeting called for the passing of a special resolution, shall be Members holding between them, in aggregate, not less than 25% (Twenty Five Percent) of the voting; provided that one of such Members is the Developer's.

10.2.2 If within half an hour from the time appointed for the holding of a general meeting, a quorum is not present, the meeting:

10.2.2.1 if convened upon the requisition of Members, shall be dissolved; or

10.2.2.2 if any other case, shall stand adjourned to the same day in the next week at the same place and time or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present in person or by proxy shall be a quorum.

10.2.3 Where a meeting is adjourned in accordance with 10.2.2 above, the Association shall within 3 (Three) days after adjournment, send written notice to each Member of the Association stating:

- 10.2.3.1 the date, time and place to which the meeting has been adjourned;
- 10.2.3.2 the agenda for the meeting including any proposed resolutions, and
- 10.3.3.3 the grounds for adjournment.

10.3 **Chairman**

- 10.3.1 The Chairman of the Board, if any, shall preside as such at all general meetings, provided that should he not be present within 15 (Fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 15 (Fifteen) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting only.
- 10.3.2 During the Development Period, the Chairman and Deputy Chairman shall be nominees of the Developer.
- 10.3.3 The Chairman may, with the consent of any general meeting at which a quorum is present as required by the Act and shall if so directed by the meeting, adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 (Ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.

10.4 **Electronic Communication**

- 10.4.1 The Association 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 of the Act and the power of the Association to do so is not limited or restricted by this Memorandum. Accordingly: –
 - 10.4.1.1 any Members' meeting may be conducted entirely by Electronic Communication; or
 - 10.4.1.2 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;

10.4.1.3 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.

10.4.2 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.

10.4.3 "Electronic Communication" for purposes of this Memorandum, shall have the meaning as set out in Section 1 of the Electronic Communications and Transactions Act No. 25 of 2002.

10.5 **Voting and Resolution of Members**

10.5.1 During the Development Period, the Developer shall hold the sole voting rights in the Association, as set out in 6.3.2 and 6.3.3 above.

10.5.2 After the Development Period:

10.5.2.1 Each Member, including the Developer, in person or by proxy and entitled to vote shall have 1 (One) vote for each Property registered in his name. If any Property is registered in the name of more than one person, then all such co-owners shall jointly have one vote.

10.5.2.2 No person other than a Member and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

10.5.3 Unless the Chairman of the meeting otherwise directs, all voting shall be by a show of hands. Should the Chairman decide that voting shall not be by show of hands, then it shall be by way of a secret poll taken during the course of the meeting or alternatively, in such other manner as the Chairman of the meeting may direct. In all instances, if necessary, the Chairman shall have a casting vote.

10.5.4 Notwithstanding the provisions of the Articles, voting on the election of a Chairman of a general meeting [if necessary] or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy and entitled to vote.

10.5.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting, shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.

- 10.5.6 Unless any Member present in person or by proxy at a general meeting shall before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.
- 10.5.7 For an Ordinary Resolution to be approved of by Members, it must be supported by more than 50% (FIFTY PERCENTUM) of the voting rights exercised on the Resolution.
- 10.5.8 For a Special Resolution to be approved of by Members, it must be supported by at least 75% (SEVENTY FIVE PERCENTUM) of the voting rights exercised on the Resolution.

10.6 Proxies

- 10.6.1 A Member may be represented at a general meeting by a proxy who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorized agent and shall be in such form approved by the Board.
- 10.6.2 The instrument appointing a proxy and the power of attorney or other authority [if any] under which it is signed or a certified copy thereof, shall be deposited or faxed to the office at least 24 (Twenty Four) hours before the time appointed for the commencement of the meeting or adjourned meeting, at which the person named in the instrument proposes to vote unless the Chairman otherwise directs. No instrument appointing a proxy shall be valid after the expiration of 12 (Twelve) months from the date of its execution.
- 10.6.3 A vote given 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 that no intimation in writing of the death or revocation shall have been received by the Directors at least one hour before the time of the meeting.
- 10.6.4 Where a Member is more than one person, a majority of those persons shall sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the proxy shall be signed by a Director of the company or by its secretary and where an association of persons, by a duly authorized representative of such association. Such resolution shall be lodged at the offices of the Association

10.7 **Members Acting Other Than at a Meeting**

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

10.7.1.1 submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and

10.7.1.2 voted on in writing by such Members within a period of 20 (Twenty) business days after the resolution was submitted to them.

10.7.2 A resolution contemplated in clause 10.7.1 –

10.7.2.1 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

10.7.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.

10.7.3 Within 10 (TEN) business days after adopting a resolution in accordance with the procedures provided in this clause 10.7, the Association shall deliver a statement describing the results of the vote, consent process or election to every Member

11. **DIRECTORS**

11.1 **Development Period**

11.1.1 The Board of Directors shall during the Development Period consist solely of nominees of the Developer.

11.1.2 On registration of the Association, the first Directors shall be appointed by the Developer, for the duration of the Development Period. In the event of any of the first Directors resigning from office or becoming ineligible then the Developer shall be entitled to nominate another person to fill the vacancy.

11.2 **After the Development Period**

11.2.1 After the Development Period, the Directors shall be elected by the Members in general meeting, save for those appointed in terms of clause 11.2.5 below.

11.2.2 After the Development Period, there shall be a Board of Directors of the Association which shall consist of a maximum of 5 (Five) and a minimum of 3 (Three) Directors.

11.2.3 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 these Articles. The validity of

any resolutions taken or acts performed by the Directors during a period when the number falls short of that agreed to in terms of article 11.2.2 above, shall not be prejudiced by such shortfall.

- 11.2.4 A Director shall be a natural person who is either a Member or the authorised representative of a Member that is not a natural person, or the spouse of a Member. A Director who is not a Member of the Association, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this Memorandum.
- 11.2.5 Save for the Directors nominated by the Developer or the Proprietor in terms of clause 11.2.5 below, each Director shall continue to hold office from the date of his appointment until the next Annual General Meeting, at which meeting he shall be deemed to have retired from office but will be eligible for re-election at such meeting.
- 11.2.6 The Board of Directors shall always include a nominee of the Developer and a nominee of the Proprietor. If such nominee's appointment is revoked by the Developer or Proprietor (as the case may be) or if such nominee retires or resigns or becomes ineligible or unavailable to act as a Director, then the Developer or Proprietor (as the case may be) shall be entitled to appoint another nominee in his place.
- 11.2.7 Any Director, with the exception of Directors appointed by the Developer and the Proprietor, may be removed by a majority Board decision, at any time, for any reason whatsoever.
- 11.2.8 The Directors shall have the power to co-opt persons onto the Board for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted onto the Board shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 11.2.9 The Chairman and Deputy Chairman shall be elected by the Directors at their first meeting after the Annual General Meeting of the Association, after the end of the Development Period.

11.3 Co-opting of Directors to the Board

Upon any vacancy occurring on the Board prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors, provided, however, that if the Director who vacates his office as aforesaid, was the nominee of the Developer, the Developer shall be entitled to nominate a Director in his stead. The appointment by the Board of a Director to fill any vacancy for whatever reason, shall be made within 45 (Forty Five) days of the date upon which such vacancy occurs.

12 VACATION OF OFFICE AS DIRECTOR

- 12.1 A Director shall be deemed to have vacated his office as such upon:
- 12.1.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 12.1.2 the commission by him of any act of insolvency;
 - 12.1.3 his conviction for any offence involving dishonesty;
 - 12.1.4 his becoming of unsound mind;
 - 12.1.5 his resigning from such office in writing delivered to the secretary;
 - 12.1.6 his death;
 - 12.1.7 is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.
 - 12.1.8 his becoming ineligible, under the Act or this Memorandum, to act as a Director;
or
 - 12.1.9 if he is the nominee of the Developer or the Proprietor, the revocation of his appointment by the Developer or Proprietor, who nominated him.

13. CONTROL OF MEETINGS

- 13.1 Save as otherwise provided in this Memorandum, the Chairman shall preside at all meetings of the Board of Directors and all general meetings of Members and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Board of Directors or of Members.
- 13.2 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman or his inability or refusal to act as Chairman and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Board of Directors. In the event of the Vice-Chairman not being present at a meeting then the remaining Directors shall appoint a Chairman for the meeting. Any reference to "Chairman" in this Memorandum shall, for the purposes of this article, include "Vice Chairman".

14. ALTERNATE DIRECTORS

- 14.1 Any Director appointed by the Developer may for any reason, and at any time and for any period, appoint an alternate to act in his stead, whether temporarily or otherwise, provided that he obtains the prior written consent of the Developer to do so.

- 14.2 any other Director may obtain a leave of absence and by a resolution of the majority of the Directors, the Board may thereupon appoint an alternate to act for him during his absence, with all powers and privileges enjoyed by him.

15. DIRECTORS REMUNERATION

- 15.1 A Director, other than the Directors who are nominees of the Developer, shall not directly receive any remuneration for his services as a Director of the Association, provided that he shall be entitled to be repaid all reasonable and bona fide expenses and disbursements incurred by them respectively in or about the performance of their duties as Directors and/or Chairman and/or Vice-Chairman, as the case may be, provided such expenditure is authorised or approved by the Board.
- 15.2 If any Director commits a breach of this clause he shall forthwith cease to be a Director and shall not be eligible for re-election.

16. FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

- 16.1 Subject to the express provisions of these Articles, the Directors shall manage and control the business and affairs of the Association and shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of the Managing Agent and save as may be expressly provided in these Articles, the Directors may exercise all such powers of the Association and all such acts on behalf of the Association, subject nevertheless to any provisions of the Act, and to such Conduct Rules as may be prescribed by the Association in general meeting from time to time. Provided that no such rule made by the Association in general meeting shall invalidate any prior act of the Board of Directors which would have been valid if such rule had not been made.
- 16.2 Notwithstanding anything contained herein or elsewhere, the Board shall not pass any resolution or make any decision which materially affects the rights of the Proprietor or the Developer without the prior written approval of the Director nominated by the Proprietor or Developer, as the case may be. If there is any dispute as to whether the decision of the Board will materially affect the rights of the Proprietor or Developer then such dispute shall be referred to the Chairman of the Design Review Committee who shall determine the matter as expert and not as arbitrator, and his decision shall be final and binding.
- 16.3 Without prejudice to the generality of the foregoing, the Directors may in their discretion, from time to time, for the purposes of the Association borrow or raise such sum or sums of money from Members of the Association or from such other source as the Directors may decide. The Directors may further secure the repayment of any sums so raised in such manner and upon such terms as they may deem fit, whether by mortgaging the property of the Association or any part thereof, or otherwise.
- 16.4 Without prejudice to the generality of this article, the Directors shall ensure that there is included in the contract of appointment of any managing agent, a provision to the effect that if he is in breach of any of the provisions of his contract or if he is guilty of conduct

which at common law would justify the termination of the contract between master and servant, the Association may, without notice, cancel such contract of appointment and the Managing Agent shall have no claim whatsoever against the Association or any of the Members as a result of such cancellation.

- 16.5 Any one or more of the Members or mortgagees of Property may, if the managing agent is in breach of the provisions of his contract, or if he is guilty of any conduct which at common law would justify the termination of a contract between master and servant, request the Directors of the Association to terminate the managing agent's contract in terms of the provisions referred to in clause 16.4. The Directors shall consider such request and shall take a decision thereon as they see fit.
- 16.6 The Developer may at its option, act as managing agent during the Development Period and may charge a reasonable management fee for this. After the Development Period the Managing Agent shall be appointed by the Board.
- 16.7 The Board is entitled, in its discretion, to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers or any other professional persons or firms for whatever reason it considers necessary and on such terms as the Board deems appropriate.
- 16.8 The Board shall have the power to enter into contracts with third parties to give proper effect to the provisions of the Memorandum of Incorporation.
- 16.9 The Board may, in exercising its rights and obligations in terms of this Memorandum, incur such expenditure as is necessary to enable it to give proper effect to the provisions of the Memorandum of Incorporation.

17. MINUTES

- 17.1. The Board shall in terms of the Act cause minutes to be kept:
 - 17.1.1. of all appointments of officers;
 - 17.1.2. of names of Directors and Members present at every meeting of the Association and at every meeting of the Board;
 - 17.1.3. of all proxies exercised at each meeting; and
 - 17.1.4. of all proceedings at all meetings of the Association and/ or the Board;
- 17.2 The Directors shall cause minutes to be taken of every Directors meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting. All minutes of Directors' meetings shall after certification as aforesaid, be placed in a Director's minutes book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of companies. The Directors' minute book shall be open for inspection at all reasonable times by a Director, the Auditors, the Members and the Managing Agent.

17.3 The Association's minute book shall be open for inspection at all reasonable times by a Director, the auditors, the Members and the Managing Agent.

18. PROCEEDINGS AT MEETINGS OF DIRECTORS

18.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Memorandum.

18.2 Meetings of the Directors shall be held on at least one occasion every quarter, provided that if all the Directors shall in writing, for good reason have waived the above requirement in respect of a particular quarter, then no meeting of the Directors need be held by that quarter.

18.3 A Director may, on 7 (Seven) day's written notice to all other Directors, at any time summon a meeting of the Directors.

18.4 The quorum necessary for the holding of any meetings of the Directors shall be a minimum of 50% (Fifty Percent) of the total number of Directors present personally or by proxy, provided that after the Development Period, one of such Directors present, must be a nominee of the Developer.

18.5. Questions arising at any meeting of the Board of Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate duly appointed. Each Director shall be entitled to exercise 1 (one) vote, provided that after the Development Period, no resolution of Directors shall be carried unless the nominee of the Developer votes In favour of same. Subject to the aforesaid, in the event of an equality of votes the Chairman shall have a second or casting vote. Where a person is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors he is representing.

18.6 If a resolution is passed at a meeting of the Board and it is afterwards discovered that there was some defect in the capacity or appointment of one of the Directors concerned, or that any of them were disqualified so to act, such resolution shall be as valid as if any such person had been duly appointed and qualified.

18.7 A resolution signed by all the Directors shall be a valid resolution in all respects, notwithstanding that such resolution may not have been passed at a meeting of Directors.

18.8 The Chairman shall preside as such at all meetings of the Directors provided that should at any meeting of the Directors, the Chairman not be present within 15 (Fifteen) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 15 (Fifteen) minutes of the time appointed for the holding of such meeting, those Directors present shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to the meeting.

18.9 All competent resolutions recorded in the minutes of any Directors meeting, shall be valid and of full force and effect as therein recorded with effect from the passing of such

resolutions and until varied or rescinded, but no resolution or purported resolution of the Directors shall be of any force or effect or shall be binding upon the Members or any of the Directors unless such resolution is within the powers of the Directors.

- 18.10 The Board of Directors shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 18.11 Save as otherwise provided in these Articles, the proceedings at any Directors meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 18.12 A resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors duly convened.

19. APPOINTMENT OF COMMITTEES

- 19.1 The Directors shall be entitled to appoint committees consisting of such Directors and/ or Members and such outsiders, including the Managing Agent, as they may deem fit and to delegate to such committee such of their functions, powers and duties as they may deem fit. The Board has the further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary or desirable.
- 19.2 Any committee so formed shall act only in an advisory capacity to the Board and shall report to and be responsible to the Board, and shall conform to such rules as may be imposed on it by the Board. The committees have not the powers to pass resolutions binding on the Board or the Association.
- 19.3 The Board shall be entitled to appoint the chairman of a committee, failing which the Members of that committee shall elect a chairman of its meetings. If at any committee meeting, the chairman is not present within 15 (Fifteen) minutes after the time appointed for holding same, the committee members present may elect one of their number to be chairman for that meeting. 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.

20. LIMITATION OF LIABILITY OF DIRECTORS AND INDEMNIFICATION OF DIRECTORS

- 20.1 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.
- 20.2 The Association may:-
 - 20.2.1 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);

20.2.2 indemnify a Director in respect of liability as set out in Section 78(5); and/or

20.2.3 purchase insurance to protect the Association or a Director as set out in Section 78(7);

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

20.3 The provisions of Clause 20.1 shall apply mutatis mutandis in respect of any former Director or Member of any committee of the Board.

21. BOARD'S POWERS TO MAKE RULES

21.1 Subject to any restriction imposed or direction given at a general meeting of the Association, the Board of Directors may from time to time, amend or make Rules for the management, control, administration, use and enjoyment of the Estate, and to give effect to the provisions of this Memorandum of Incorporation.

21.2 The Board shall also be entitled to amend, repeal, add to or substitute such Rules from time to time, as and when it considers this necessary.

21.3 The Board is entitled to impose reasonable financial and other penalties upon those Members who fail to comply with the provisions of this Memorandum or the Rules.

21.4 The Rules which the Board may make pursuant to the provisions of this Memorandum shall relate, inter alia, to the following:-

21.4.1. the preservation of the natural environment;

21.4.2. vegetation and flora and fauna in the Estate (including but in no way limited to the use of exotic and indigenous plants);

21.4.3. the storing of flammable and other harmful substances;

21.4.4. the conduct of any persons within the Estate and the prevention of nuisance of any nature to any resident in the Estate;

21.4.5. the use by Members or their households, their guests and lessees, of the Roads, pathways, Common Property and open spaces;

21.4.6. the use of parking areas;

21.4.7. the imposition of fines and other penalties, for non-compliance with the provisions of this Memorandum and Rules, against Members of the Association and those who occupy erven on the Estate and person accredited to do work on the Estate and visitors to the Estate;

21.4.8. the management administration and control of the Common Property (excluding those erven which form part of the Equestrian Centre);

- 21.4.9 the erection of all buildings and other structures on the Estate (including but in no way limited to, Services connections to buildings), and any alterations or additions thereto;
- 21.4.10 the accreditation of contractors, architects and other professionals for the Estate;
- 21.4.11. the establishment, installation and maintenance of gardens, both public and private (including the accreditation of landscape architects, landscape contractors and garden maintenance personnel);
- 21.4.12 the use by owners or their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 21.1.13 the right to prohibit, restrict or control the keeping of any animals or pets;
- 21.1.14 the use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
- 21.1.15 the placing of movable objects and refuse upon the outside of the buildings, including the power to remove any such objects;
- 21.1.15 the control of business premises in the Estate (if any) and the use of Land within the Estate (excluding land that forms part of the Equestrian Centre);
- 21.1.16 the accreditation of estate agents and letting agents (insofar as this doesn't conflict with any rights of the Developer), in respect of property on the Estate;
- 21.1.17 the management of sectional title schemes on the Estate;
- 21.1.18 the re-sale and letting of property within the Estate.

22. ENFORCEMENT OF THE RULES

- 22.1 The Board may take or cause to be taken such steps as it considers necessary to remedy a Member's breach of any rules and to debit the costs of so doing to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the Association. This shall be in addition to any fine and or other penalty imposed on such Member.
- 22.2 In the event of any breach of the rules by any tenant, employee, lodger, family member, contractor, occupier or invitee of any Member, the Board shall be entitled to take such action as it deems fit against the Member concerned.
- 22.3 In the event of any breach of the Rules by the Members of any Member's household or his guest or lessees, such breach shall be deemed to have been committed by the Member himself but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 22.4 Notwithstanding the foregoing, the Directors may in the name of the Association, enforce the provisions of this Memorandum and any Rules by civil application or action in

court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they deem fit. Any Director authorised to do so by the Board, shall be entitled to depose to any affidavit on behalf of the Association and to give instructions to the Association's legal representatives.

22.5 If the Association incurs any legal costs as a result of the breach (or deemed breach under clause 22.2 and 22.3 above) by a Member, the Association shall be entitled to recover all such legal costs from the Member concerned on an attorney and own client scale.

22.6 It shall be the duty of the Managing Agent, or such other person or body as may be empowered by the Directors, to ensure compliance by the Members, their guest, lessees and all other persons within the township, with the Conduct Rules and to this end, to issue such notices, impose such fines or do such things as may be necessary or requisite.

23. EQUESTRIAN CENTRE

The Equestrian Centre is private property and shall be owned and administered by the Proprietor. Members shall be entitled to use and access of the Equestrian Centre only upon such terms as the Equestrian Centre imposes.

24. FINANCE

24.1 Finance Committee

The Board may establish a finance committee, which shall consist of a minimum of 3 persons appointed by the Directors, (at least 2 of whom shall be Directors), to assist it in carrying out the functions set out in these provisions. However, any decisions taken on the matters set out herein shall be by way of Board resolution.

24.2 Ordinary Levies

24.2.1 The Board shall establish and maintain a levy fund sufficient in its opinion for the control, management and administration of the Association and the maintenance, repair, and improvements of the Estate property, including keeping in good order and condition of the roads, Common Property and services, structures, erections and other improvements in the Development, as well as the provision of security service, and/or for payment of all rates and other charges payable by the Association in respect of the erven vested in it and/or for the services rendered to it and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably, incurred in connection with the Management of the Association, the Development and the Association's affairs including all and any expenses reasonably or necessarily incurred in the attainment of the object of the Association or in the pursuit of its business.

- 24.2.2 Before the end of each financial year, the Board shall prepare a budget, setting out all of the anticipated expenses which the Association is likely to incur during the following financial year, which shall include a reserve amount for unexpected expenses.
- 24.2.3 The Board shall determine the proportions in which Members shall contribute towards the levy fund in accordance with the following principles, having regard to all circumstances prevailing at the time and to equity:
- 24.2.3.1 it shall assign those costs arising directly out of the erf itself to the Member owning such erf;
 - 24.2.3.2 it shall assign those costs relating to the Estate and the Conservation areas generally, to the owners of the erven equally;
 - 24.2.3.3 if a Member owns more than one erf he shall be deemed to be a separate owner in respect of each erf he owns for the purpose of levies;
 - 24.2.3.4 it may draw a distinction between the Services rendered to a particular Body Corporate for a particular scheme, again taking into account the nature and the extent of the Services rendered to that Body Corporate and the number of members of that Body Corporate;
 - 24.2.3.5 they may, during the development of the Estate, assign costs arising solely out of a particular phase of the Estate to the owners of erven within that phase (for example in the event of the developed phases of the Estate having the benefit of security and the undeveloped phases not having the benefit of security, the costs of security may be assigned to the owners in the developed phases of the Estate), provided however that the Board may in any case where it considers it equitable to do so, assign to any owner any greater or lesser share of the costs as may be reasonable in the circumstances.
- 24.2.4 Within 14 days of preparing such budget, the Board shall circulate copies thereof to each Member, together with details of the levy payable by that Member for the following financial year.
- 24.2.5 All ordinary levies due by Members shall be payable to the Association on the 1st day of each month, without deduction, demand or set off by way of debit order.
- 24.2.6 The levies shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 24.2.7 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 24.2.1 above.
- 24.2.8 Fines and penalties recovered from Members shall be deposited into the ordinary levy fund and may be used to defray the expenses set out in 24.2.1 above.

24.3 **Special Levies**

The Board shall have the power from time to time to impose additional special levies on Members in respect of any unforeseen expenditure not included in the Budget for the financial year and shall determine how such levies are to be paid in accordance with the principles set out in this Memorandum.

24.4 **Levy Stabilisation Fund**

24.4.1 The Association shall establish a levy stabilisation fund for the purposes of meeting any extraordinary expenditure (including any extraordinary maintenance or repair costs) and expenditure of a capital nature to be incurred by the Association in carrying out its main objects in accordance with the provisions of these Articles.

24.4.2 In the event of any land being sold, or otherwise alienated or disposed of, the new owner shall be obliged to pay an initial contribution towards the levy stabilisation fund. The Board shall determine the amount of the contribution applicable from time to time.

24.4.3 No Member shall be entitled to a refund of the levy stabilisation fund contribution paid by him at any stage, even when he ceases to be a Member.

24.4.4 Where an erf is owned by an artificial person, such as a company or close corporation, or where it is owned by a trust, a further contribution to the levy stabilisation fund shall be made by such owner if there is a change in beneficial ownership or control, immediately upon such change taking effect. Examples are the alienation or transfer of:-

24.4.1 shares in a company;

24.4.2 members' interest in a close corporation;

24.4.3 a beneficiary's interest in a trust; or

24.4.4 a change in the control of a trust;

which owns an erf in the Estate.

24.4.5 Notwithstanding the above, a material change in the beneficial ownership or the controlling interest which results from the alienation by way of succession, whether testate or intestate, or from an act of estate planning or corporate restructure, as decided by the board in its sole discretion, shall not give rise to an obligation on the part of the artificial person or its new representative member to pay a contribution to the levy stabilisation fund.

24.4.6 In the event of there being two or more simultaneous transfers of the same land in the Deeds Registry, the Board may in its sole and absolute discretion, only require one contribution to be made to the aforesaid levy stabilisation fund in respect of all such transfers.

24.4.7 the levy stabilisation fund shall be deposited and kept in a separate investment account held with a bank in the name of the Association, and all interest thereon shall be credited to the Association.

24.5 Levies: General

24.5.1 In the event of a person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be due, owing and payable, and recoverable from such person.

24.5.2 Any amount due by a Member, whether in respect of a levy or any other amount falling due for payment under these Articles, which remains unpaid after it has fallen due, shall bear interest from the due date to the date of actual payment, at the rate of 2% (Two percent) per month compounded.

24.5.3 A member shall not be entitled to demand payment of any amount standing to the credit of his levy account at any time, even if he ceases to be a Member.

24.5.4 All contributions levied under the provisions of these Articles shall be due and payable by Members on the passing of a resolution to that effect by the 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.

24.5.5 Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies, or any other amount of any nature which the Board avers is due to the Association, such Member shall not be entitled, either in person or proxy, to speak or vote at a meeting of Members of the Association.

24.5.6 In the event of there being a dispute as to the amount of any levies, interest, legal costs or other sum due by the Member, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.

24.5.7 Although the obligation to pay levies to the Association shall rest with the individual Member it shall, if the Board so directs, be the responsibility of the Body Corporate of any sectional title scheme laid out on the land in the Estate, to collect the levies due to the Association from the Body Corporate's members, and to pay same over to the Association on the due dates.

24.6 Levies: Developer

24.6.1 The Developer shall not be obliged to pay any levies in respect of erven which it has not yet sold.

24.6.2 Notwithstanding anything contained herein or elsewhere, during the Development Period, the Developer alone, in its sole and absolute discretion, shall determine what portion of the total expenditure of the Association is to be paid by the Developer.

24.6.3 The Developer shall be entitled to recoup from the Association the costs which it has incurred in providing and installing services on the Estate, providing assets or items of a capital nature, and for the costs incurred by it in administering the Estate during the Development Period.

25. ACCOUNTING RECORDS

- 25.1 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 explain the transactions and financial position of the business of the Association.
- 25.2 The accounting records shall be kept at the registered office of the Auditors or at such other place or places as the Board considers fit, and shall be open to inspection by the Members during business hours, by prior appointment only.
- 25.3 A copy of the Association's most recent audited financial statements shall be laid before the Annual General Meeting each year.

26. DESIGN REVIEW COMMITTEE (DRC)

- 26.1 The Design Review Committee shall comprise of:
 - 26.1.1 during the Development Period, at least 1 (one) professional architect appointed by the Developer, a representative of the Developer and any other individuals appointed by the Developer.
 - 26.1.2 after the Development Period, at least 2 (two) professional architects appointed by the Board and at least 1 (one) Board member.
- 26.2 The duties of the DRC shall be to ensure compliance with the Building Code and the Architectural Design Principles and Guidelines and to formulate and amend these from time to time. Its duties shall include the following:
 - 26.2.1 approving all building plans, and any variation thereof, prior to their submission to the relevant Local Authority;
 - 26.2.2 approval and control of all Landscaping and gardening in respect of Stoneford in accordance with the provisions of the LDC and EMP;
 - 26.2.3 approving the position of each building to be built in Stoneford. Height restrictions can be imposed as deemed necessary.
- 26.3 The DRC shall be entitled to charge a fee for the approval of building plans which shall be payable by the owner submitting building plans for approval. The amount of such fee shall be set by the DRC from time to time.
- 26.4 The DRC shall on request, supply an owner with the particulars of the Building Code and Architectural Design Principles and Guidelines.
- 26.5 The DRC shall be entitled, in conjunction with the Local Authority from time to time, to impose additional regulations or to amend the Building Code, in order to ensure that a high quality of building standards and aesthetics is maintained.

- 26.6 The DRC will also ensure that the aesthetics of any development within the Estate is in accordance with the standards and architectural theme which will enhance the attraction of the Estate as a whole.
- 26.7 The Board shall ensure that the DRC carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Architectural Design Principles and Guidelines.
- 26.8 The chairman of the DRC shall be elected by its members at its first meeting in each financial year of the Association, provided that, for the Development Period, the Chairman shall be the Committee member nominated by the Developer.

27. BUILDING CONTROLS

- 27.1 In order to procure compliance with the nature and amenity of the Estate nothing shall be placed on or attached to a building or other structure which is visible from the outside thereof, without the prior written consent of the DRC.
- 27.2 No building or structure, not any extension or alteration to an existing building or structure shall be built or erected on any erf or land with the Estate, other than in accordance with the Town Planning Scheme, the Architectural Design Principles and Guidelines and the plans approved by the DRC and the Association and the relevant Local Authority. The DRC's approval shall be in writing and signed by a duly authorised representative of the DRC. Before giving such approval, the DRC may require, *inter alia*, that there be lodged with it:
- 27.2.1 such plans, drawings and descriptions as are necessary, in the opinion of the DRC, to enable it to consider the matter;
 - 27.2.2 details of construction materials to be used;
 - 27.2.3 the payment of a scrutiny fee, set by the Association, in its sole and absolute discretion, to peruse and consider the aforesaid documentation;
 - 27.2.4 a geo-technical report for the piece of land in question;
 - 27.2.5 a detailed survey of the land in question (which shall include, *inter alia*, the position of all indigenous trees, the road edges and markings, all services, all embankments, all retaining walls, the road reserve and the cadastral boundaries of the land in question) and;
 - 27.2.6 such other documentation as the DRC, in its sole and absolute discretion, may require.
- 27.3 No Member may, without the written consent of the DRC:
- 27.3.1 change the colour of the exterior walls of any building or structure on the Estate, including the exterior doors and window frames, exterior fixtures and fittings;

- 27.3.2 replace any exterior fixtures, fittings or appurtenances, including but not limited to pergolas, blinds, shutters awnings or ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon construction of the building with items of the same nature, colour and appearance;
- 27.3.3 make any additions, alterations or extensions to any building on the Estate, or erect any further buildings, structures or fences, whether of a temporary or permanent nature;
- 27.3.4 remove any fixtures, fittings, doors or windows from the exterior of a building, or demolish any portion of the exterior of a building.
- 27.4 If a building on a Member's erf is destroyed and he decides to rebuild it, building plans must be prepared and submitted to the DRC, the Association and the local authority for approval, before any building commences.
- 27.5 The DRC may give any approval required in terms of these Articles subject to such conditions as it deems fit.
- 27.6 In the event that any building or other structure on the Estate is not erected in accordance with the plans approved of by the DRC, the Association shall be entitled to require that the Member forthwith remove such structures or parts thereof, or effect such changes, as to procure compliance with the approved building plans. Alternatively, the Association can procure such changes and/ or removals itself and recover the costs of doing so from the Member concerned, which amount shall be deemed to be part of the levy due by the Member to the Association.
- 27.7 This clause shall in no way alter or supersede any requirements of or obligations to the relevant Local Authority.
- 27.8 The provisions of this clause shall not be binding on the Developer during the Development Period.
- 27.9 Members shall ensure that their erf is kept in a neat and tidy state at all times, including during the building process, to the reasonable satisfaction of the DRC, and in accordance with the requirements set out in the Building Protocol document.
- 27.10 The Architectural Design Principles and Guidelines may be amended by the Developer from time to time during the Development Period and, after the expiry of the Development Period, may be amended by the DRC with the prior written consent of the Developer.

28. MAINTENANCE

- 28.1 If the Board considers that the appearance of a Member's erf or any structure or building on it is unsightly and/or detracts from the aesthetics of the Estate or is not being properly maintained, the Association may serve notice on such Member to take the steps specified in the notice to remedy this.

- 28.2 In the event of the Member failing to take the requisite steps within 30 (Thirty) days of the date of such written notice, the Association shall be entitled to add the cost to the Member's levies.
- 28.3 The Board shall determine the routine maintenance requirements of:
- 28.3.1 the exterior of each and every building within the Estate, including those on Members' erven;
 - 28.3.2 all common property and Roads in the Estate; and
 - 28.3.3 all other ground within the Estate, whether held by the Association or by Members privately;
- 28.4 The Board shall instruct the estate manager to effect such maintenance on the Estate as it considers necessary from time to time;
- 28.5 For the purposes of exercising its functions in terms hereof, the Directors of the Board, its members, and the estate manager, shall be entitled to access to any Members erf and the buildings thereon, at all reasonable times.
- 28.6 It is specifically recorded that the maintenance of the exterior of the Sectional Title Units within Stoneford shall at all times remain the responsibility of the Body Corporate of that particular scheme who may raise special levies from time to time for purposes of maintenance.

29. SERVICES

- 29.1 The Association may, from time to time, contract with suppliers to provide services such as electricity, water telephone and refuse removal services to the Estate. Where the Board considers it necessary, it may allow service providers and/or local authority, to conduct work or effect installations, beyond the boundaries of the relevant servitudes on the common property.
- 29.2 Inasmuch as the provision, establishment, maintenance and repair of such services may be required to take place in the Estate, Members shall be obliged to accept the laying out and installation of such services across their land, in such places as the Board or relevant service provider determines, from time to time. The Association, the relevant service provider or persons authorised by them, shall be entitled to enter upon such land for the purposes of providing, establishing, inspecting, maintaining and/or repairing the services, provided that this be carried out with as little inconvenience to the affected party as reasonably possible.
- 29.3 In the event of the Local Authority or any other service provider failing to maintain or provide the services normally provided by a local authority or such service provider, or their not maintaining such services to a standard acceptable to the Association shall be entitled (but not obliged) to provide and maintain such services.
- 29.4 Each home owner shall have septic tanks as designed by the Engineer. The Association shall have no responsibility for the provision of sewage.

- 29.5 The Association may also provide certain services to the Estate, such as security, maintenance and such other utilities as it considers appropriate. Members shall be obliged to give the Association and those authorised by it access to their erven in order to provide such services. The association shall be entitled to recover the costs of providing such services from the Members, as part of their levies.

30. LANDSCAPING

The landscaping of a Member's erf shall be undertaken in accordance with the Landscape Design Plan. A garden design plan shall be drafted, in accordance with the Association's rules and requirements, by a landscape contractor accredited by the Board. Not member shall commence landscaping until such landscape plan has been approved by the DRC and the Association, in writing.

31. ROADS AND COMMON PROPERTY

- 31.1 The Association shall be responsible for the maintenance, upkeep and repair of Common Property, Roads and other common landscaped areas within the Estate.
- 31.2 Members and their invitees shall be entitled to use the Common Property as well as the Roads on the Estate, subject to such rules as the Board may lay down from time to time. Members shall have vehicular and pedestrian ingress and egress from their land to a public road at all times.
- 31.3 No resolution for the winding up of the Association shall be passed until the Member' rights of vehicular pedestrian ingress and egress to their erven are secured by way of servitudes registered against the Roads and Common Property or the transfer of such Roads and Common Property to the local authority, as public roads.
- 31.3 Neither the whole nor any portion of the roads or Common Property which fall inside the boundaries of the land owned by the Association or Body Corporate, shall be sold, let or alienated or otherwise disposed of, subdivided or transferred except with the consent of a resolution of the majority of the Members of the Association.
- 31.4 The Common Property erven belonging to Association shall not be mortgaged or made subject to any rights, whether registered in the Deeds Registry or not, save for servitudes which are for the purposes of protecting the rights of Members and ensuring that services may be maintained and protected for the benefit of Members of the Association, without the sanction of a resolution of the Association.

32. OCCUPATION OF BUILDINGS

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

33. SECURITY

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

The Association shall not be held responsible for any loss, damage or injury which occurs in consequence of any breach of security on the Estate.

34. ENFORCEMENT OF OBLIGATIONS OF OWNERS

Should any Member, or anyone who occupies his erf through him, fail to perform any obligation incumbent upon him, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as it is, in the opinion of the Association, necessary 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. Furthermore, the Association is entitled to impose a fine or financial penalty upon Members for their failure to comply with any Estate rules, including but not limited to the Architectural Design Principles and Guidelines, the Building Code, the Landscaping Design Plan, the Conduct Rules, these Articles, and the Environmental Management Plan. Such fine or penalty shall be deemed to be part of the Member's levies and shall attract interest if not paid timeously. The Member shall be obliged to bring to the attention of any occupant of his erf, the rules of the Association. In addition, all Members must ensure that their invitees upon the Estate comply with the Association's rules.

35. DETERMINATION OF DISPUTES

- 35.1 Should a dispute arise between a Member and the Directors of the Company, either the Member or the Directors may refer the dispute to an Arbitrator for determination in terms of the provisions of the Arbitration Act of 1965.
- 35.2 The arbitrator shall be a retired Judge and/or practising attorney or advocate of not less than (20) Twenty years standing who shall be agreed upon between the parties, or failing agreement, appointed by the then President of the KwaZulu-Natal Law Society or its successor with a request that the President nominate an Arbitrator to whom the dispute will be referred.
- 35.3 The arbitration shall be held in Pietermaritzburg or such other place or places as the arbitrator in his sole discretion may determine, in accordance with such procedures as may be determined by the arbitrator and may be held, if in the exercise of his discretion

he considers it appropriate, in an informal and summary manner on the basis that it shall not be necessary to observe or carry out the usual formalities or procedures, including the delivery of pleadings, the making of discovery or the observance of the strict rules of evidence.

- 35.4 Without detracting from the arbitrator's discretion in terms of clause 31.3 foregoing, it is the parties intention that as far as it is practicable in the circumstances, that the arbitration shall be held and completed as soon as possible and in any event within 3 (Three) months after it is demanded and the arbitrator should determine the procedures for the arbitration accordingly.
- 35.5 The decision of the arbitrator shall be final and binding upon both the Member and the Company, and may be made an order of court at the instance of any one of the parties to the dispute, save that any party hereto may refer the arbitrator's finding to an appeal board consisting of three persons with like qualifications as set out in paragraph 35.2. each one of the parties shall be entitled to nominate one such appeal arbitrator. The two so nominated shall thereafter appoint an umpire of their choice who shall act as the chairman of the appeal arbitrators. The provisions of this arbitration clause shall thereafter, *mutatis mutandis*, apply to such appeal board.
- 35.6 Subject to the provisions of this clause, the arbitration will be held under the provisions of the arbitration laws for the time being in force in South Africa.
- 35.7 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages, account of profits, a penalty or otherwise as he, in his sole discretion of costs, including if applicable, costs on the attorney and client scale or own client scale and his own fees.
- 35.8 The arbitrator is specifically authorised to make an interim order pending the final determination of any dispute which may be submitted to him.
- 35.9 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not disclose it to an one except for the purposes of obtaining an order of court as is envisaged foregoing.
- 35.10 The provisions of this clause:
- 35.10.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.
- 35.10.2 are severable from the rest of these articles and shall remain in effect despite the termination of or invalidity for any other reason of this agreement.
- 35.11 This clause shall not preclude either party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.

36. DEVELOPERS RIGHTS REGARDING THE ESTATE

- 36.1 The developer shall be entitled to develop any land within the Estate of which is the owner, without the approval of the Association.
- 36.2 The Developer may, on written notice to the Association, inform the Association of additional immovable property which is to be incorporated into the Estate. The definition of Estate in these Articles shall be deemed to include such additional property from the date specified in such notice by the Association

37. FAILURE TO COMMENCE AND/ OR COMPLETE BUILDING ON TIME

- 37.1 In the event that a Member fails to commence construction of his dwelling within 30(Thirty) months from the date of registration of transfer of his erf to him, he shall pay a penalty to the Association as determined by the Association from time to time at its sole discretion.
- 37.2 If a Member fails to commence construction of his dwelling within a further 3 (Three) month period thereafter, he shall be obliged to offer the erf to the Developer for re-purchase by it at the same purchase price which the Member paid for it, less VAT or transfer duty and costs. If the Developer declines such offer, the Board is entitled to impose further penalties on the Member concerned, by way of a penalty levy raised each month until the building commences. The sum of such penalty levy shall be determined by the Board from time to time.
- 37.3 If a Member fails to complete the construction of his dwelling and the other buildings on his erf within a 24 (Twenty Four) month period after the commencement of construction, he shall pay a penalty to the Association as determined by the Association from time to time at its sole discretion.

38. PROHIBITION AGAINST THE SUB-DIVISION AND CONSOLIDATION OF ANY LAND

No Member shall be entitled to sub-divide or consolidate his erf/ erven in the Estate, without the prior written consent of the Association, which consent the Association may in its sole and absolute discretion grant or refuse. This provision shall not be binding upon the Developer.

39. ENVIRONMENTAL MANAGEMENT PLAN

- 39.1 Members shall at all times adhere to the provisions of the Environmental Management Plan, and ensure that such provisions are adhered to in respect of their erven.

- 39.2 The management and the other obligations undertaken by the Developer in terms of the Environmental Management Plan shall automatically pass to the Association upon the expiry of the Development Period.

40. CONSERVATION TRUST

- 40.1 The Conservation Trust has been established for the purposes of, inter alia, establishing and rehabilitating the conservation areas on the Estate.
- 40.2 The Conservation Trust has been funded initially by contributions from the Developer. Thereafter, contributions will be made by the Members to the Conservation Trust as part of their monthly levies. The Conservation Trust, in conjunction with the Board, shall determine the amount required from each member in order to continue to fund the Trust's objectives.

41. AUDIT

- 41.1 The Association 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.
- 41.2 The Association 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.

42. SERVICE OF NOTICES

- 42.1 A notice may be served by the Association upon any Member, either personally or by sending it through the post in a prepaid registered letter, addressed to such Member at such address as he may have notified the Association in writing, save that such address shall be within the boundaries of the Republic of South Africa, or if such Member has failed to notify the Association in writing of any such address, at the address of any Property owned by him, provided that copies of all notices sent to Members shall be sent to the mortgagee [if any] of that Member's Property.
- 42.2 Any notice, if served by post, shall be deemed to have been served on the day but four following that on which the letter containing the same was put into the post, and in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office as a prepaid registered letter. If sent by telefax, the notice would have been deemed to have been received 48 (Forty Eight) hours after the confirmation of transmission of such telefax.
- 42.3 Any notice sent by e-mail shall be deemed to have been received 48 (Forty Eight) hours after confirmation of delivery and read receipt.
- 42.4 Members may change their address for service of notices at any time by giving at least 7 (Seven) days prior notice, in writing.

- 42.5 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, provided such failure was not intentional.

43. DELEGATION OF POWERS TO MANAGING AGENT

The powers of the committees established in terms of this Memorandum and the powers of the Directors and the powers of the Association generally may be delegated to the Managing Agent to such extent and upon such conditions as the Directors may determine from time to time and such delegations may from time to time, be revoked either in whole or in part by the Directors. If a Managing Agent was appointed, such Managing Agent may be obliged to take out fidelity insurance to the satisfaction of the Directors for all moneys held by the Managing Agent on behalf of the Association from time to time. If there be no Managing Agent, then all references to the Managing Agent in these Articles relating to the constitution of committees of Directors, shall be deemed to be a reference to an additional Director as Member of the committee concerned, and all other references to the Managing Agent shall be deemed to be a reference to the Directors or committee or persons appointed by them for the purposes concerned.

44. WINDING UP OF HOA

- 44.1 No resolution for the winding-up of the Association and the transfer of the assets shall be taken unless the Association shall have made adequate provision for the rights of Members to obtain access to their Property and their rights of exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the Member concerned if the Member so requires.
- 44.2 In the event of the Association being wound up, its assets shall devolve upon such other Company as the Members in such winding up order may determine, provided that such Company has aims and objects similar to those of the Association.

45. BINDING CLAUSE

The provisions of these Articles shall be binding upon all Members and insofar as they may be applicable, to all persons occupying any Property by, through or under any Member, whatever the nature of such occupation.

46. DISCLAIMER OF RESPONSIBILITY

- 46.1 The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring on the Estate. Members hereby acknowledge that they 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.

- 46.2 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 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.
- 46.3 The 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 occurring on or in connection with the Estate.