

## MEMORANDUM OF INCORPORATION

of

### AVENUES ESTATE RESIDENTIAL HOMEOWNERS' ASSOCIATION (RF) NPC

which is referred to in the rest of this Memorandum of Incorporation as “the Association”. The Association is a non-profit company with members, with the following objects (the words used below with upper case first letters shall bear the meaning ascribed to them in Article 1):

1. To promote the development and maintenance of all properties within the Residential Sub Precinct, and to ensure that all such properties are developed and maintained in such a way as to derive maximum benefit for the whole community of the Residential Sub Precinct.
2. To promote, advance and protect the interests of Members generally and to co-ordinate with the Avenues Estate Management Association for the benefit of the Association and its Members.
3. To collect levies and other contributions towards the funds of the Association for the attainment of the objectives of the Association or any one of them.
4. To maintain Common Spaces within the Residential Sub Precinct, which the Association may own or otherwise be responsible for and to make and enforce regulations governing the use thereof by Members.
5. To provide security for, and other services to, the Residential Sub Precinct.
6. To regulate the conduct of any person within the Residential Sub Precinct and to prevent any nuisance of any nature to any Member.
7. To impose fines and other penalties upon Members disobeying the Memorandum of Incorporation or the Rules made in terms thereof.

B.

The Memorandum of Incorporation are as follows:

1 **INTERPRETATION**

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

1.1.1 “Act” means the Companies Act 71 of 2008 as amended from time to time;

1.1.2 “Association” means Avenues Estate Residential Homeowners’ Association (RF) NPC;

1.1.3 “Beneficial Interest” means, in the event of the Member being :

1.1.3.1 a close corporation, the entire member’s interest in the close corporation;

1.1.3.2 a company, all the issued shares in that company or

1.1.3.3 a trust, the entire beneficial interest in that trust (as the case may be).

1.1.4 “Board” means the board of Directors of the Association for the time being;

1.1.5 “Body Corporate” means a body corporate as defined in Section 1 of the Sectional Titles Schemes Management Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act;

1.1.6 “Common Spaces” means the common areas within the Residential Sub Precinct, which areas shall include, inter alia, open spaces, parks, certain areas of indigenous bush, certain road verges and private roads within the Residential Sub Precinct;

1.1.7 “Developer” means Hilton Devco (Pty) Ltd (Registration No. 2012/083047/07), including its successors and assigns;

- 1.1.8 “Development Manual” means Avenues Estate Development Manual dated March 2020, drafted by the Developer, (and which includes the Builder’s performance agreement, Design guidelines, Landscaping protocols and security protocols), as amended and added to, from time to time;
- 1.1.9 “Development Period” means the period reckoned from the date of registration of the Association until such time as the Developer gives written notice to the Association of the termination of the Development Period;
- 1.1.10 “Directors” means the directors of the Association for the time being;
- 1.1.11 “Municipality” means the Umgeni Municipality, its successors in title or assigns;
- 1.1.12 “Environmental Management Approval” means the Environmental Authorisation issued by the Department of Agriculture, Environmental Affairs and Rural Development (Refence DC2/0061/08), together with the appeal judgment in respect thereof, as read with the Environmental Management Plan, drafted by Guy Nicolson dated March 2020 , as amended, from time to time;
- 1.1.13 “the Estate” means the area outlined on the Plan, which incorporates Erf 1676 Hilton and all subdivisions thereof (as may be amended, from time to time, in terms of the MMA’s Memorandum of Incorporation);
- 1.1.14 “Individual Ownership” means ownership by a natural or juristic person or persons;
- 1.1.15 “Land” means any freehold property in the Residential Sub Precinct, including any subdivision capable of individual ownership, whether such land is improved or not, and a sectional title unit under the provisions of the Sectional Title Schemes Management Act, where a sectional title scheme has been established on any such Land;

- 1.1.16 “Manager” means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Residential Sub Precinct;
- 1.1.17 “Member” means:-
- 1.1.17.1 an Owner and
- 1.1.17.2 the Developer, during the Development Period (although, it is recorded that, the Developer shall continue to be a Member after the expiry of the Development Period, if the Developer is then also an Owner);
- 1.1.18 “MMA” means the Avenues Estate Management Association (RF) NPC;
- 1.1.19 “MOI” means the Memorandum of Incorporation for the time being of the Association;
- 1.1.20 “Office” means the registered office of the Association for the time being;
- 1.1.21 “Owner” means any person who is the registered owner of Land or an undivided share in Land in the Residential Sub Precinct:
- 1.1.22 “Plan” means the plan attached hereto marked annexure “A”, dated \_\_\_\_\_, drafted by \_\_\_\_\_;
- 1.1.23 “Residential Sub Precinct” means that portion of the Estate which shall be used exclusively for residential purposes, the boundaries of which are shown on the Plan (as read with Articles 26 and 27 hereof);
- 1.1.24 “Rules” mean the conduct rules made by the Board in accordance with the provisions of Article 8.5 hereof;
- 1.1.25 “Scheme” means the Umgeni Urban Planning Scheme in the course of preparation and any successor thereto;

- 1.1.26 “Sectional Title Schemes Management Act” means the Sectional Title Schemes Management Act No. 8 of 2011 (as amended from time to time) and all regulations thereto;
- 1.1.27 “Services” means refuse removal, communications, security, maintenance of Common Property and such other utilities or services as may be provided by the Association or any other supplier of services to the Residential Sub Precinct, from time to time;
- 1.1.28 “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;
- 1.1.29 Words and expressions used and not otherwise defined in this MOI shall have the meaning assigned to them by the Act.
- 1.1.30 Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include Bodies Corporate, and vice versa in each instance.
- 1.1.30 The heading above any Article is intended for reference purposes only and shall not influence the interpretation of the MOI.
- 1.1.31 In interpreting this MOI, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule (i.e. a specific provision in this MOI on any particular issue, shall not be deemed in any way to detract from any general provision in respect to the same issue).

## 2 MEMBERSHIP

### 2.1 Membership of Association

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

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

2.1.3 In order to procure compliance with the provisions of this MOI, it shall be registered as a condition of ownership of Land that no Land shall be alienated without the prior written consent of the Board first being had and obtained, which consent shall not be unreasonably withheld in the event of all the Association's requirements in this regard having been met, including, but in no way limited, to :

2.1.3.1 the transferor having complied with all its obligations to the Association, including, but in no way limited to, the payment of all monies due to the Association by such transferor and

2.1.3.2 the transferee has complied with the Association's requirements referred to in Article 2.1.2 above.

2.1.4 Notwithstanding anything contained herein or elsewhere, the Developer shall not be required to obtain the consent of the Association when transferring any Land owned by the Developer nor shall consent be required from the Association to mortgage any property simultaneously with the transfer thereof from the Developer.

2.1.5 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 by way of sale, exchange, donation, deed, intestacy, will, cession, mortgagee, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolute condition.

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

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

## 2.2 **Admission of Members**

2.2.1 The Members of the Association shall be the Developer, during the Development Period, and those persons who, from time to time, become Members in accordance with the provisions of this MOI.

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

2.2.3 Members shall be of a single class, being voting Members, each of whom shall have a vote, the value of which shall be calculated in accordance with the provisions of Article 3.4.1 hereof.

2.3 **Rights and duties of Members**

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

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

2.3.1.2 the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Company as listed in Section 26 of the Act which, which it is recorded includes the following, namely:

2.3.1.2.1 the Company's MOI and any amendments to it and any Rules made by the Company;

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

2.3.1.2.3 the reports to annual meetings and annual financial statements;

2.3.1.2.4 the notices and Minutes of annual meetings and any communications to the members and

2.3.1.2.5 the register of Members.

2.3.1.3 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this MOI;



2.3.1.4 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with and subject to the provisions of this MOI;

2.3.1.5 should Members holding between them, in aggregate, not less than 10% (Ten Percent) of the voting rights in the Association, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.

2.3.2 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

## 2.4 **Cessation of Membership**

2.4.1 Membership of the Association shall cease:

2.4.1.1 upon an Owner ceasing to be an Owner;

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

2.4.1.3 upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs;

2.4.2 In the event of a Member ceasing to be a Member in terms of Article 2.4.1.2 or 2.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this MOI.

## 2.5 **Liability of each Member**

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

## 2.6 **Register of Members**

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

## 3 **GENERAL MEETINGS**

### 3.1 **Annual General Meeting**

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

### 3.2 **Notice of General Meeting**

The annual general meeting and any meeting called for the passing of a Special Resolution shall be called by not less than 21 (Twenty One) clear days notice in writing and any other general meeting shall be called by not less than 14 (Fourteen) clear days notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this MOI, entitled to receive such notices from the Association: Provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly

called if it is so agreed by all the Members having a right to attend the meeting.

### 3.3 **Proceedings at General Meetings**

#### 3.3.1 **Business**

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

#### 3.3.2 **Quorum**

3.3.2.1 A quorum for a general meeting shall be Members holding between them, in aggregate, not less than 20% (Twenty Percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote (subject to a minimum of 3 (Three) Members personally present), provided that for the Development Period, 1 (One) of such Members must be the Developer;

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

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

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

3.3.4.2 the matter before the meeting when it was adjourned and

3.3.4.3 the grounds for the adjournment.

### **Chairman**

3.3.5 The chairman, if any, of the Board shall preside as chairman at every general meeting of the Association. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the Members shall elect one of their Members to be chairman. Notwithstanding the aforesaid, during the Development Period, the chairman and deputy chairman shall be nominees of the Developer.

3.3.6 The chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 3.3.3 and 3.3.4 shall *mutatis mutandis* apply to such adjournment.

### **Voting**

3.3.7 Subject to the provisions of Article 3.4.2, at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at

any time before or on the declaration of the result of the show of hands) demanded by the Chairman or by any Member, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or negatived, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected by the Members present to determine the result of the poll. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of a meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of Article 3.4.

### **Proxy**

- 3.3.8 The instrument appointing a proxy shall be under the hand of the appointer and shall be in such form as the Board shall approve.
- 3.3.9 The instrument appointing a proxy shall be furnished to the chairman of the meeting prior to the commencement of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy otherwise provides.
- 3.3.10 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided no intimation in writing of the death or revocation shall have been received at the office or by the chairman of the meeting before the vote is given.

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

3.4 **Votes of Members**

3.4.1 Subject to the provisions of Article 3.4.2, on a show of hands, each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote. On a poll, which may be called for by any Member or his proxy or the Chairman of the meeting, a Member shall be entitled to one vote for each freehold subdivision and sectional title unit he is the registered owner of within the Residential Sub Precinct.

3.4.2 Notwithstanding the foregoing, during the Development Period, the Developer shall, for the purposes of voting on any proposed resolution of the Association, be deemed to have the higher of the actual number of votes that vested in the Developer and the number of votes as are held, in aggregate, by all of the other members present in person or by proxy at the relevant meeting.

3.5 **RESOLUTIONS OF MEMBERS**

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

3.5.2 For a special resolution to be approved of by members, it must be supported by at least 75% (Seventy Five Percent) of the voting rights exercised on the resolution.

4           **INSPECTION OF MINUTES**

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

5           **DIRECTORS (TERMS OF OFFICE)**

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

5.1.1         During the Development Period, there shall be 3 (Three) Directors, 2 (Two) of whom shall be nominees of the Developer.

5.1.2         After the expiry of the Development Period, there shall be a maximum of 5 (Five) Directors and a minimum of 4 (Four) Directors;

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

5.1.4         A nominee of the Developer shall be a director for so long as the Developer does not revoke his appointment.

5.2           Save as is set out in Article 5.3 and Article 10, and save for the Director's nominated by the Developer in terms of Article 5.1, each Director shall continue to hold such office from the date of his commencement of office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board at such meeting.

5.3           If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed minimum number, the Board shall act promptly to bring the number of Directors up to the level as specified in this MOI. If the Director so retiring or resigning was the nominee of the Developer, his successor shall be appointed by the Developer. The validity of any resolutions taken or acts performed by the Board during a period when the number falls short

of that provided in 5.1 above shall not be prejudiced by such shortfall.

5.4 Any Director, with the exception of a Director appointed by the Developer, may be removed by a majority Board decision, for any reason whatsoever.

5.5 The appointment by the Board of any Director to fill any vacancy for whatever reason, shall be made within 45 (Forty Five) days of the date upon which such vacancy occurs.

5.6 The Directors shall have the power to co-opt persons for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted shall be entitled to attend board meetings but shall not be a director and shall not be entitled to vote on any matter which comes up for consideration by the Board.

5.7 The chairman and deputy chairman shall be elected by the Directors at their first meeting in the financial year, provided that for the Development Period, the Chairman and the Deputy Chairman shall be directors nominated by the Developer.

## 6 **ALTERNATE DIRECTORS**

6.1 Any Director appointed by the Developer may for any reason, and at or for any time, appoint an alternate.

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



**7 REMUNERATION OF DIRECTORS**

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

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

**8 POWERS AND DUTIES OF DIRECTORS**

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

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

8.3 The Board may, pursuant to their rights, obligations and duties in terms of this MOI and as provided for and contemplated under this MOI, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of this MOI.

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

## **Conduct Rules**

- 8.5 The Board shall have the power to make conduct rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Residential Sub Precinct, for the purposes of giving proper effect to the provisions of the MOI and for any other purpose which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of the MOI or the rules.
- 8.5.1 In no way detracting from the generality of the aforesaid, the Board may from time to time make rules, applicable within the Residential Sub Precinct, specifically in regard to:
- 8.5.1.1 the preservation of the natural environment;
  - 8.5.1.2 vegetation and flora and fauna in the Residential Sub Precinct;
  - 8.5.1.3 the placing of movable objects upon or outside the buildings included in the Residential Sub Precinct, including the power to remove any such objects;
  - 8.5.1.4 the storing of flammable and other harmful substances;
  - 8.5.1.5 the conduct of any persons within the Residential Sub Precinct and the prevention of nuisance of any nature to any owner or occupier of Land in the Residential Sub Precinct;
  - 8.5.1.6 the use of roads, pathways and Common Spaces;
  - 8.5.1.7 the imposition of fines and other penalties to be paid by Members of the Association;
  - 8.5.1.8 the management, administration and control of the Common Spaces;

- 8.5.1.9 the use by Owners or their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 8.5.1.10 the use of adjoining sidewalks, road frontages and parking areas
- 8.5.1.11 security;
- 8.5.1.12 the keeping of pets and
- 8.5.1.13 any other matter as may in the opinion of the Board require to be regulated.

provided that no such Rule shall in any way contradict or detract from the Rules and the Memorandum of Incorporation of the MMA

#### 8.5.2 **Enforcement of Rules**

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

- 8.6 Any Rules made by the Board shall reasonably be in the interest of the Association and the Residential Sub Precinct and, where applicable, shall apply equally to all Members or “class” of members, as the case may be.
- 8.7 The Rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.
- 8.8 In no way detracting from the generality of any other provision of this MOI, in the event of the Association incurring any legal costs as a result of any breach of this MOI by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

## 9 **MINUTES**

- 9.1 The Board shall in terms of the Act cause Minutes to be kept:
- 9.1.1 of all appointments of officers;
- 9.1.2 of names of Directors present at every meeting of the Association and at every meeting of the Directors and
- 9.1.3 of all proceedings at all meetings of the Association and/or the Directors.
- 9.2 Such Minutes, once they are approved as a true record of proceedings, shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the following meeting.

## 10 **DISQUALIFICATION OR RESIGNATION OF DIRECTORS**

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

- 10.1 ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or this MOI or

- 10.2 resigns his office by notice in writing to the Association and the Companies and Intellectual Property Commission or
- 10.3 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors or
- 10.4 is found to be a lunatic or of unsound mind or
- 10.5 is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence;
- 10.6 in the case of a Director appointed by the Developer, on the Developer revoking his appointment.

## 11 **PROCEEDINGS AT MEETINGS OF DIRECTORS**

- 11.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (Four) times during a financial year.
- 11.2 A Director may, on 7 (Seven) days' written notice to all other Directors, at any time summon a meeting of the Directors.
- 11.3 The quorum necessary for the transaction of the business of the Board shall be at least 50% of the total number of Directors, provided that for the Development Period at least one of such Directors must be the appointee of the Developer;
- 11.4 If at a meeting neither the chairman nor the deputy chairman is present within 10 (Ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman for that meeting subject to the provisions of Article 5.7.

- 11.5 Matters arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise 1 (One) vote. Notwithstanding the foregoing, during the Development Period, the Directors who are appointees of the Developer and are present at such meeting, shall, for the purposes of voting on any proposed resolution of the Board, be deemed, jointly, to hold between them 51% of the votes of Directors present at the meeting.
- 11.6 All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any person acting as a Director, notwithstanding that it be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Directors or a committee of Directors had been duly appointed and had qualified to be a Director.
- 11.7 A written resolution signed by all of the Directors shall be a valid Resolution notwithstanding that such resolution may not have been passed at a meeting of the Board.

### **Committees**

- 11.8 The Board may delegate any of its powers to committees consisting of such persons as it thinks fit, the Chairman of which committees may be appointed by the Board. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Board.
- 11.9 Should the Board not appoint the chairman of a committee, the members of that committee, shall elect a chairman of its meetings. If at any meeting the chairman is not present within 10 (Ten) minutes after the time appointed for holding the same, the committee members present may elect one of their number to be chairman for that meeting.

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

11.11 **Limitation of Liability of Directors**

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

12 **DELEGATION OF POWERS OF DIRECTORS**

The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

13 **ASSIGNMENT OF POWERS AND FUNCTIONS**

In the event of a Member of the Association being a Shareblock Company or a Sectional Title Scheme Body Corporate, then in that event, the Association shall carry out all the functions and assume all powers as provided for in the Sectional Title Schemes Management Act (and in particular Sections 3, 4 and 5 thereof) as the Association may require to be delegated to it by the relevant Body Corporate and those functions imposed in terms of the Share Blocks Control Act (and in particular Sections 13, 15 and 19 thereof), as the Association may require to be delegated to it by a Share Block Company, in relation to any Sectional Title or

Share Block Scheme in the Residential Sub Precinct. In addition to the foregoing any controlling body of any Share Block Scheme or Sectional Title Scheme, shall assign such powers and functions to the Association as may be require of it by the Association.

14        **LEVY FUND**

- 14.1        The Board shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Residential Sub Precinct including the provision of security services for the Residential Sub Precinct, insurance premiums, the payment of rates and taxes and other charges on property owned by the Association levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sewage disposal, refuse collection and any other Services to the Residential Sub Precinct including any matter arising from the provisions of Article 13, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Residential Sub Precinct and for the discharge of any other obligation of the Association (provided that nothing in this MOI shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).
- 14.2        All levies due by Members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.
- 14.3        Notwithstanding anything contained herein or elsewhere, during the Development Period, the Developer alone in his sole and absolute discretion, shall determine what portion of the total expenditure of the Association is to be paid by the Developer.
- 14.4        Subject to the provisions of Article 14.3, 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 :

- 14.4.1 it shall assign those costs arising directly out of the Land itself to the Member owning such Land;
- 14.4.2 they shall assign those costs relating to the Residential Sub Precinct generally, (including but in no way limited to, the maintenance of the Common Spaces) to all Owners equally (provided that an Owner shall, for the purposes of the calculation in terms hereof, be deemed to be a separate Owner of each separate freehold subdivision and/or sectional title unit within the Residential Sub Precinct, such Member is the registered owner);
- 14.4.3 they may draw a distinction between the services rendered by the Association to a particular Body Corporate for a particular type of scheme, again taking into account the nature and the extent of the services rendered to that Body Corporate and the owners of that Body Corporate;
- 14.4.4 they may draw a distinction between Members owning developed and undeveloped Land.  
  
provided however that the Board may in any case where they consider it equitable to do so, assign to any owner any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any replacement or other reserves shall be determined by the Board;
- 14.5 All contributions received from Members and the Developer shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 14.6 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 14.1 above.
- 14.7 Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be of full force and effect and recoverable from such person.

- 14.8 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this MOI, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited as its prime overdraft rate plus 3 (Three) percentage points. Such interest shall be calculated and compounded monthly.
- 14.9 Subject to the provisions of Article 14.3, the Board shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in Article 14.4.
- 14.10 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 14.11 All contributions levied under the provisions of this MOI 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.
- 14.12 The Board shall establish a Levy Stabilisation Fund for the purposes of meeting extraordinary expenditure and expenditure of a capital nature, to be incurred by the Association in carrying out its main objects under provisions of this Memorandum of Incorporation. In the event of any Land being sold, alienated or otherwise disposed of, the new owner of such Land, shall be obliged to pay the Levy Stabilisation Fund contribution applicable at that time and the ex-owner shall not be entitled to a refund of the Levy Stabilisation Fund contribution paid by him. Further, in the event of a Member being a Juristic Person and the Beneficial Interest in such Juristic Person being alienated or otherwise disposed of, the new holder of such Beneficial Interest shall similarly be obliged to pay the Levy Stabilisation Fund contribution applicable at the time, and the ex-holder of such Beneficial Interest shall not be entitled to a refund of any Levy Stabilisation

Fund contribution paid.

14.13 Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Article or any other amount of any nature whatsoever due to the Association by such Member (including by not limited to any fine that may be imposed by the Association on any such Member) and remain in arrears notwithstanding demand for payment by the Association, then in that event such Member shall not be entitled either in person or by proxy to speak or vote at a meeting of Members of the Association. A certificate by the Chairman of the Board, dated not more than 14 (Fourteen) days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid certificate having been signed by the Chairman of the Board).

14.14 In the event of there being a dispute as to the amount of any levy 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.

## 15 **ACCOUNTING RECORDS**

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

15.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Board think fit, and shall always be open to inspection by the Members.

## 16 **ANNUAL FINANCIAL STATEMENTS**

16.1 The Board shall from time to time, in accordance with the Act, cause to be

prepared and laid before the Association in general meeting such financial statements as are prescribed by the Act.

- 16.2 A copy of any annual financial statements shall be laid before the Association in annual general meeting. A copy of the aforesaid financial statements shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to every Member of the Association: provided that this MOI shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

17 **AUDITOR**

An auditor shall be appointed to the Association in accordance with the Act.

18 **NOTICES**

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

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

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

- 18.2.2 to the auditor for the time being of the Association.

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

- 18.4 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 18.5 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.
- 18.6 Notwithstanding anything contained herein or elsewhere, the sending of any notice or other communication to a Member at an electronic mail address, nominated by such member for these purposes in writing to the Association, shall be deemed to be good and proper services of such notice or other communication, in terms of this Memorandum of Incorporation, and shall be deemed to have been received by the Member on the date that such communication or other notice was sent by electronic mail.

## 19 **WINDING-UP OF ASSOCIATION**

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

20           **ADMINISTRATION, MANAGEMENT AND CONTROL OF THE RESIDENTIAL SUB PRECINCT**

20.1       **Provision of Services**

The Association may, from time to time, supply Services, which are in the reasonable discretion of the Board required, to the Residential Sub Precinct or contract with suppliers of services to do so.

20.2       **Common Spaces and Rights of Access**

20.2.1     Members, their employees and invitees shall be entitled to use all common spaces owned or managed by the Association in the Residential Sub Precinct, subject to the rules and restrictions as the Board may lay down from time to time, provided that at all times Owners shall have vehicular and pedestrian ingress and egress from their land to a public road, subject to security measures as the Board may implement from time to time.

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

20.3       **Use of Land**

An Owner shall not use Land or permit it to be used, in such manner or for such purposes, as may cause a nuisance to any occupier of any other Land within the Residential Sub Precinct or interfere with the amenities of the Residential Sub Precinct. In no way detracting from the generality of the aforesaid, it is specifically recorded that the following activities shall be strictly prohibited anywhere on the Residential Sub Precinct, namely:

20.3.1     any activity which will increase the insurance premium payable by the Association in respect of any insurance policy of the Residential Sub Precinct;

20.3.2 the slaughtering of animals;

20.3.3 the lighting and discharge of fireworks and

20.4 **Services**

Inasmuch as the provision, establishment, maintenance and repair of Services may be required to take place in the Residential Sub Precinct, Members shall be obliged to accept the laying out and installation of such services across their Land, in such places as the Board determines, from time to time. The Board or persons authorised by it, shall be entitled to enter upon such Land for the purpose of providing, establishing, maintaining and/or repairing the Services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

20.5 **Security of the Residential Sub Precinct**

The Association shall provide such security in the Residential Sub Precinct, and the various precincts thereof, as it deems appropriate, from time to time.

20.6 **Maintenance of Common Spaces, Private Roads and Municipal Services**

The Association shall be responsible for the maintenance, upkeep and repair of the Common Spaces. Further, in the event of the Municipality, or any other provider of services to an area in, or in the vicinity of the Residential Sub Precinct, not having the means or being unwilling to maintain or provide the services normally provided by a local authority or, in the event of the Municipality or any other service provider not maintaining the services normally provided by a local authority to a standard acceptable to the Association, then in that event, the Association may provide and maintain such services (in consultation, where possible, with such Municipality or other service provider).

## 20.7 **Servitudes**

It is recorded that the Association may be the holder of a number of servitudinal rights over Land within the Residential Sub Precinct. Although the Board may from time to time, in its sole discretion and as it deems fit, pass on the benefit of these various servitudinal rights to individual Members or service providers, it shall be under no obligation to do so, and shall exercise these rights reasonably as it, in its sole discretion, deems it to be in the best interests of the Association and its Members as a whole.

## 20.8 **Environmental Management Approval**

Notwithstanding anything contained herein or elsewhere, no Land within the Residential Sub Precinct shall be developed or utilized in any manner, save in accordance with the Environmental Management Approval. Further, the Association shall comply with the Environmental Management Approval in every respect, including but not limited to, in respect of property it owns or otherwise manages, and in respect of the Services it provides.

## 20.9 **Development Manual**

Notwithstanding anything contained herein or elsewhere, no Land within the Residential Sub Precinct shall be developed save in accordance with the provisions of the Development Manual.

## 21 **ENFORCEMENT OF OBLIGATIONS OF OWNERS**

Should any Owner, or any person occupying a unit through an Owner, fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Board shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Board, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Member concerned, which shall be payable on demand. The Member shall be obliged to bring to the attention of



any occupant of his Land, the Rules and regulations of the Association. In addition, a Member shall utilise its best endeavours to ensure that any invitee of the Member who goes upon the Residential Sub Precinct complies with the Association's rules and regulations.

## 22 DETERMINATION OF DISPUTES

22.1 Subject to Articles 14.3 and 14.14 above, in the event of any dispute or difference arising between the Members inter se or between a Member and the Association as to the construction, meaning or interpretation or effect of any of the provisions or as to the rights, obligations or liabilities of the Association or any Member in terms of this Memorandum of Incorporation, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 60 (Sixty) days, such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.

22.2 Such arbitration shall be held:

22.2.1 at Durban during the Development Period and at Pietermaritzburg after expiry of the Development Period;

22.2.2 under the provisions of the Arbitration Act No. 42 of 1965 of the Republic of South Africa as amended from time to time and the Association of Arbitrators Rules for the Conduct of Arbitrations (Latest Edition).

22.3 The arbitrator shall be, if the question in issue is:

22.3.1 primarily an accounting matter, a practising auditor of not less than ten (10) years standing appointed by the president for the time being of the Institute of Chartered Accountants;

- 22.3.2 primarily a legal matter, a practising attorney of not less than ten (10) years standing appointed by the chairperson for the time being of the Legal Practice Council at the request of either Party;
- 22.3.3 any other matter, an independent person agreed upon between the parties and failing agreement as may be appointed by the chairperson for the time being of the said Legal Practice Council at the request of either party.
- 22.4 If agreement cannot be reached within seven (7) business days after a dispute has been declared and an arbitration has been demanded, as to whether the question in issue falls under Article 22.3.1, 22.3.2 or 22.3.3 above, then a practising attorney as agreed upon the parties and failing agreement then appointed at the request of either party by the chairperson for the time being of the said Legal Practice Council, as soon as possible thereafter, shall determine whether the question in issue falls under clause 22.3.1, 22.3.2 or 22.3.3 above so that an arbitrator can be appointed in terms of clause 22 and the arbitration can be held and concluded as soon as possible.
- 22.5 The decision of the aforesaid arbitration proceedings:
- 22.5.1 shall be binding on the parties thereto;
- 22.5.2 shall be carried into effect and
- 22.5.3 may be made an order of court of competent jurisdiction.

23 **DEVELOPER'S RIGHTS REGARDING THE RESIDENTIAL SUB PRECINCT**

The Developer shall, during the Development Period, be entitled to develop any land within the Residential Sub Precinct of which it is the owner in conformity with the Scheme, without the approval of the Association.

24           **DISCLAIMER OF RESPONSIBILITY**

24.1           The Association and/or its agents, 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 Residential Sub Precinct regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within the Residential Sub Precinct. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

24.2           The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Residential Sub Precinct, regardless of the cause thereof.

24.3           Members shall indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this clause 25.

25           **AMENDMENT TO THE MOI**

Save as otherwise herein provided, the MOI may only be amended or varied by way of a Special Resolution of Members, provided that :

25.1           during the Development Period, the MOI shall not be varied or amended without the prior written consent of the Developer and

25.2           in addition, the MOI shall not be varied or amended without the prior written consent of the Master Management Association.

26           **EXCLUSION OF LAND**

The Developer may, on notice in writing to the Association, have any Land owned by the Developer, excluded from the Residential Sub Precinct. The date of such exclusion of any aforesaid land shall be the date on which notice is given by the Developer to the Association.

27           **INCORPORATION OF LAND**

27.1       The Developer may, with the prior written consent of the Master Management Association, on notice in writing to the Board, have any land contiguous to the Residential Sub Precinct (as currently defined in this Memorandum of Incorporation) incorporated into the Residential Sub Precinct. The date of such incorporation of any aforesaid additional land shall be the date on which notice is given by the Developer to the Board. (Provided that, for the purposes of this clause 27.1, any property separated from the Residential Sub Precinct by a public road, shall be regarded as contiguous to the Residential Sub Precinct).

27.2       In addition, the Developer may, with the prior written consent of the Board and the Master Management Association, incorporate any additional Land into the Residential Sub Precinct which is not contiguous to the Sub-Precinct (as currently defined in this Memorandum of Incorporation).

28           **MASTER MANAGEMENT ASSOCIATION**

It is recorded that the Association is a member of the Master Management Association and shall, at all times, comply with the Master Management Association's Memorandum of Incorporation, rules and regulation and other directives. In no way detracting from the generality of the aforesaid, it is specifically recorded that :

28.1       the provisions of this Memorandum of Incorporation and any rules made by the Association (as contemplated in paragraph 8.5 hereof) shall always be subject to the provisions of the Master Management Association's

Memorandum of Incorporation, rules and regulations;

- 28.2 should there be any conflict between the provisions of this Memorandum of Incorporation and the Memorandum of Incorporation, rules or regulations of the Master Management Association, the Master Management Association's Memorandum of Incorporation, rules and regulations (as the case may be) shall prevail;
- 28.3 the Association shall ensure that its Members are made aware of the provisions of the Master Management Association's Memorandum of Incorporation, rules and regulations and undertake at all times to comply with, and abide by, the provisions of same and
- 28.4 the Association shall be required to pay a monthly levy to the Master Management Association, calculated in accordance with the provisions of the Master Management Association's Memorandum of Incorporation, which, it is recorded shall include, inter alia, the costs of complying with the provisions of the Environmental Management Restrictions and the administration of the Master Management Association in general.
- 28.5 Should the Master Management Association delegate to the Association the function of enforcing aesthetics, architectural controls and the provisions of the Development Manual within the Residential Sub Precinct (which the Master Management Association shall be entitled to do in its sole and absolute discretion), then in that event, the Board shall appoint a Residential Sub Precinct Architectural Review Committee, which shall comprise of an architect, urban designer or other competent professional, a representative of the Master Management Association and other individuals. The aforesaid Committee shall act, inter alia, as an aesthetics committee with a view to ensuring any development within the Residential Sub Precinct is in accordance with the Development Manual, the Scheme and to a standard that will enhance the attraction of the Residential Sub Precinct as a whole. The Board shall ensure that the Residential Sub Precinct Architectural Review Committee

properly undertakes all the functions and duties entrusted to it, so as to give proper effect provisions of the Development Manual (which function shall include the approval of building plans in respect of all buildings and other structures to be erected or altered within the Residential Sub Precinct (prior to submission to the local authority)).