

MEMORANDUM OF INCORPORATION

of

ZINI RIVER ESTATE 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:

1. To promote the development and maintenance of all properties within the Estate (as more fully referred to and defined herein) and to ensure that all such properties are developed and maintained in such a way as to derive maximum benefit therefrom for the whole community of the Estate.
2. To enforce the provision of the Architectural and Development Guidelines for the Estate. 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 or fitting attached thereto, comply with the aforesaid controls and generally to ensure that the external appearance of all buildings and other structures in the Estate, comply with the standards set out in the aforesaid document.
3. To promote, advance and protect the interest of Members generally and to co-operate with the local authority, provincial government, and all other appropriate authorities for the benefit of the Association and its Members.
4. To represent the interest of Members and to provide a united voice by which such interests may be expressed.
5. To collect levies and other contributions towards funds for the attainment of the objectives of the Association or any one of them.
6. To maintain Common Spaces, within the Estate, which the Association may own or may otherwise be responsible for, and to make and enforce regulations governing the use thereof by the Members.
7. To manage, oversee and control all security aspects of the Estate.
8. To enter into agreements for the provision of any services with any competent authority or other third party including, inter alia, the provision of access to the Estate, maintenance of roads, water, electricity, and security services to the Estate, and where required, to supply such services to the various Members of the Association.

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The Memorandum of Incorporation is as follows:

1. INTERPRETATION

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

- 1.1 “Act” means the Companies Act 71 of 2008 as amended from time to time.
- 1.2 “MOI” means the Memorandum of Incorporation for the time being of the Association.
 - 1.2.1 “Association” means the Zini River Estate Homeowners Association (RF) NPC.
 - 1.2.2 “Beneficial Interest” means, in the event of the Member being:
 - a) a close corporation, the entire member’s interest in the close corporation.
 - b) a company, all the issued shares in that company or
 - c) a trust, the entire beneficial interest in that trust (as the case may be).
- 1.3 “Board” means the Board of Directors of the Association for the time being.
- 1.4 “Body Corporate” means a body corporate as defined in Section 1 of the Sectional Titles Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act.
- 1.5 “Common Spaces” means the communal areas within the Estate, which areas shall include, inter alia, open spaces, certain areas of indigenous bush, certain road verges, private roads, and public thoroughfares within the Estate.
- 1.6 “Design Review Committee” means the committee as provided for in Article 20 hereof.
- 1.7 “Developer” means Win Win Business Trust (IT No. 488/04), including its successors and assigns.
- 1.8 “Architectural and Development Guidelines” means the Architectural, Environmental and Development Guidelines of the Association in respect of the Estate, a copy of which is available from the offices of the Association, and which controls may be amended by the Developer during the Development Period and by the Board after the expiry of the Development Period.
- 1.9 “Development Period” means the period reckoned from the date of registration of this MOI until the date upon which the Developer gives notice to the Association of the termination of the Development Period.
- 1.10 “Directors” means the directors of the Association for the time being.

- 1.11 “Environmental Management Plan” means the final approved Environmental Management Plan (EIA5900) for “Zini River Estate” (Rev 03) prepared by Sustainable Development Projects CC and dated May 2006.
- 1.12 “Estate” means the Zini River Estate, the boundaries and layout of which are shown on the Plan.
- 1.13 “Immovable Property” means any immovable property in the Estate, including any Subdivision or Unit and rights therein.
- 1.14 “Individual Ownership” means ownership by a natural or juristic person or persons.
- 1.15 “Juristic Person” means a company, close corporation, trust or other legal or juristic person (excluding the body corporate of a sectional title scheme).
- 1.16 1.16 “Manager” means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Estate.
- 1.17 “Member” means: -
- a) an Owner;
 - b) and 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 an Owner).
- 1.18 “Office” means the registered office of the Association for the time being.
- 1.19 “Owner” means any person who is a registered owner of a Subdivision or an undivided share in a Subdivision, provided that, for the purposes of this Memorandum of Incorporation, the Body Corporate of any sectional title scheme on any Subdivision shall be deemed to be the Owner of such Subdivision (it being specifically recorded, for the purposes of clarity, that the Owner of a Unit shall not be deemed to be an “Owner” for purposes of this Memorandum of Incorporation);
- 1.20 “Plan” means the plan attached hereto marked annexure “A,” drafted by Ndebele Kirby Projects (Drawing No. 2495/15), and dated 11 September 2015.
- 1.21 “Property Time Share Control Act” means the Property Time Share Control Act No. 75 of 1983 as amended and any regulations in force thereunder from time to time.
- 1.22 “Rules” mean the rules made by the Board in accordance with the provisions of Article 8.6 hereof.
- 1.23 “Scheme” means the Town Planning Scheme applicable to the Estate, from time to time.

- 1.24 “Sectional Titles Act” means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time.
- 1.25 “Services” means water, sewerage, refuse removal, electricity, telecommunications, security, maintenance of Common Spaces and such other utilities or services as may be provided by the Association or any other supplier of services to the Estate, from time to time.
- 1.26 “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.
- 1.27 “Subdivision” means any freehold property in the Estate, including any subdivision capable of individual ownership, whether such subdivision is improved or not (however shall specifically exclude a Unit where a sectional title scheme has been established on any such Subdivision).
- 1.28 “Municipality” means the Umlalazi Municipality, its successors in title or assigns.
- 1.29 “Unit” means a sectional title unit under provisions of the Sectional Titles Act, where a sectional title scheme has been established on any Subdivision.
- 1.30 Words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act.
- 1.31 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.
- 1.32 The heading above any of this Memorandum of Incorporation is intended for reference purposes only and shall not influence the interpretation of the Articles.
- 1.33 In interpreting this Memorandum of Incorporation, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule.

2 MEMBERSHIP

2.1 Membership of Association

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

2.1.2 No Immovable Property shall be transferred unless: where a Subdivision is being transferred, it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a member and is admitted as a member in terms of Article 2.2.1;

and where Immovable Property other than a Subdivision is being transferred, it is a condition of such transfer that the transferee agrees to abide by this Memorandum of Incorporation and the Rules made in terms thereof in a manner acceptable to the Association.

2.1.3 To procure compliance with the provisions of this Memorandum of Incorporation, it shall be registered as a Condition of ownership of Immovable Property that no Immovable Property shall be alienated without the prior written consent of the Association first being had and obtained:

- a) where such Immovable Property is a Subdivision, such consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor); and
- b) where such Immovable Property is not a Subdivision, such consent shall be given if the proposed transferee agrees to abide by this Memorandum of Incorporation and the rules made in terms thereof in a manner acceptable to the Association and the transferor has complied with all its obligations to the Association (including but in no way limited to, the payment of any monies due to the Association by such transferor).

For the purposes of this clause “alienate” means to alienate any Immovable Property 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 resolutive condition.

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

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

2.2 **Admission of Members**

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

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

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

- a) the right to inspect and/or receive copies of the annual financial statements of the Association.
- b) 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:
 - i. the Company's Memorandum of Incorporation and any amendments to it and any Rules made by the Company.
 - ii. the records in respect of the Company's directors.
 - iii. the reports to annual meetings and annual financial statements.
 - iv. the notices and Minutes of annual meetings and any communications to the members and
 - v. the register of members.
- c) the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum of Incorporation.

- d) the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extraordinary, in accordance with and subject to the provisions of this Memorandum of Incorporation.
- e) should Members holding between them, in aggregate, not less than 5% (Five Percent) of the voting rights in the Association, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.

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

2.4 **Cessation of Membership**

2.4.1 Membership of the Association shall cease:

- a) upon an Owner of Immovable Property ceasing to be an Owner.
- b) upon the issue of a final order of sequestration or liquidation of the Member concerned.
- c) 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.(b) or 2.4.1.(c) the legal representative of such Member shall, for all purposes, be recognized and be bound as the Member under this Memorandum of Incorporation.

2.5 **Liability of each Member**

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

2.6 **Register of Members**

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

3 GENERAL MEETINGS

3.1 Annual General Meeting

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

3.2 Notice of General Meeting

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

3.3 Proceedings at General Meetings

3.3.1 Business

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

3.3.2

Quorum

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

b) If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting, shall stand adjourned to a date not earlier than 7 (Seven)

c) 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.

d) 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 recognized newspapers circulating on the KwaZulu-Natal North Coast, stating:

- i. the date, time, and place to which the meeting has been adjourned.
- ii. the matter before the meeting when it was adjourned; and
- iii. the grounds for the adjournment.

3.3.3

Chairperson

a) The chairperson, if any, of the Board shall preside as chairperson 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.

b) The chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 3.3.2.(c) and 3.3.2.(d) shall *mutatis mutandis* apply to such adjournment.

3.3.4

Voting

a) 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 Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

3.3.5

Proxy

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

b) The instrument appointing a proxy shall be deposited at the office of the Association not less than 24 (Twenty-Four) hours before the time for the holding of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof or shall be handed to the Chairman of such meeting, in person, prior to the commencement of such meeting. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution unless the proxy specifically otherwise provides.

c) 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.

d) In the event of a Member being a Juristic Person, such Member shall lodge at the offices of the Association, a resolution authorizing a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such Resolution shall be lodged at the offices of the Association at least 24 (Twenty-Four) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote or shall be handed to the Chairman of such meeting, in person, prior to the commencement of such meeting.

3.3.6 Votes of Members

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, each Member present at the meeting (in person or by proxy) shall be entitled to one vote for each Subdivision he owns, provided that the Body Corporate of a sectional title scheme laid out on a Subdivision, shall be entitled to 5 votes.

3.4 Resolutions of Members

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

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

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 There shall be a maximum of 5 (Five) Directors
- 5.1.2 After the expiry of the Development Period, there shall be a maximum of 5 (Five) Directors and a minimum of 2 (Two) Directors.
- 5.1.3 A retiring Director shall be eligible for re-election after having served a two-year period on the Board as Director.
- 5.2 Save as is set out in Article 5.3 and Article 10, each Director shall continue to hold such office from the date of his commencement of office until the second 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, because of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this Memorandum of Incorporation. 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 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 people for the purposes of assisting the Directors in conducting 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,

6 **ALTERNATE DIRECTORS**

6.1 Any Director appointed 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 an alternate shall not, however, be valid unless confirmed by a resolution of the majority of Directors present at the meeting.

7 **REMUNERATION OF DIRECTORS**

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

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

8 **POWERS AND DUTIES OF DIRECTORS**

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

8.2 Without in any way affecting the generality of Article 8.1 (however, subject to the provisions of Article 8.5 below) the Board shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum of Incorporation.

8.3 The Board may (subject to the provisions of Article 8.5 below), pursuant to their rights, obligations and duties in terms of this Memorandum of Incorporation and as provided for and contemplated under this Memorandum

of Incorporation, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of the Memorandum of Incorporation of the Association.

- 8.4 The Association, in a 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.
- 8.5 The Board shall not be entitled to undertake, on behalf of the Association, any permanent works of a major capital nature, save as approved of by an ordinary resolution of Members. For the purposes of this Article 8.5 “works of a major capital nature” shall mean works that cost more than R1,000,000.00 (ONE MILLION RAND) (excluding Value Added Tax) (which amount shall be escalated annually at a rate of 8% per annum on the 1 January of each and every calendar year, from the 1 January 2017).

8.6 **Conduct Rules**

- 8.6.1 The Board shall have the power to make conduct rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Estate, for the purposes of giving proper effect to the provisions of the Memorandum of Incorporation and for any other purpose which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this Memorandum of Incorporation or the conduct rules.
- 8.6.2 In no way detracting from the generality of the previously mentioned, the Board may from time to time make conduct rules, applicable within the Estate, specifically regarding:
- a) the preservation of the natural environment, vegetation and fauna within the Estate including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any Subdivision to ensure strict compliance with the Environmental Management Plan.
 - b) vegetation and flora and fauna in the Estate.
 - c) the placing of movable objects upon or outside the buildings included in the Estate, including the power to remove any such objects.
 - d) the storing of flammable and other harmful substances.
 - e) the conduct of any persons within the Estate and the prevention of nuisance of any nature to any Owner.
 - f) the use of land within the Estate.

- g) the use of roads, pathways and Common Spaces.
- h) the imposition of fines and other penalties to be paid by Members of the Association.
- i) the management, administration, and control of the Common Spaces.
- j) the erection of all buildings and other structures, including service connections to buildings.
- k) the establishment, installation, and maintenance of gardens, both public and private.
- l) the use by owners and their tenants of buildings and other structures and the upkeep, aesthetics, and maintenance of such buildings.
- m) the use of road frontages and parking areas.
- n) security.
- o) the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the Estate or any building, construction, or any other work continued within the Estate.
- p) the right to prohibit, restrict or control the keeping of any animals and other pets (particularly considering the need to protect wildlife and preserve the natural environment).
- q) the use of the river (which is also subject to a number of environmental and other legislative restrictions) and
- r) generally, regarding any other matter, which the Association, from time to time, considers appropriate.

8.6.3 **Enforcement of Conduct Rules**

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

- 8.6.4 Any conduct rules made by the Board shall be in the interest of the Association and the Estate and, where applicable, shall apply equally to all Members or “class” of members.
- 8.6.5 The conduct rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.
- 8.6.6 In no way detracting from the generality of any other provision of this Memorandum of Incorporation, in the event of the Association incurring any legal costs because of any breach of this Memorandum of Incorporation by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

9 MINUTES

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

10 DISQUALIFICATION OR RESIGNATION OF DIRECTORS

- 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 Memorandum of Incorporation; or
 - 10.2 resigns his office by notice in writing to the Association and the Registrar; 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.
- 10.7 if the Director is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.

11 **PROCEEDINGS AT MEETINGS OF DIRECTORS**

- 11.1 The Board may meet for the dispatch 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) day's written notice to all other Directors, at any time, summon a meeting of the Board.
- 11.3 The quorum necessary for the transaction of the business of the Directors shall be at least 50% of the total number of Directors, provided that for the Development Period at least one of such Directors must be the nominee of the Developer.
- 11.4 If at a meeting neither the chairman nor the deputy chairperson is present within 10 (Ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be chairman for that meeting subject to the provisions of Article 5.7.
- 11.5 Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise 1 (One) vote. Notwithstanding the foregoing, during the Development Period, the Directors who are nominees 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 Resolution signed by all the Directors shall be a valid Resolution notwithstanding that such Resolution may not have been passed at a meeting of the Board.

11.8 A meeting of the Board of Directors may be conducted by electronic communication, or one or more Directors may participate in a meeting by electronic communication, as contemplated, and subject to the provisions of Section 73(3) of the Act.

11.9 **Committees**

11.9.1 The Board may delegate any of their powers to committees consisting of such people as they think fit, the Chairperson 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.

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

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

11.10 **Limitation of Liability of Directors**

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

12 **DELEGATION OF POWERS OF DIRECTORS**

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

13 **SECTIONAL TITLE SCHEMES**

13.1 As is clear from Article 1 hereof, in the event of a Sectional Title register being opened on any Subdivision, as contemplated in terms of the Sectional Titles Act, then in that event, the Body Corporate of such sectional title scheme (as opposed to the individual owners of the sectional title units therein) shall be the member of the Association in respect of that particular Subdivision.

13.2 It is recorded that although the aforesaid Body Corporate, as the member of the Association, is obliged to comply with the provisions of the Memorandum of Incorporation and the Rules, (and further obliged to ensure that the Body Corporate's members, guests and invitees or any other person who may come upon the Subdivision in question or the Estate by virtue of their rights thereto, do likewise) each Owner of each sectional title unit in such sectional title scheme shall, should the Board, so require, be obliged to sign an undertaking in favour of the Association agreeing to comply with the Memorandum of Incorporation and Rules and to pay a portion of the levy payable by the Body Corporate to the Association (which portion shall be calculated by multiplying the total levy payable by the Body Corporate by the participation quota, as contemplated in the Sectional Titles Act, of that particular section) directly to the Association in the event of the Body Corporate failing to make payment of the total monthly levy to the Association timeously.

- 13.3 The levy and other amounts due by the Body Corporate to the Association shall constitute a first charge on all amounts collected by the Body Corporate from its members.
- 13.4 In no way detracting from the generality of the aforesaid, or anything contained in this Memorandum of Incorporation, it is specifically recorded that each Body Corporate shall ensure that no section in its scheme is transferred until such time as, inter alia, the transferee of such Section has secured the payment of the Levy Stabilization Fund contribution (as more fully referred to in Article 14.12 hereof) to the satisfaction of the Association.
- 13.5 The Association shall carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Association may require to be delegated to it by the relevant Body Corporate, in relation to any Sectional Title Scheme in the Estate. In addition to the foregoing any controlling body of any Sectional Title Scheme, shall assign such powers and functions to the Association as may be required of it by the Association.

14 **LEVY FUND**

- 14.1 The Members shall in general meeting establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Estate including the provision of security services for the Estate, garden maintenance, Services, verge, private road and Common Spaces maintenance, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sewage disposal, refuse collection and any other services to the Estate including any matter arising from the provisions of 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 Estate and for the discharge of any other obligation of the Association (provided that nothing in this Memorandum of Incorporation shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).
- 14.2 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 Subject to the provisions of Articles 14.3, the Members shall, at the Annual General Meeting of the Association 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:
- 14.3.1 they shall assign those costs arising directly out of a Subdivision to the Member owning such Subdivision.
- 14.3.2 they shall assign those costs relating to the Estate generally, (including but in no way limited to the maintenance of the Common Spaces) to all Owners equally provided that if an Owner owns more than one Subdivision, such Owner shall be deemed to be a separate Owner in respect of each Subdivision he owns for purposes of this clause and provided further, that the Body Corporate of a sectional title scheme within the Estate, shall be deemed to be the owner of 5 Subdivisions for the purposes of this clause;
- 14.3.3 they may draw distinction between the services rendered by the Association to a particular Body Corporate for a particular Scheme, again considering the nature and extent of the services rendered to that Body Corporate and the Owners of Units within that Body Corporate.

Provided however that the Members may (subject to the provisions of Article 14.3 above) 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 Members in general meeting.

- 14.4 All contributions received from Members shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 14.5 The monies in the levy fund shall be utilized to defray the expenses referred to in clause 14.1 above.
- 14.6 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.
- 14.7 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum of Incorporation, 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 2 (Two) percentage points. The Board may, in its

sole discretion, increase the interest rate, provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005, compounded monthly in arrears

- 14.8 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 (not provided for in the annual budget of the Association as approved of by the Members at the Annual General Meeting), which in the opinion of the Board is urgent and shall determine how such levies are to be paid in accordance with the principles set out in Article 14.4.
- 14.9 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 14.10 All contributions levied under the provisions of this Memorandum of Incorporation 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.
- 14.11 The Board shall establish a Levy Stabilization Fund for the purposes of meeting extraordinary expenditure and expenditure of a capital nature, to be incurred by the Association in conducting its main objects under provisions of this Memorandum of Incorporation. In the event of any Subdivision or Unit being sold, alienated or otherwise disposed of, the new owner shall be obliged to pay the Levy Stabilization Fund contribution applicable at that time and the ex- owner shall not be entitled to a refund of the Levy Stabilization Fund contribution paid by him. Further, in the event of the owner of a Unit or Subdivision 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 Stabilization Fund contribution applicable at the time, and the ex-holder of such Beneficial Interest shall not be entitled to a refund of any Levy Stabilization Fund contribution paid (notwithstanding the aforesaid, any change in the ownership of any Immovable Property or any change in Beneficial Interest in a Member which is a Juristic Person, which results from an alienation due to succession, whether testate or in intestate, shall not give rise to an obligation on the part of the Member to make a contribution to the aforesaid Levy Stabilization Fund).
- 14.12 Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Memorandum of Incorporation 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)

14.13 Should any Member be in arrears with the payment of any levies due in terms of this Memorandum of Incorporation, such Member's easy access to the Estate can be suspended in that such Member and or anyone resident at such member's property shall be prevented access to the estate through the facial recognition access system. Such Member and his family members shall follow the same procedure as visitors to the estate, prior to being granted access. Such member shall also be prevented from issuing any Pin access authority via the visitors' application and will have to manually record the full particulars of any visitor, in writing, with the security at the access gate, to be verified by the security on arrival of the visitor.

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

17 **AUDITOR**

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

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

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 Immovable Property 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**

Subject to the provisions of Article 21.4.2, 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 like those of the Association.

20 **DESIGN REVIEW COMMITTEE**

20.1 The Design Review Committee shall be comprised of:

20.1.1 1 (One) professional architect, appointed by the Board, the Manager (if any) and such other individuals appointed by the Board.

20.2 The Design Review Committee shall function as, *inter alia*, an aesthetics committee with a view to ensuring any development within the Estate is in accordance with the Architectural and Development Guidelines, the Scheme and with standards and an architectural theme which will enhance the attraction of the Estate as a whole.

20.3 The Board shall ensure that the Design Review Committee conducts all the functions and duties entrusted to it to give proper effect to the provisions of the Architectural and Development Guidelines.

- 20.4 Any individual appointed to the Design Review Committee by the Developer may, for any reason or for any time, appoint an alternative.
- 20.5 The Chairman and Deputy Chairman of the Design Review Committee shall be elected by the Committee at their first meeting in the financial year of the Association, the Chairman and Deputy Chairman shall be members of the Committee nominated by the Developer.
- 20.6 A meeting of the Design Review Committee may be called by any Member on 14 (Fourteen) days' written notice to the other Members.
- 20.7 During the building phase of a home, the building contractor shall maintain the building site in a clean and safe condition. Should the site become untidy or unsafe in the opinion of the DRC committee, the building contractor and the owner will be instructed in writing to remedy the situation. Should the situation not improve after two written notifications then the DRC chairperson shall instruct the gate control to restrict access to the building contractor and his staff until the specific site is returned to an acceptable condition in the eyes of the DRC.

21 **REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE ESTATE**

21.1 **Buildings and improvements**

21.1.1 In order to procure compliance with the nature and amenity of the Estate nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Design Review Committee and no building, extension or alteration to an existing building or other structure shall be built or erected within the Estate, other than in accordance with the Scheme, the Architectural and Development Guidelines and plans approved by the Design Review Committee which approval shall be in writing and signed by a duly authorized representative of the Design Review Committee. The Design Review Committee shall be entitled to charge members a fee, as determined by the Board in this regard. Before giving such approval, the Committee may require that there be lodged with it:

- a) such description and/or drawing and/or plan as may be necessary, in the opinion of the Committee, to enable them to consider the matter.
- b) details of construction materials to be used.

- c) the payment of a scrutiny fee, set by the Association to peruse the aforesaid documentation (which fee shall be set by the Association, in its sole and absolute discretion).
- d) a geotechnical report of the Immovable Property in question.
- e) a detailed survey of the Immovable Property in question and
- f) such other documentation and information as the Design Review Committee in its sole and absolute discretion may require.
- g) Any approval as contemplated herein may be subject to such conditions as the Design Review Committee may deem fit. In the event of any building or other structure being erected, save in accordance with the plans approved of by the Design Review Committee as set out in this clause, then in that event, the Board shall be entitled to make such amendments to such building or other structure in order to procure compliance with building plans approved of by the Design Review Committee and recover the costs of such alterations from the relevant owner in question which amount shall be deemed to be part of the levy due by the Member to the Association. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period. This clause shall in no way alter or supersede any requirements of or obligations to the relevant Local Authority.

21.1.2 Members shall ensure that their land is always kept in a neat and tidy state to the reasonable satisfaction of the Design Review Committee.

21.2 **Landscaping**

21.2.1 Save as may otherwise be agreed by the Board, any landscaping on Immovable Property to be undertaken by a Member shall be undertaken in accordance with a landscape plan approved by the Design Review Committee and no Member shall commence landscaping of any Immovable Property until such time as such landscape plan has been approved in writing.

21.2.2 Notwithstanding anything to the contrary herein or elsewhere contained, no Member shall have the right to landscape any part of the Estate or attempt to erect any fence or wall or any other structure or remove same on any Immovable Property without the prior written consent of the Design Review Committee. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period.

21.2.3 The maintenance of any garden area shall be in accordance with such rules and regulations as the Board may lay down, from time to time, (including, but in no way limited to, any rules or regulations the Board may lay down from time to time, in respect of the appointment and accreditation of persons authorized to maintain such areas).

21.3 **Services**

The responsibility in respect of the supply, maintenance and upkeep of services and infrastructure to the Estate shall be as set out in the services agreement(s) between the Developer and the Umlalazi Municipality and/or the Uthungulu District Municipality or any other local authority that may exist, from time to time. In the event of a conflict between the services agreement and this Memorandum of Incorporation, the provision of the services agreement shall prevail.

21.3.1 **Water**

The Members shall be liable for and shall pay to the relevant local authority on demand all charges arising from water supplied to or consumed in or on the Member's Immovable Property.

21.3.2 **Electricity**

a) The liability of Members for electricity charges shall be in accordance with separate meters serving each Members' Immovable Property. The Members shall be liable for and shall pay to the relevant local authority on demand all charges arising from electricity supplied to or consumed in or on the Member's Immovable Property.

b) Lighting on the Common Spaces shall be supplied through separate electricity supply meters and the cost incurred by the Association in respect thereof shall be recovered from Members as part of the levies imposed by the Association.

21.3.3 **General**

a) Each Member of the Association shall from date of transfer be responsible for any connection charges to the infrastructure of the Estate, and the cost of the maintenance and replacement of any metering device.

b) The Association, shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any Common Space or any privately owned Subdivision, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.

c) The Members shall allow reasonable access to, and co-operate with, the Association (as the case may be) together with their agents and representatives onto their Subdivisions for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.

d) Without limiting the generality of the provisions of Article 21.3.3.3 The Association, shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The Members accept and shall be bound by the consents to the registration of the servitudes referred to in this Article 21.

21.4 **Common Spaces and Private Roads**

21.4.1 Members, their employees and invitees shall be entitled to use the Common Spaces and Private Roads, owned or managed by the Association in the Estate, 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.

21.4.2 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 Estate or the transfer of such accesses to a local authority, as public roads.

21.5 **Maintenance of Building**

Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition by the Member and no Member shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Design Review Committee which consent shall not unreasonably be withheld. An Owner shall, on receipt of a notice given by the Design Review Committee, undertake such work as may be specified in such notice relative

to such Owner's building. Should an Owner fail to carry out any work as required by the Design Review Committee, after the Design Review Committee has given the owner notice, which the Design Review Committee deems reasonable in the circumstances, so to comply, the Board shall be entitled to carry out such work and to recover the reasonable cost thereof from the Member concerned which amount shall be deemed to be part of the levy due by the Member to the Association.

21.6 **Occupation of Building**

Occupation and use of a building shall, always, be in compliance with the Scheme and this Memorandum of Incorporation. No Member shall use any building within the Estate or allow any other person to use such building for purposes not permitted by the Scheme or this Memorandum of Incorporation or the Rules, nor occupy any building not approved of by the Design Review Committee and confirmed in writing by the Design Review Committee as being complete and compliant with its requirements.

21.7 **Security of the Estate**

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

21.8 **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 Local Authority, or any other provider of services to an area in, or in the vicinity of the Estate, 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 Local Authority 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 Local Authority or other service provider).

21.9 **Environmental Management Plan**

21.9.1 Notwithstanding anything contained herein or elsewhere, no Immovable Property within the Estate shall be developed or utilized in any manner save in accordance with the Environmental Management Plan.

21.9.2 It is recorded that the management and other obligations of the Developer in terms of the Environmental Management Plan shall pass to the Association on the expiry of the Development Period.

21.10 **Architectural and Development Guidelines**

Notwithstanding anything contained herein or elsewhere, no Immovable Property within the Estate shall be developed save in accordance with the provisions of the Architectural and Development Guidelines.

21.11 **Prohibition of certain business activities conducted in the Estate**

The Estate is exclusively a residential estate with a strict security protocol in keeping with the provisions of this Memorandum of Incorporation. No Member or resident in the Estate may conduct any business activity within the Estate that requires direct access to the Estate by the public or any customer or client. This prohibition includes, but is not limited to, the operation of Bed and Breakfast establishments, overnight residence and retail outlets. Notwithstanding this provision, a Member may rent out his property to a tenant, provided the period of the lease exceeds 6 (Six) months.

22 **REZONING**

An Owner may not have his Subdivision rezoned (or have the permitted statutory use thereof otherwise changed), save with the prior written consent of the Association first being had and obtained.

23 **SUBDIVISION AND CONSOLIDATION**

An Owner may not have his Subdivision further subdivided nor consolidated with other properties, save with the prior written consent of the Association first being had and obtained.

24

ENFORCEMENT OF OBLIGATIONS OF OWNERS

Should any Member or any lessee of a Member fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Board shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the 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 tenant of his Immovable Property, the rules, and regulations of the Association. In addition, a Member shall utilize its best endeavours to ensure that any invitee of the Member who goes upon the Estate complies with the Association's rules and regulations.

25

DETERMINATION OF DISPUTES

25.1

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.

25.2

Such arbitration shall be held:

25.2.1

at Durban.

25.2.2

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).

25.3

The arbitrator shall be if the question in issue is:

25.3.1

primarily an accounting matter, a practicing auditor of not less than ten (10) years standing appointed by the President for the time being of the Institute of Chartered Accountants.

- 25.3.2 primarily a legal matter, a practicing attorney of not less than ten (10) years standing appointed by the President for the time being of the Law Society of Kwa-Zulu Natal at the request of either Party.
- 25.3.3 any other matter, an independent person agreed upon between the parties and failing agreement as may be appointed by the President for the time being of the said Law Society at the request of either party.
- 25.4 If agreement cannot be reached within seven (7) business days after a dispute has been declared and arbitration has been demanded, as to whether the question in issue falls under Article 25.3.1, 25.3.2 or 25.3.3. above, then a practicing attorney as agreed upon the parties and failing agreement then appointed at the request of either party by the President for the time being of the said Law Society, as soon as possible thereafter, shall determine whether the question in issue falls under clause 25.3.1, 25.3.2 or 25.3.3 above so that an arbitrator can be appointed in terms of clause twenty-five and the arbitration can be held and concluded as soon as possible.
- 25.5 The decision of the aforesaid arbitration proceedings:
- 25.5.1 shall be binding on the parties thereto.
- 25.5.2 shall be carried into effect and
- 25.5.3 may be made an order of court of competent jurisdiction.

26 **DISCLAIMER OF RESPONSIBILITY**

- 26.1 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 within the Estate. 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.

26.2 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 Estate, regardless of the cause thereof.

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

27 AMENDMENT TO MEMORANDUM OF INCORPORATION

Save as otherwise herein provided, this Memorandum of Incorporation may only be amended or varied by way of a Special Resolution of Members.

28 EXCLUSION OF IMMOVABLE PROPERTY

The Developer may, on notice in writing to the Board, have any Immovable Property owned by the Developer, excluded from the Estate. The date of such exclusion of any previously mentioned Immovable Property shall be the date on which notice is given by the Developer to the Board.

29 PROHIBITION AGAINST THE SUBDIVISION AND CONSOLIDATION OF ANY IMMOVABLE PROPERTY

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