



Memorandum of Incorporation unique to

THE GATES AT HILTON RF NPC

which is referred to in the rest of this Memorandum of Incorporation as “the Company”.

In this Memorandum of Incorporation —

- (a) a reference to the Act means the Companies Act, 2008, as amended;
- (b) a reference to a section by number refers to the corresponding section of the Act;
- (c) a reference to a Chapter by number refers to the corresponding Chapter of the Act;
- (d) words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in the Act;
- (e) words signifying the singular number shall include the plural and vice versa;
- (f) words signifying a natural person, shall include a juristic person and other legal personae and vice versa;
- (g) words signifying the masculine shall include the feminine and neuter genders and vice versa; and
- (h) the headings of this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of this Memorandum of Incorporation.
- (i) unless the context otherwise indicates -
 - (1) “Environmental Committee” means the Environmental Committee to be appointed by the Developer and which shall have such powers and functions as may be assigned to it by the Developer;
 - (2) “alienate” means the alienation of a Stand to any third party;
 - (3) “Environmental, Architectural and Landscaping Guidelines” means the Environmental, Architectural and Landscaping Guidelines applicable to any and all improvements on the Development;
 - (4) “articles” means the Memorandum for the time being of the Company;
 - (5) “Conduct Rules” means the rules, which shall, in terms of article 6, govern the conduct of all owners, residents, visitors and occupants of stands in the Estate. The Rules shall be provided by the Directors to each owner, who irrevocably undertakes to strictly abide to the said Rules, in accordance with the provisions hereof;
 - (6) “Deeds Office” means the registration office in Pietermaritzburg as described in the Registration of Deeds Act, Act 47 of 1937, as amended;
 - (7) “Developer” means Gwens Stream Estates Proprietary Limited, Registration number: 2008/021315/07, a private company with limited liability and duly incorporated in accordance with the provisions of the Act as the Developer of the Development;

- (8) "the Development" means the development of the 81 (eighty one) erven of The Gates No 18360, Registration Division FT, Province of Kwazulu-Natal Numbered I to 81 inclusive appearing on General Plan SG and which development will be known as "The Gates at Hilton";
- (9) "the development/Environmental approval" means the approval by Developer or its nominee for the consideration, evaluation and approval of development of and/or improvements to stands in the Estate;
- (10) "the Directors" means the Directors appointed by the Members of the Company;
- (11) "erven" means stands in the Development;
- (12) "Estate" means the entire development;
- (13) "Property Owner" means an owner of a Stand in the Development;
- (14) "manager" means the Person appointed by the Company, from time to time, to undertake the management of the Estate;
- (15) "the Manual" means the Environmental, Architectural and Landscaping Guidelines according to which all development of and/or improvements to any Stand in the Development will be undertaken, subject to the prior approval thereof and supervision by the Developer, its nominee and Environmental Committee, The Manual shall include the Environmental, Architectural and Landscaping Guidelines;
- (16) "Members" means owners of stands in the Development including the Society as contemplated by the provisions of article 1.1(1);
- (17) "Memorandum" means the Memorandum of Incorporation from time to time of the Company;
- (18) "Office" means the registered office of the Company;
- (19) "Person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- (20) "the Properties" means the 81 (eighty one) erven of The Gates, Registration Division FT, Province of Kwazulu-Natal Numbered into 81 inclusive appearing on General Plan SG;
- (21) "Rules" means the rules made by the Board of Directors in terms of article 1.4(2) and includes the Conduct Rules made in terms of article 6;
- (22) "the Society" means the Hiltonian Society NPC, registration number 1928/001172/08;
- (23) "Company Secretary" means any Person appointed by the Directors to perform the statutory secretarial duties of the company; and
- (24) "Stand" means a residential Stand forming part of the Estate,

Article 1 — Incorporation and Nature of the Company

1.1 Special privileges of the Society

- (1) The Society owned the property described as Portion 31 of the farm Ongegund No 795 and an undivided half share in the property described as Remainder of Portion 2 of the farm Hilton No 12304 on which the Development is to be laid out. Hilton College, a school owned and run by the Society, is located on land adjacent to the property which is the subject of the Development. The Society shall take transfer and remain the owner of the portion designated as the Conservation area on the layout plan of the township. In order to ensure that the integrity of the Hilton College and the remainder of the property are not compromised and that access to the school facilities is controlled, the Society shall always be a Member of the Company with special privileges.
- (2) The Society shall be entitled to appoint 2 Directors of the Company, one of whom shall serve as Chairperson of the Board. No quorum shall be present at a Board meeting unless one of the Directors present at such meeting was appointed by The Society.
- (3) The Society shall be entitled to appoint the Chairperson to chair all general meetings of Members. No quorum shall be present at a general meeting unless a representative of The Society is present at such a meeting.
- (4) The Society shall be entitled to veto any matter when it is considered by any general meeting of Members or at a meeting of the Directors of the company. At every general meeting the Society shall have 400 (four hundred) votes.
- (5) No change and/or alteration to and/or amendment of the Memorandum shall be tabled at any general meeting without the prior written consent of the Society having been obtained.
- (6) The Society shall be entitled to veto any Rule of the Company.

1.2 Incorporation

- (1) The Company is incorporated as a non-profit company, as defined in the Act with the following objects:
 - (a) The sole object of the company is to manage the collective interest common to all Members of the development to be developed on the farm The Gates 18360, Registration Division FT, Province of Kwazulu-Natal, comprising 81 (Eighty One) .erven, numbered 1 (one) to 81 (Eighty One) appearing on general plan of the township, which interest includes expenditure applicable to the common immovable property of such Members and the collection of levies of which such Members are liable.
- (2) The collective interest shall include the following
 - (a) To ensure compliance by Members with the conditions of establishment of the Estate on the Properties, with particular reference to the conditions dealing with environmental, aesthetic and building regulations and requirements.

- (b) To exercise control over the rights created and still to be created over the stands on the Properties and to formulate Rules and by-laws for the control of the environment, buildings, walling, fencing, exterior lighting, signage, aesthetic planning and landscaping of the Properties and the stands and to ensure compliance with such Rules and by-laws by Members to the Company.
 - (c) To implement and control the principal concepts of the Development relating to the security, architecture, landscaping, parking, signage and advertising, exterior finishing and maintenance as detailed by urban designers, landscape architects and ecological planners of the Properties appointed by the Developer or its nominee and in particular as stated in the architectural guidelines and Rules of the Estate.
 - (d) To ensure that each Member maintains his/her/its Stand in a clean and tidy condition and adheres to the specifications imposed by the Company relating to the environmental, landscaping and ecological planning. In the event of any Member failing to adhere to the specifications and maintenance of his Stand, the Directors or the Developer shall be entitled, but not obliged, to perform the necessary acts and services and recover from such Member the costs thereof.
 - (e) To undertake the maintenance of street verges and where required by Members to maintain the vegetation and landscaping on any individual Stand against payment to the Company of a special levy.
 - (f) To administer the general security arrangements on the Properties, with particular reference to controlling access and the nature and type of security to be provided from time to time, excluding the security arrangement of any particular building on a Stand.
 - (g) To consent or declare any proposed consolidation, subdivision/rezoning of any Stand valid and to stipulate the environmental, landscaping and certain aesthetic conditions, which shall apply prior to such rezoning and subdivision, if approved. It is however recorded that the Developer shall be entitled to subdivide any Stand after proclamation in accordance with the guideline plans alternatively rezoned for the purpose of subdivision and the Company and its Members irrevocably consent to the said rezoning and/or subdivision (whichever is applicable). It is further recorded that the provisions hereof may not be amended by special resolution without the Developer's written consent.
- (3) The Company is incorporated in accordance with, and governed by -
- (a) the unalterable provisions of the Act, that are applicable to Non Profit companies;
 - (b) the alterable provisions of the Act that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - (c) the provisions of this Memorandum.

1.3 Objects and Powers of the Company

- (1) The objects of the Company are as set out in article 1.2(1) and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are subject to the restrictions, limitations, qualifications and special privileges provided for in article 1.1(1).
- (2) The Company is subject to the provisions of article 1.1(1) and may not change and/or alter and/or amend the Memorandum without the prior written consent of the Society.
- (3) The Company –
 - (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in the Memorandum; and
 - (b) subject to paragraph (a), may –
 - (i) acquire and hold securities issued by a profit company; or
 - (ii) directly or indirectly, alone or with any other Person, carry on business, trade or undertaking consistent with or ancillary to its stated objects.
- (4) The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or assets was derived, to any Person who is or was an incorporator of the Company, or who is a Member or Director, or Person appointing a Director, of the Company, except –
 - (a) as reasonable –
 - (i) remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
 - (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - (b) as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that Person or another;
 - (c) as a payment in respect of any rights of that Person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
 - (d) in respect of any legal obligation binding on the Company.
- (5) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company –
 - (a) no past or present Member or Director of the Company, or Person appointing a Director of the Company, is entitled to any part of the value of the Company after its obligations and liabilities have been satisfied; and
 - (b) the entire net value of the Company must be distributed to The Society.
- (6) The Company may not –

- (a) amalgamate or merge with, or convert to, a profit company; or
 - (b) dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- (7) Any proposal to -
- (a) dispose of all or the greater part of the Company's assets or undertaking; or
 - (b) amalgamate or merge with another non-profit company, must, subject to the provisions of article 1.1(1) be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.
- (8) Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in article 1.4(7).
- (9) The Company may grant loans only to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- (10) The Company may only invest funds available for investment with a registered financial institution as described in section 1 of the Financial Institutions Act of 1984, as amended, and in a security listed on a licensed Stock Exchange as defined in the Stock Exchange Control Act, No 1 of 1985, as amended.
- (11) The Company may enter into indemnities, guarantees and suretyships and secure payment thereunder in any way only with one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- (12) The Company may
- (a) make donations provided that no donations may be made to present or former incorporators, Members or Directors; and
 - (b) pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees.
- (13) The activities of the Company shall be confined to the Republic of South Africa.

1.4 Memorandum and Company Rules

- (1) This Memorandum of the Company may be altered or amended only with the prior written consent of the Society.
- (2) The authority of the Company's Board of Directors to make Rules for the Company, as contemplated in section 15(3) to (5), is limited and restricted by the provisions of article 1.1(1).
- (3) The Board must publish any Rules made in terms of section 15(3) to (5) by delivering a copy of those Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.

- (4) The Company must publish a notice of any alteration of the Memorandum or the Rules, made in terms of section 17(1) of the Act, by delivering a copy of those alterations or Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.

1.5 Optional provisions of the Act

- (1) In terms of section 84(1) (c) (B) of the Act, the Company elects voluntary to appoint an auditor and to have its annual financial statements audited by such auditor.
- (2) The Company may voluntary elect to appoint a Company Secretary.
- (3) As the Company will be audited voluntarily, the Company does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditor shall be determined by the Board of Directors.

1.6 Members of the Company

- (1) The Company shall maintain at its registered office a register of Members of the Company as provided in section 24(4) (a) of the Act. The register of Members shall be opened to inspection, as provided in section 26 of the Act.
- (2) Any Person automatically becomes a Member of the Company on the date on which a property in the Development is being transferred and registered into his/its name in the Deeds Office (hereinafter referred to as “registered owners”).
- (3) The membership of the initial Members, excluding the Developer, shall be terminated as and when the first 6 (six) stands are transferred into the names of the new registered owners. The membership of the Developer shall be terminated as and when the very last Stand in the Development is transferred from him to a new registered owner.
- (4) Where a registered owner becomes the registered owner of more than one Stand such owner shall be regarded as one Member of the Company,
- (5) Where more than one Person becomes the joint registered owner of a Stand, the joint Members must nominate and appoint one from their ranks to represent them as a Member of the Company for the receipt of notices from the Company. The joint registered owners shall advise the Company in writing of the full first names) surname, residential and postal addresses of such representative. Joint registered owners may with written notification to the Company change their representative provided that such representative shall at all times be one of the joint owners of the Stand. All joint owners are jointly and severally responsible for the proper fulfilment of the responsibilities arising from their membership of the Company due to their ownership of the Stand or a sectional title scheme.
- (6) The membership of an existing registered owner is automatically terminated on date of the registration in the Deeds Office of a sold Stand and/or property in the name of the new owner on which date the new registered owner automatically becomes a Member of the Company.
- (7) A registered owner of a Stand cannot resign as a Member of the Company.

- (8) Any individual being a registered owner, the spouse or partner of a registered owner, joint registered owner or the representative of a juristic person, which is a registered owner or joint registered owner, may be elected to any office in the Company.
- (9) A Member shall not be entitled to any rights and/or privileges associated with his membership of the Company including his right to vote at a General Meeting of the Company if any amount as at the end of the month immediately preceding the month in which the General Meeting is held, is owed by such Member to the Company.
- (10) Each Member shall not undertake any development of and/or improvement to his Stand without having submitted the required plans, conforming to the requirements of the Development and design manual (Environmental, Architectural and Landscaping Guidelines), for consideration, evaluation and approval by the Developer or its duly appointed nominee and having obtained the prior written consent thereto from the Developer or its duly appointed nominee. Each Member shall in submitting his plans to the Developer or its duly appointed nominee accept the supervision rights and responsibilities of the Developer or its duly appointed nominee over the Development of and/or improvements to the Stand or otherwise.
- (11) Each Member shall be responsible to the Company for the professional expenses and costs incurred by the Developer or its duly appointed nominee for the consideration, evaluation and approval of the plans for the Development and/or improvements to his Stand which expenses and costs shall be payable to the Developer or its duly appointed nominee on presentation of a statement of account.
- (12) Estate agents or owners shall not be permitted to display for sale, to let and/or pointer boards at the entrance to the Development without the prior written approval first being obtained from the Developer or its duly appointed nominee and the Company.
- (13) A registered owner shall be entitled to sell his Stand to a buyer of his choice: Provided that the Stand shall not be transferred into the name of the purchaser without all amounts owed by the seller to the Company and/or its agents have been paid and the purchaser has accepted in writing the terms and conditions contained in the Memorandum of the Company as well as the Rules of Estate as determined by the Directors and the Developer or its duly appointed nominee.
- (14) The executor of an estate of a deceased sole registered owner of a Stand shall be the only Person recognised by the Company as having any title to such Stand and to membership of the Company. In the case of a Stand registered in the names of two or more registered owners, the survivors or survivor, or the executor of the last survivor after his death shall be the only Persons recognised by the Company as having any title to such Stand and to membership of the Company.
- (15) Any Person becoming entitled to membership in consequence of the death or insolvency of a Member shall, upon such evidence being produced as may from time to time be required by the Directors, having the right, either to be registered as a Member in respect of the Stand or instead of being registered himself, to make such transfer of the Stand as the deceased or insolvent could have made.

- (16) A Person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Member of the Company or the estate of a Member whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any juristic person which is a Member of the Company shall be entered in the register of Members of the Company nomine officii, and shall thereafter, for all purposes, be deemed to be a Member of the Company.

Article 2— Rights of Members

2.1 Members' authority to act

- (1) If, at any time, every Member of the Company is also a Director of the Company, as contemplated in section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum.

2.2 Members' right to Information

- (1) In addition to the rights to access information set out in section 26(1), a Member of the Company has no further rights to information.

2.3 Representation by concurrent proxies

- (1) The right of a Member of the Company to appoint Persons concurrently as proxies, as set out in section 58(3) (a), is not limited, restricted or varied by this Memorandum.

2.4 Authority of proxy to delegate

- (1) The authority of a Member's proxy to delegate the proxy's powers to another Person, as set out in section 58(3) (b), is not limited or restricted by this Memorandum.

2.5 Requirement to deliver proxy instrument to the Company

- (1) The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Member's rights at a Members meeting, as set out in section 58(3)(c), is not varied by this Memorandum.

2.6 Deliberative authority of proxy

- (1) The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in section 58(7), is not limited or restricted by this Memorandum.

2.7 Record date for exercise of Member rights

- (1) If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3).

2.8 Duties of Members

Each Member shall:

- (1) Abide by the Memorandum and adhere to the Rules, Conduct Rules and by-laws provided by the Directors from time to time.
- (2) Abide by the Environmental, Architectural and Landscaping Guidelines.
- (3) Obtain consent from the Developer or its duly appointed nominee (and after the Developer has transferred all the stands in the development, the Environmental Committee) to any building plans before commencing with any building, walling, fencing and signage operation, exterior lightning, painting or repainting of exterior finishes. The decision of the Developer, its duly appointed nominee or the Environmental Committee, as contemplated herein above, shall be final and binding on the parties.
- (4) Maintain his/her/its Stand in a clean and tidy condition to the satisfaction of the Directors. Should the Directors be of the opinion that a Member is not complying with the Memorandum, the Directors shall give such Member reasonable notice, depending on the nature of the breach, failing which, where possible, the Directors shall be entitled to perform the work or Services which is required to be done or provided at the expense of the Member and shall be entitled to recover the expenditure in this connection from the Member, together with interest calculated thereon at prime bank rate, for the period from date of expenditure to date of repayment.
- (5) Not construct a building on the Stand in a manner which causes danger, nuisance or disturbance to the occupiers of the neighbouring stands and where applicable, the Members shall cause suitable screens and/or barricades to be erected to reduce the emission of noise, dust, waste, effluent or other nuisance from the stand.
- (6) Not burn or permit to be burnt any materials or rubbish resulting from or connection with construction on the Stand and shall ensure that such materials or rubbish be removed from the stand.
- (7) Repair at his/her/its cost and expense any damage to the infrastructure, sidewalks and road shoulders or any part of the common or public areas in the Estate caused by the Member or his/her/its agents during the course of the construction of the stand.
- (8) Not interfere with the convenience of the common or public areas within the Estate during construction of any approved building.
- (9) Ensure that all responsible means are used to prevent the roads leading to the Stand from being damaged or injured by any act or omission of the building contractor engaged by the Member in respect of the construction on the Stand and the subcontractors of the building contractors and the servants or agent of the Member whilst moving equipment and materials to and from the stand.
- (10) Indemnify and shall keep the Company indemnified in respect of all loss, damage, cost or expense, which may be suffered by the Company as a result of any claim,

demand, suit or proceedings which may be instituted against the Company as a result of any breach of any of the above obligations by the Member.

- (11) Prevent the accumulation of trash, garbage or other waste material on the Stand except in containers located in appropriate areas screened and concealed from the view so that odours do not emanate from such containers: Provided that such containers may not be placed on any common or public area or upon a thoroughfare for a period exceeding 24 (twenty four) hours.
- (12) Prevent the Stand from being used for any purposes, which may be illegal or injurious to the other stands in the Estate or Members.

Article 3— Members Meetings

3.1 Requirement to hold meetings

- (1) The Company is required to hold Members meetings in addition to those specifically required by the Act.
- (2) The Company must convene an Annual General Meeting of its Members—
 - (a) initially, no more than 18 (eighteen) months after the Company's date of incorporation; and
 - (b) thereafter, once in every calendar year within 6 (six) months after the end of its financial year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.
- (3) An Annual General Meeting convened in terms of article 3.1(2) must, at a minimum, provide for the following business to be transacted:
 - (a) Presentation of—
 - (i) the Directors report; and
 - (ii) audited annual financial statements for the immediately preceding financial year) a copy of which must be supplied to each Member together with the notice of the Annual General Meeting.
 - (b) Either
 - (i) audited annual financial statements; or
 - (ii) annual financial statements, which have independently been compiled and reported on by an independent accounting professional, for the immediately preceding financial year, a copy of which must be supplied to each shareholder together with the notice of the Annual General Meeting;
 - (c) Noting of the budget and levy for the financial year in which the meeting takes place.
 - (d) Election of Directors, to the extent required by this Act or the Company's Memorandum;

- (e) Appointment of either an auditor or an independent accounting professional for the ensuing financial year; and
- (f) Any matters raised by Members, with or without advance notice to the Company.

3.2 Members' right to requisition a meeting

- (1) Subject to the Society's veto right, the right of Members to requisition a meeting, as set out in section 61(3), may be exercised by at least 10 (ten) of the voting Members.

3.3 Location of Members meetings

- (1) The Company's Board of Directors shall determine the location of any Members meeting, and the Company is authorised to hold any such meeting provided that such meeting shall be in the Republic.

3.4 Notice of Members meetings

- (1) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members, as required by section 62, is 15 business days before the meeting is to begin.

3.5 Electronic participation in Members meetings

- (1) The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63, is not limited or restricted by this Memorandum.

3.6 Quorum for Members meetings

- (1) Notwithstanding any other provision in the Memorandum, there will be no quorum unless at least 1 (one) representative of the Society is present.
- (2) Initially the quorum necessary for the holding of a General Meeting shall be 10% (ten percent) of all Members provided that 2 (two) Members present in Person or the representative of a juristic person. After the first 20 (twenty) stands have been transferred from the Developer to their new owners, the quorum shall 15% (fifteen per centum) and at no stage be less than 5 (five) Members present in person.
- (3) If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall Stand adjourned to the same day in the next week at the same place and time or such other place as the chairperson of the meeting shall appoint, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.
- (4) The time periods allowed in section 64(4) and (5) apply to the Company without variation
- (5) The authority of a meeting to continue to consider a matter, as set out in section 64(9), is limited or restricted to the extent set out below:

- (a) The authority of a meeting to continue to consider a matter, as set out in section 64(9), is restricted so that a quorum must be present at all times during a meeting.
- (b) As soon as a quorum is no longer present, the meeting must be adjourned for half an hour and, if a quorum is thereafter still not present, the meeting must be adjourned in accordance with the provisions of section 64(12).

3.7 Adjournment of Members meetings

- (1) The maximum period allowable for an adjournment of a Members meeting is, as set out in section 64(13), without variation.

3.8 Members resolutions

- (1) For an ordinary resolution to be adopted at a Members meeting, it must be supported by the Society and at least 50% of the Members who voted on the resolution, as provided in section 65(7).
- (2) For a special resolution to be adopted at a Members meeting, it must be supported by the Society and at least 75% of the Members who voted on the resolution, as provided in section 65(7).
- (3) A special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11).
- (4) At every General Meeting:
 - (a) The Society shall have 400 (four hundred) votes in addition to the votes conferred upon it in terms of article 3.8(4) (b) below. The Developer shall have 82 (eighty two) votes whilst it remains a Member of the Company
 - (b) Every Member, including the Developer, in person or by proxy and entitled to vote, shall have 1 (one) vote for each Stand registered in its name. It is recorded that the aforesaid shall mutatis mutandis apply to unsold stands which the Developer owns, in other words, the Developer shall, in addition to the other votes as recorded herein, have 1 (one) vote per unsold proclaimed Stand (it thus need not have been registered as a separate Stand in the name of the Developer).
 - (c) Save as expressly provided for in these articles, no Person other than a Member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of or arising out of his membership and who is not under suspension shall be entitled to vote on any question, either personally or by proxy, at any General Meeting.
 - (d) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote provided that during the development period, in other words until such time as all the stands have been developed, sold and transferred, such casting vote may only be cast by the Developer.

- (e) A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith, a poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- (f) Every resolution and every amended resolution proposed for adoption by a General Meeting shall be seconded at the meetings and if not so seconded, shall be deemed not to have been proposed.
- (g) An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a single majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated provided that during the development period (shall mean the period until all the stands have been developed, sold and transferred) the Developer shall have a second or casting vote (see article 3.4(4)(d) supra).
- (h) Unless any Member present in person or by proxy at a General Meeting shall, before closure of the meeting, have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hand or otherwise, or to the propriety or validity of the procedure at such meetings, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
- (i) The parent or guardian of a minor, and the curator bonis of a lunatic Member, and also any Person entitled to transfer the membership, may vote at any General Meeting in respect thereof in the same manner as if he were the registered Member: Provided that forty- eight hours at least before the time of holding the meeting at which he proposes to vote he shall satisfy the Directors that he is such parent, guardian or curator or that he is entitled to transfer the membership, or that the Directors have previously admitted his right to vote in respect of the membership. Co-executors of a deceased Member whose names Stand in the register shall, for the purposes of this article, be deemed to be joint holders of that membership.
- (j) On a poll, votes may be given either personally or by proxy.

Article 4— Directors and Officers

4.1 Composition of the Board of Directors

- (1) The board of Directors of the Company shall consist of 7 (seven) Directors. The Society shall appoint 2 (two) Directors including the Chairperson of the Board and 5 (five) Directors shall be elected by Members in accordance with the provisions of

section 68(2). While the Developer is a Member of the Company, the Developer shall have the right to nominate 2 (two) Directors. This right of the Developer shall cease as and when the very last Stand is transferred from him to a new registered owner in the development.

- (2) At the first Annual General Meeting of the Company all the elected Directors shall retire from office, and at the Annual General Meeting in every subsequent year one-third of the elected Directors for the time being, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office.
- (3) The elected Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.
- (4) A retiring Director shall be eligible for re-election.
- (5) The Company at the Annual General Meeting at which an elected Director retires in the manner aforesaid or at any other General Meeting may fill the vacancy by electing a person thereto.
- (6) If at any meeting at which an election of Directors ought to take place the office of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall Stand adjourned, and if at such adjourned meeting the vacancies are not filled, the retiring Directors or such of them as have not had their office filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for the re-election of any such Director shall have been put to the meeting and negatived.
- (7) The Company may with the consent of the Society, which consent may be withheld for any reason, from time to time in General Meeting increase or reduce the number of Directors, and may also determine in what rotation such increased or reduced number is to retire from office. A change in the number of Directors can only be made if, after the change, the Society shall still be entitled to appoint 2 Directors, one of whom shall serve as the Chairperson of the Board.
- (8) In addition to satisfying the qualification and eligibility requirements set out in section 69, to be elected or remain a Director and/or prescribed officer of the Company subject to the provisions hereof, a person must be
 - (a) either the registered owner of an erf or the spouse or partner of a registered owner of an erf; or
 - (b) the representative of a juristic person which is the registered owner of an erf.
- (9) Only a person who is the registered owner of an erf or the spouse or partner of a registered owner of an erf, or the representative of a juristic person which is the registered owner of an erf, may be elected or appointed as a Director and/or prescribed officer, subject to the Developer's right, while the Developer is still a Member, to nominate as Directors persons who are not Members.

- (10) The authority of the Company's Board of Directors to fill any vacancy on the Board of Directors on a temporary basis is not limited or restricted by this Memorandum.
- (11) The office of Director, whether elected, appointed or *ex officio*, or prescribed officer shall be vacated if the Director or prescribed officer -
 - (a) no longer satisfy the qualification and eligibility requirements set out in section 69;
 - (b) ceases to be the registered owner of an erf except for directors nominated by the Developer in accordance with article 4.1(9) or Directors appointed by the Society; or
 - (c) ceases to be the representative of a juristic person who is a Member; or
 - (d) is a representative of a juristic person and the juristic person ceases to be a Member; or
 - (e) resigns his office by notice in writing to the Company; or
 - (f) is removed as Director as provided for in section 71.
 - (g) ceases to be the spouse or partner of a registered owner of an erf.

4.2 Authority of the Board of Directors

- (1) The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66(1), is not limited or restricted by this Memorandum.
- (2) Subject to the express provisions hereof, the Directors shall be responsible for the administration, control, management and Services required in the fulfilment of the objects of the Company as defined in articles 1.2 and 1.3 hereof and to manage and control the business and affairs of the Company. The Directors shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent and may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by these presents required to be exercised or done by the Company in General Meeting, subject, however, to such Rules as may have been made by the Company in General Meeting or as may be made by the Directors from time to time.
- (3) Save as specifically provided in these presents, the Directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, advocates, architects, engineers and managing agents and any other professional firm or Person or other employees whatsoever for any reason deemed necessary by the Directors and on such terms as the Directors shall decide.
- (4) Subject to any restriction imposed and direction given at a General Meeting of the Company, the powers of the Directors shall include the following:
 - (a) to appoint for and on behalf of the Company such agent and employees as they deem fit in connection with the control, management and administration required in terms of the Memorandum, more particularly for

- the maintenance of the street verges and areas of individual stands falling within building line reserves;
- (b) to delegate to one or more of their Members or an outside expert such of their powers and duties as they may deem fit, and at any time to revoke such delegation;
 - (c) to make Rules and by-laws for the control, use, safety, cleanliness and aesthetic landscaping of the Properties and to determine by rule and by-laws from time to time promulgated, inter alia, the security, vegetation, continuity, parking, signage, advertising and maintenance;
 - (d) to open and operate a current account and savings account with a banking institution;
 - (e) to purchase, hire or otherwise acquire movable property for use in fulfilling the duties imposed on the Directors in terms of the Memorandum;
 - (f) to utilize the facilities and equipment of the Company for purposes of providing a maintenance service in respect of the individual Stand of any Member relating to such Member's stand, against a remuneration fee to be determined by the Directors from time to time;
 - (g) to ensure that Members adhere to the provisions of the articles; and
 - (h) to do all things reasonable necessary for the enforcement, management, control and administration devolving upon the Directors in terms of the Memorandum, as more fully set out in the articles read in conjunction with the Rules.
- (5) The Directors are hereby empowered to establish for administrative expenses a fund sufficient in the opinion of the Directors for the upkeep, control, management and administration required to be performed by the Directors in terms of the Memorandum and for the acquisition of such movables as may be required for purposes of providing the Services to be rendered in terms hereof, or for the discharge of any duty imposed upon the Directors in terms hereof.
- (6) The Directors shall have the right to co-opt on the board any person or persons chosen by them. A co-opted director need not necessarily be a Member of the Company.
- (7) The Directors shall be entitled to appoint committees consisting of such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

4.3 Board of Directors meetings

- (1) The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74, is not limited or restricted by this Memorandum.

- (2) The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised by at least 25% of the Directors, as provided in that section.
- (3) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), is not limited or restricted by this Memorandum.
- (4) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4), is not limited or restricted by this Memorandum.
- (5) If all of the Directors of the Company acknowledge actual receipt of the notice, are present at a meeting, or waive notice of the meeting, the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- (6) A minimum of 3 (three) Directors must be present at a meeting before a vote may be called at a meeting of the Directors. No quorum shall be present at a Board meeting unless a Director appointed by the Society is present.
- (7) Each Director has one vote on a matter before the board, Subject to the Society's right to veto, a majority of the votes cast on a resolution is sufficient to approve that resolution; and in the case of a tied vote, the chairperson shall have a second or casting vote.

4.4 Indemnification of Directors

- (1) The authority of the Company's Board of Directors to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(3), is not limited or restricted by this Memorandum.
- (2) The authority of the Company's Board of Directors to indemnify a Director in respect of liability, as set out in section 78(5), is not limited or restricted by this Memorandum.
- (3) The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a Director, as set out in section 78(6), is not limited or restricted by this Memorandum.

4.5 Officers and Committees

- (1) The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- (2) The authority of the Company's Board of Directors to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1), or to include in any such committee persons who are not Directors, as set out in section 73(2) (a), is not limited or restricted by this Memorandum.
- (3) The authority of a committee appointed by the Company's Board, as set out in section 72(2) (b) and (c), is not limited or restricted by this Memorandum.

Article 5— Income of the Company

- 5.1 The income of the Company shall consist of the compulsory monthly contributions (levies”) paid by Members and shall be used to promote and fulfil the main objects of the Company.
- 5.2 For as long as the Developer remains a Member of the Company, the levies shall be determined by the Developer and thereafter as detailed in the following articles.
- 5.3 The Directors shall prepare no later than 1 (one) month prior to the end of each financial year a budget which shall detail the anticipated expenses for the ensuing year and the provisions for any budgeted fund in order to ensure that the Company will be able to fulfil its main objects. The budget must reflect the total annual and monthly levies required, each registered owner of a Stand, excluding the Company and the Developer, shall be responsible for a monthly levy equal to the total monthly levies divided by the total number of stands (proportionately), excluding stands not yet transferred.
- 5.4 The budget and levies for the following year, as calculated in terms of article 5.3, must be delivered to the Members before the end of the financial year.
- 5.5 The monthly levies shall be due and payable on the first working day of each month. Each registered owner shall pay his monthly levies by means of electronic funds transfer to the bank account of the Company.
- 5.6 The Directors shall be entitled to raise interest at the Company’s bankers’ prime overdraft rate plus 2 (two) percent on all overdue levies.
- 5.7 The Directors may at any stage introduce a special levy on all registered owners should the Directors realise that the budgeted income of the Company will be insufficient to enable the Company to fulfil its main objects.
- 5.8 Any amount due by a Member by way of levy and interest shall be a debt due by him to the Company. The obligations of a Member to pay a levy and interest shall cease upon him ceasing to be a Member without prejudice to the Company’s right to recover arrear levies and interest. No interest on levies paid by a Member shall under any circumstances be repayable by the Company upon him ceasing to be a Member. A Member’s successor in title to a Stand shall be liable as from the date upon which he becomes a Member pursuant to the transfer of the Stand, to pay the levy and interest thereon attributable to that Stand,
- 5.9 The Company shall be entitled to refuse traversing rights over its access security stands to any Member or such Member’s employees, invites or visitors, while such Member is in breach of any of the terms and conditions of membership or Rules of the Company, all of which are deemed to be material.
- 5.10 In calculating the levy payable by any Member, the Directors shall as far as practicable:
- (a) assign those costs directly attributable to the Estate and which is also directly attributable to a specific Stand in the Estate to the Member owning such Stand;
 - (b) assign those costs directly attributable to the Estate, but which is not directly attributable to a Stand in such Estate generally to the owners of all stands in the Estate; and

- (c) the Directors may in any case where they consider it equitable to do so, assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances,
- 5.11 The Directors shall be entitled to establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Company and of the Estate, including the provision of security services for the Estate, garden maintenance services, optic fibre cable networks, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the Society or any other authority, any charges for the supply of electrical current, gas, water, fuel and sewerage disposal, refuse collection and any other services to the Estate and any services required by the Company to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Company, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligations of the Company (provided that nothing in these articles shall be construed as obliging the Company to pay service charges due by Property Owners to the relevant authority).
- 5.12 Notwithstanding any contrary term contained in the Memorandum of the Company, it is recorded that the Developer shall not be obliged to pay any levies in respect of any Stand until such Stand has been transferred in the Deeds Office in the name of a purchaser, in which event the purchaser shall be liable to pay the levies as from date of transfer. The provisions hereof may not be amended by special resolution without the Developer's written consent.

Article 6—Conduct Rules

- 6.1 Subject to any restriction imposed and direction given at a General Meeting of the Company, and subject thereto that it must be equitable, in order to ensure adherence to sound environmental principles and duty of care, guidelines for the management, building design, and maintenance of properties with the Development, the Directors may from time to time make Rules in regard to:
- (a) the architectural design, construction, quality and building materials of any proposed building to be erected on any Stand in the Estate (the aforesaid shall however not deviate in any way from the architectural designs and building materials proposed by the Developer at the inception of the Development without the Developer's written consent);
 - (b) determine from time to time Rules with regard to the security, vegetation, landscaping, parking, signage, advertising and maintenance of any Stand or building or the Properties itself (during the development period, the Conduct Rules may not be amended without the Developer's written consent);
 - (c) the furtherance and promotion of any of the objects of the Company and/or the better management of the affairs of the Company and/or for the advancement of the interests of Members of the stands;
 - (d) the maintenance of all buildings, outbuildings, structures, electricity, water and sewerage reticulation, improvements of any nature and landscaping on the Stand;

- (e) the right of reasonable access to any stands in order to effect the maintenance of any matter referred to above;
- (f) the placing of moveable objects upon or outside the buildings included in the Estate, including the power to remove any such objects;
- (g) the storing of flammable or other harmful substances including gas;
- (h) the conduct of any Persons within the Estate and the prevention of nuisance of any nature to any Property Owner and/or Member;
- (i) the use of stands within the Estate;
- (j) the use of roads, pathways including appropriate traffic calming measures;
- (k) the maintenance of all buildings, outbuildings and structures;
- (l) conditions with regard to the use and/or supply of electricity, water, sewerage reticulation, gas on or about the Estate; and
- (m) the keeping of pets.

6.2 For the enforcement of any of the Rules made by the Directors in terms hereof, the Directors may: -

- (a) take or cause to be taken such steps as they may consider necessary to remedy the breach of a rule 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 concerned to the Company; and/or
- (b) impose a system of fines or other penalties. The amounts of such fines shall be reviewed and confirmed at each Annual General Meeting of the Company; and/or
- (c) take such other action including proceedings in court, as they may deem fit.

6.3 In the event of Directors instituting any legal proceedings against any Member or resident of a Stand for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client.

6.4 In the event of any breach of the Rules by the Members or any Member's household or his guests or invitees or the like, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken steps against the Person actually committing the breach as they in their discretion may deem fit.

6.5 In the event of any Member disputing the fact that he has committed a breach of any of the Rules, a committee of three Directors appointed by the chairperson for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the Rules of natural justice shall be observed) as the chairperson may direct.

6.6 Any fine imposed upon any Member shall be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.

- 6.7 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company enforce the provisions of any Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 6.8 The Company may in General Meeting itself make any Rules which the Directors make and may in General Meeting vary or modify any Rules made by it or by the Directors from time to time.

Article 7—Company Secretary

- 7.1 The Board of Directors will be appoint the Company Secretary for a period, at a remuneration and on such terms and conditions, which they may deem fit. The Board of Directors may also discharge a Company Secretary.
- 7.2 A Director or the auditors of the Company may not be appointed as Company Secretary of the Company.

Article 8 — Accounting Records

- 8.1 The Directors shall cause such accounting records as are prescribed by the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transaction and financial position of the trade or business of the Company.
- 8.2 The accounting records shall be kept at the registered office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.
- 8.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any accounting records or documents of the Company except as conferred by the Act or authorised by the Directors or by the Company in General Meeting.

Article 9 - Annual Financial Statements

- 9.1 The Directors shall from time to time, in accordance with section 30 of the Act, cause to be prepared and laid before the Company in Annual General Meeting such annual financial statements, group annual financial statements and group reports (if any) as are referred to in the Act.
- 9.2 A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the Company in Annual General Meeting, shall not less than 15 (fifteen) business days before the date of the meeting be sent to every Member of, and every holder of debentures of, the Company: Provided that this article shall not require a copy of those documents to be sent to any Person of whose address the Company is not aware or to more than one of the joint holders of any membership or debentures.

Article 10 - Articles Binding On Invitees

- 10.1. The provisions of these articles (including in particular but without limiting the generality of the foregoing restrictions and conditions relating to the use of stands) shall be binding on all invitees as if they were Members.

Article 11 - Restriction Against Alienation

- 11.1 No Member, as aforesaid, shall be entitled to alienate his Stand to any third party unless
- (1) the third party concerned has first agreed in writing to be and become a Member of the Company; and
 - (2) the board has certified in writing that all levies and similar amounts payable by the Member concerned to the Company have been paid or secured to the satisfaction of the Board for a period terminating not earlier than 3 (three) months after the date of such certificate.
- 11.2 Upon the registration of the Stand to a third party such third party will automatically be and become a Member of the Company.

Article 12 - Enforcement of Obligations of Members

- 12.1. Should any Member or guest or invitee of a Member fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Company shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Company, necessary and/or requisite to procure compliance. The costs thereby incurred by the Company shall be recoverable from the Member, which amounts shall be deemed to be part of the levy due by the Member concerned.

Article 13 - Determination Of Disputes

- 13.1 In the event of any dispute arising between a Member and the Directors (as the representative of the Company) as to the construction, meaning or interpretation of any of the provisions of these articles or as to the rights, obligations or liabilities of the Company or any Member in terms of these articles the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 (fourteen) days, then such dispute or difference shall be submitted to and decided by summary arbitration.
- 13.2 The arbitration shall be held-
- (1) at Pietermaritzburg;
 - (2) in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by the Arbitration Act or the strict rules of evidence;
 - (3) as soon as reasonable practicable in the circumstances and with a view to it being contemplated within 21 (twenty one) business days after it is demanded;
- 13.3 The arbitrator shall be a person agreed to between the parties to the dispute and failing agreement, a person nominated for such purpose by the president (or failing him, the secretary) for the time being of the Law Society of the KZN (or its successors in title).

- 13.4 The arbitrator shall determine-
- (1) the issues submitted to him according to what he considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to the strict rules of the law;
 - (2) which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.
- 13.5 The arbitrator shall be deemed to act as an expert and not as an arbitrator.
- 13.6 The decision of the arbitrator shall be-
- (1) final and binding on all parties;
 - (2) carried into effect; and
 - (3) capable of being made an order of any court of competent jurisdiction.

Article 14 -Disclaimer Responsibility

- 14.1 The Company shall not be liable for any injury to any Person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Company be responsible for any theft of property occurring on the Estate, Members hereby acknowledge that they shall not, under any circumstances have any claim or right of action whatsoever against the Company for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.
- 14.2 The Company and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any Member of the public dealing with the Member or any such other Person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.
- 14.3 Members hereby accept responsibility for and indemnify the Company and its employees, servants and agents and lawful invitees against all claims by any Person arising from any injury or loss or damage as contemplated in this article 18.