



**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY NOT HAVING A
SHARE CAPITAL, DULY ESTABLISHED AND REGISTERED ACCORDING TO THE
COMPANY LAWS OF THE REPUBLIC OF SOUTH AFRICA**

Name of company

THE COVES GOVERNING BODY NPC

Registration number of company

2003/010909/08

1. INTERPRETATION AND DEFINITIONS

In this Memorandum of Incorporation unless the context otherwise requires:

- 1.1 words incorporating the singular number shall include the plural number, and vice versa,
- 1.2 words importing the masculine gender shall include the feminine genders,
- 1.3 words importing natural persons shall include partnerships, trusts and corporate bodies,
- 1.4 the word “meeting” shall also include any adjourned meeting,
- 1.5 reference to any provision of the Companies Act, Act 71 of 2008, shall include such provision as it may be modified, varied or repealed by amendment from time to time,
- 1.6 subject to the aforesaid 1.5, any words or expressions defined in the Companies Act, Act 71 of 2008, or any statutory amendment of such Act in force at the date on which this Memorandum of Incorporation become binding on the Members of the Association, shall, if not inconsistent with the subject or context, bear the same meaning in this Memorandum of Incorporation.
- 1.7 subject to the proceeding Article, any words or expressions defined in the Deeds Registrar Act, 1973, shall, unless the contents otherwise requires bear the same meaning in this Memorandum of Incorporation, if not inconsistent with the subject or context, and
- 1.8 In this Memorandum of Incorporation the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

<i>“the Act”</i>	the Companies Act, Act 71 of 2008, including any amendments, consolidation or re-enactment thereof, if and when such statute comes into force;
<i>“the Memorandum of Incorporation”</i>	this Memorandum of Incorporation or any amended thereof by Special Resolution of the members of the Association as duly and properly convened from time to time;
<i>“the Association”</i>	The Coves Governing Body NPC. For clarity any reference to Company will have reference to the Association;
<i>“the Auditors”</i>	the auditors of the Association;
<i>“Body Corporate”</i>	a Body Corporate established in terms of the Sectional Titles Act, Act 95 of 1986, or as amended, in respect of a sectional title scheme registered upon the Property;

The following Bodies Corporate have been established upon the Property:

The Coves Boat Club Body Corporate (SS 2/2013 and SS317/2008); Olive Tree Cove Body Corporate (SS 558/2005); Oyster Cove Body Corporate (SS 207/2007, SS208/2007, SS 647/2007, SS753/2007, SS 324/2007, SS 563/2005, SS 372/2006, SS 373/2006, SS 1016/2006); and Plover Cove Body Corporate (SS 1245/2005, SS277/2006);

“Farming Company”

a duly incorporated and registered profit company according to the Company laws of the republic of South Africa and wholly owned by the Association styled The Coves HOA Farming (Pty) Ltd and with registration number 2007/02625/07 and which conducts farming activities on the property;

“Freehold Cove”

an area developed or to be developed within the Property, consisting of unique features and / or characteristics of the proximate erven;

The following Freehold Coves exist upon the Property namely:

Aero Cove; Bass Cove; Fish Eagle Cove; Heron Cove; Mountain Cove and Woodlands Cove. The term “Freehold Cove” shall also mean and include any non-profit Company registered and incorporated to represent the owners of a Freehold Cove;

“the Chairperson”

the Chairperson of the Board of Directors;

“the Directors”

the Directors of the Association from time to time, who shall, also for the purposes and for interpretation of the Act, be the Directors of the Association as company;

“common areas”

the roadways and pavements, as well as all the land and areas upon the Property which do not form part of the individual erven registered in the members’ names;

<i>“erf”</i>	a freehold erf situated upon the Property duly demarcated on a Land Surveyor General diagram, including an erf upon which a single dwelling is erected and an erf upon which a sectional title scheme as a body corporate has been established;
<i>“in writing”</i>	written, printed or lithographed, partly one and partly another, and includes any communication in electronic form transmitted by electronic mail;
<i>“unit”</i>	a sectional title unit in a Body Corporate. When used in the context of and with regard to a sectional title unit, the word “unit” shall bear its ordinary meaning as defined in the Sectional Titles Act 95 of 1986 (or as amended);
<i>“the Property”</i>	the entirety of the Coves Estate, comprising of The Heron Cove Township as proclaimed in Government Gazette No. 6079 on 28 October 2004 and as indicated on General Plan (S.G. No. 9377/2002) (previously known as Portion 178 of the Farm De Rust 478 JQ) and The Coves Township (Kosmos Extension 7) as proclaimed in Government Gazette No. 6097 on 11 January 2005 and as indicated on General Plan (S.G. No. 5219/2004) (previously known as Remainder of portion 177 of the Farm De Rust 478 JQ);
<i>“precinct”</i>	a part of the Property designated for a particular use such as a Body Corporate or Freehold Cove;
<i>“member”</i>	a member of the Association and a member of a Body Corporate and any Body Corporate in its capacity as such and a member of a Freehold Cove and any Freehold Cove in its capacity as such. a Body Corporate and a Freehold Cove shall have no voting right itself separate from its members;
<i>“the Rules”</i>	the Rules made by the Directors in meeting or by the members in General Meeting in terms of Article 9 of this Memorandum of incorporation.

2. PRELIMINARY

- 2.1 If the provisions of this Memorandum of Incorporation are in any way inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and this Memorandum of Incorporation shall be read and interpreted in all respects subject to the Act.
- 2.2 Notwithstanding the omission from this Memorandum of Incorporation of any provision to that effect, the Association may do anything which the Act empowers a company to do if so authorised by the Act.
- 2.3 Neither the short nor the long standard form of Memorandum for a Non-Profit Company, being Forms CoR.15.1.E and respectively CoR15.1F of the Act, will apply to the Association.
- 2.4 This Memorandum is in a form unique to the Association, as contemplated in section 13(1)(a)(ii) of the Act.
- 2.5 The Association does not elect in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Act.
- 2.6 The Association does not elect, in terms of section 118 (1)(c)(ii) of the Act, to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act nor to the Takeover Regulations provided for in the Act and will be bound by these provisions only to the extent contemplated in section 118(1)(c)(i).
- 2.7 The accounts of the Association must nevertheless be strictly audited, in accordance with standards to be determined by the Directors from time to time by resolution, but which may be no less than those imposed by IFRS Small Business Compliant auditing.

3 NON PROFIT COMPANY

The Association is a Non-Profit Company as defined and modified by Section 10 (1) as well as the exclusions defined in Section 10(2) and Schedule 1 of the Act.

4 THE MAIN OBJECTIVES AND BUSINESS OF THE COMPANY

- 4.1 The main business of the Association is to co-ordinate the communal interest and managerial functions and activities of the Association and its members in the development and estate known as "The Coves" as well as the bodies corporate established under the Sectionals Title Act, Act 95 of 1986.
- 4.2 The main objectives of the Association are to co-ordinate the communal interest of its members and the managerial functions and activities of the Association.

- 4.3 The main objectives of the Association also include the carry on, the promotion, the advancement and the protection of communal interests, the safety and welfare of the members of the Association, including, but not limited to, by maintaining the open spaces, controlling the aesthetic appearance of land and dwellings erected on the Property, including landscaping, buildings, alterations and improvements on the property, controlling traffic, inclusive of air traffic, implementing security measures for the controlled access and exit to the property, holding and the controlling of shares in companies and to amalgamate with other companies having the same or similar objectives as the company.

5 MEMBERS

- 5.1 The following persons shall be members of the company:

5.1.1 Any person who is the registered owner of any residential stand;

5.1.2 The members of the Coves Boat Club body corporate;

5.1.3 The members of the Olive Tree Cove body corporate;

5.1.4 The members of the Oyster Cove bodies corporate;

5.1.5 The members of the Plover Cove body corporate;

5.1.6 The owners of the erven in Aero Cove;

5.1.7 The owners of the erven in Bass Cove;

5.1.8 The owners of the erven in Fish Eagle Cove;

5.1.9 The owners of the erven in Heron Cove;

5.1.10 The owners of the erven in Mountain Cove;

5.1.11 The owners of the erven in Woodlands Cove;

5.1.12 The owners of any other sectional title units or erven to be created in the future on the Property.

- 5.2 Where an erf or unit is owned by more than one person, all the registered owners of such erf or unit shall together be deemed to be one member of the Association and shall have the rights and obligations of only one member of the Association.

- 5.3 Where any erf or unit is owned by a Corporate Body, Close Corporation, Company or the trustees of a Trust on behalf of that Trust, as the case may be, the member or its members, shareholders, directors or trustees shall jointly have the rights and obligations of one member of the Association. The joint owners of an erf or unit or the members, shareholders, directors or trustees, as the case may be, shall nominate one of their numbers, or the spouse of any of them, who shall exercise and enjoy the rights and obligations of membership on behalf of such member.
- 5.4 When a member becomes the registered owner of an erf or unit, he ipso facto becomes a member of the Association, and when he ceases to be the owner of any erf or unit, he ipso facto ceases to be a member of the Association. The joint owners of an erf or unit or the members, shareholders, directors or trustees, as the case may be, shall be jointly and severally liable to the Association for the due performance of any obligation of the owner or owners to the Association.
- 5.5 No member shall let or otherwise part with occupation of land or his unit, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such land/unit as a *stipulatio alteri* in favour of the Association that such occupier shall be bound by all the terms and conditions of these Articles presents and any rules promulgated in terms hereof.
- 5.6 A registered owner of an erf or unit may not resign as a member of the Association.
- 5.7 Every member of the Association shall be obliged to give prior written notice to the Association of any change in such member's membership, shareholders, directors or trustees. In addition, every new holder of a member's interest, shareholding, directorship or trusteeship in respect of any member of the Association shall sign and deliver to the Association, prior to his taking office in such capacity, the Association's standard form acknowledgement of its rules and regulations.
- 5.8 The rights and obligations of a member shall not be transferable and every member shall:
- 5.8.1 further to the best of his ability the objectives and interests of the Association;
- 5.8.2 observe the provisions of all the Rules of the Association; provided that nothing contained in this Memorandum of Incorporation shall prevent a member from ceding his rights in terms of this Memorandum of Incorporation, subject to all the rights of the Association as entrenched in this Memorandum of Incorporation, as security to the mortgagee of that member's erf or unit;
- 5.8.3 not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of any building or the common areas, or the carrying on of any business, trade or profession on his erf or in his unit, or so contravene or permit the contravention of the conditions of title applicable to an erf or the Property.

- 5.9 The provisions of this Memorandum of Incorporation and of any Rules and the duties of the member in relation to the use and occupation of any erf, unit and common areas, shall be binding on the member and any lessee or other occupant of any erf or unit, and it shall be the duty of the member to ensure compliance with the Rules by his lessee or occupant, including employees, contractors, guests and any member of his family, his lessee or his occupant.
- 5.10 Any member who has failed to effect payment to the Association in respect of any levy, interest, penalty or any other sum payable by him in terms of these Articles or the Rules (provided that such payment is overdue), or who is in breach of any of the provisions of these Articles or the Rules, and has failed to remedy such breach upon the written notice of the Directors, may be suspended as a member of the Association, on such terms and conditions as the Directors may determine. Such suspension shall preclude the member from exercising his right to vote at a General Meeting of the Association (save for a General Meeting called for a Special Resolution) or in any other manner enjoying the benefits and privileges of his membership of the Association. Such suspension shall however not excuse the member from the due fulfilment of any of his obligations to the Association in terms of these Articles or the Rules.
- 5.11 The owner of a boathouse in the sectional title scheme styled The Coves Boat Club Body Corporate will not pay an additional HOA levy. Ownership of a boathouse section will not confer an additional membership to the HOA. This clause shall not preclude the owner of the boathouse from paying the HOA levy as the registered owner of any other properties and/or sectional title units.
- 5.12 The owner of a boathouse in the sectional title scheme is obliged to dispose of the boathouse when he/she ceases to be a member of the HOA. He/she is obliged to sell the boathouse to another member, failing which the HOA will dispose of the boathouse on the owner's behalf to an existing member or by auction to existing members.
- 5.13 The owner of a hanger in any sectional title scheme or freehold erf is obliged to dispose of the hanger when he/she ceases to be a member of the HOA. He/she is obliged to sell the hanger to another member, failing which the HOA will dispose of the hanger on the owner's behalf to an existing member or by auction to existing members.

6 LEVIES:

- 6.1 The Directors may from time to time impose levies upon the members of the Association for the purposes of meeting all the expenses which the Association has incurred, or to which the Directors reasonably anticipate the Association will incur in the attainment of its object or the pursuit of its business.

- 6.2 The Directors shall not less than 30 (Thirty) days prior to the end of each financial year, or so soon thereafter as reasonably possible, prepare and serve upon every member at the address chosen by him of an estimate in reasonable detail of the amount which shall be required by the Association to meet the expenses during the ensuing financial year, and shall specify separately such estimated deficiency or over recovery, if any, as shall result from the preceding year.
- 6.3 The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 6.4 Each notice to each member shall specify the contribution payable by each member to such expenses and the reserve fund.
- 6.5 Every levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- 6.6 In the event of the Directors for any reason whatsoever failing to prepare and serve the estimate referred to in Article 6.2 above timeously, every member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in Article 6.4.
- 6.7 The Directors may from time to time impose special levies upon the members.
- 6.8 The power to impose a special levy is subject to it only being imposed once per calendar year and in addition being sanctioned by a general meeting of the Association subject thereto however that in the event of an emergency, the Directors shall have the authority to unilaterally impose a special levy upon members.
- 6.9 The Directors shall be empowered in addition to such other rights as the Association may have in law as against its members to determine the rate of interest from time to time chargeable upon arrear levies, subject to applicable legislation.
- 6.10 Any amount due by a member by way of levy and interest shall be a debt due by him to the Association.
- 6.11 The obligation of a member to pay a levy and interest shall cease upon his ceasing to be a member without prejudice to the Association's right to recover arrear levies and interest then due.
- 6.12 No levies lawfully raised or interest paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member.
- 6.13 A member's successor in title to his erf or unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that erf or unit into his name, to pay the levy and interest thereon attributable to that erf or unit.
- 6.14 In calculating the levy payable by any member, the Directors shall as far as is reasonably practical:

- 6.14.1 assign those costs arising directly out of the erf or unit itself to the member owning such erf or unit;
- 6.14.2 assign a proportion of those costs attributable generally to a particular portion of the Property to the registered owners of erven or units in such portion of the Property as the case may be;
- 6.14.3 assign those costs relating to the Property generally to the owners of all erven and units equally; provided however that 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.
- 6.15 An owner shall be liable for and pay all legal costs, including costs as between Attorney and client, counsel's fees, correspondent's fees, collection commission, and any other expenses and charges incurred by the Association in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the Association, or in enforcing compliance with the rules of the Association.

7 MANAGER

- 7.1 The Directors may from time to time, and shall, if required by the Members of the Company in General Meeting, appoint in terms of a written Contract a Managing Agent, Manager or Managers with specified functions to control, manage and to and to administer the Company and to exercise such powers and duties as may be entrusted to a Manager / Managing Agent, including the power to collect contributions levied by the Company.
- 7.2 The Contract with the Manager / Managing Agent shall further provide for the appointment to be terminated and the Manager / Managing Agent shall cease to hold office if:
 - 7.2.1 Where the Manager / Managing Agents is a Company or Close Corporation, an Order is made for its Provisional or Final Liquidation, or, where the Manager / Managing Agent dis a natural person, he Surrenders his Estate as Insolvent or his Estate is Sequestrated, whether provisionally or finally;
 - 7.2.2 The Manager / Managing Agent is Convicted of an Offence involving Fraud or Dishonesty, or, where the Manger / Managing Agent is a Company or Close Corporation, any of its Directors is Convicted of an Offence involving Fraud or Dishonesty; or
 - 7.2.3 A Special Resolution of the Members of the Company is passed to that effect, provided that in such event the Manager / Managing Agents so removed from office shall not be deprived of any right he may have to Claim Compensation or Damages for Breach of Contract.

- 7.3 The Manager / Managing Agent shall keep full records of his administration and shall report to the Company on all matters which in his opinion detrimentally affect the value or amenity of any Freehold Residential Erf, the Land or Open Spaces, as well as for the Property.

8 RULES

- 8.1 Subject to any restriction imposed or direction given at a General Meeting of the Association and subject to any requirements of the Act, the Directors may from time to time make, amend or vary Rules in regard to the use and observance of members and their households, their guests and lessees and any and all occupants of their erven or units, of the Property, including without limitation thereto all units and erven, all common areas and the security infrastructure and all amenities of the Association.
- 8.2 In addition, the Directors may also regulate in such Rules:
- 8.2.1 the standards and guidelines for the architectural design of all buildings and outbuildings, structures or improvements of any nature, swimming pools, tennis courts, club houses and all additions and alterations to any such buildings, outbuildings or structures erected or to be erected on the Property, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the materials used on such exteriors to ensure an attractive, aesthetically pleasing character to all the buildings on the Property and any change to the external appearance of any building;
 - 8.2.2 the siting of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any thereof;
 - 8.2.3 the standards and guidelines for the design of all site works, buildings, structures, installations and projections on the Property, including amongst others, aerials, masts, pergolas, side walls, swimming pools, tennis courts, awnings, Jacuzzis, solar heating, generators, air-conditioning units, carports, garage doors, gates, paved pathways and landscaping features and works;
 - 8.2.4 the preservation of the environment, including the right to control vegetation, the right to control watercourse and the right to prohibit and/or control the erection of fences, whether upon or within the boundaries of any erf or unit;
 - 8.2.5 the right to prohibit, restrict or control the keeping of any animal in any unit or on any erf;
 - 8.2.6 the conduct of any persons on the Property for the prevention of nuisance of any nature to any member, including the regulation of such conduct within any erf or unit;
 - 8.2.7 the preservation of the natural environment, vegetation and fauna on the Property;

- 8.2.8 the use of services, entertainment and recreation areas, amenities and facilities;
- 8.2.9 the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping upon the Property; and
- 8.2.10 any matters for the furtherance and promotion of any of the business or objectives of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the communal interests of members of Association.
- 8.3 In making such Rules, the Directors shall take into account the fact that the Property is a residential estate and that every effort must be made to preserve its residential status.
- 8.4 For the enforcement of any of the Rules made by the Directors in terms hereof and/or for the payment of any debt due to the Association, the Directors may:
- 8.4.1 give notice to the member or occupant concerned requiring him to remedy the breach thereof or make payment within such reasonable period as the Directors may determine; and / or
- 8.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the Rule of which the member or occupant may be guilty or recover the debt, and debit the cost of so doing to the member or occupant concerned, which amount shall be deemed to be a debt owing by the member or occupant concerned to the Association, and shall be paid together with the monthly levies.
- 8.4.3 impose a system of penalties. The amounts of such penalties shall be reviewed for the then forthcoming year at each Annual General Meeting of the Association. Such penalties shall be in respect of breaches of the Rules and breaches of the terms of this Memorandum of Incorporation; and/or
- 8.4.4 take legal action by instituting legal proceedings in a Court of Law or;
- 8.4.5 take such other action, including arbitration proceedings in terms of Article 25, as they may deem fit.
- 8.5 In the event of the Directors instituting any legal proceedings against any member for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover, on demand, all legal costs so incurred from the member concerned, calculated as between Attorney and own client as specified in Article 6.15.
- 8.6 In the event of any breach of the Rules by the members of any member's household, or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.

- 8.7 Any penalty imposed upon any member shall be deemed to be a debt due by the member or occupant to the Association and shall be recoverable by ordinary civil process.
- 8.8 In the event of any member disputing the fact that he has committed a breach of any of the Rules, a committee of 3 (three) Directors or a committee consisting of 1 (one) Director and 2 (two) members appointed by the Chairperson or in his absence or unwillingness, the Vice-Chairperson of the Board for such purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairperson or Vice-Chairmen may direct.
- 8.9 The Directors may in the name of the Association 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.
- 8.10 The Association may in General Meeting itself make or amend or vary any Rules which the Directors have made.
- 8.11 In the event of any conflict, any Rules (including penalties) made by the Directors or the Association in terms of this Article 8 shall prevail over the provisions of any conduct or management rule in respect of any Body Corporate or Freehold Cove upon the Property.
- 8.12 The Directors shall annually place on the agenda for the Annual General Meeting that the Rules applicable for that specific year be ratified with or without amendment in terms of section 15 of the Act.

9 DIRECTORS

- 9.1 Unless otherwise resolved by the members of the Association, the Board of Directors of the Association shall consist of not less than 5 (five) and not more than 10 (ten) natural persons, who shall be nominated so far as to ensure representation by nominees of the Bodies Corporate and Freehold Coves and skill set, as far as is reasonably possible in the opinion of the Chairperson of the meeting at which such nominations are made.
- 9.2 Subject to Article 9.1 and unless directed otherwise by the Association in General Meeting:
- 9.2.1 no person shall be a Director unless he is also a member of the Association or the person (or his or her spouse) nominated in terms of Article 9.1 hereof; and
- 9.2.2 the majority of Directors at any given time shall be permanent residents upon the Property;
- 9.2.3 the quorum for a Director's meeting shall be 4 (four) Directors present in person or one half of the total number of Directors then in office, plus one, whichever is the greater.

10 REMOVAL AND ROTATION OF DIRECTORS

- 10.1 Each Director shall continue to hold office as such from the date of his appointment to office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Directors at such meeting.
- 10.2 A Director shall be deemed to have vacated his office as such upon:
- 10.2.1 his having become disqualified to act as Director in terms of the provisions of the Act or in terms of this Memorandum of Incorporation;
 - 10.2.2 his being removed from office as provided for in the Act;
 - 10.2.3 his being convicted of any fraudulent act;
 - 10.2.4 his sequestration or his being placed under an order of debt review;
 - 10.2.5 his being declared insane;
 - 10.2.6 his resignation in writing being tendered;
 - 10.2.7 his ceasing to be a member of the Association or is suspended as such.
- 10.3 Upon any vacancy occurring in the Board of Directors prior to the next Annual General Meeting or should a seat be held vacant for a precinct's representative, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors. However, in so doing, the Directors shall adhere to the provisions of Article 9.1 and as far as possible, to the principle that the Board of Directors shall be representative of the precincts in the manner prescribed in Article 9.1.

11 CHAIRPERSON AND VICE CHAIRPERSON

- 11.1 The Directors shall within 14 (fourteen) days after each Annual General Meeting appoint from their number a Chairperson and Vice Chairperson, who shall hold their respective offices until the Annual General Meeting next after their said appointments, provided that the office of Chairperson or Vice Chairperson shall *ipso facto* be vacated by a Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the Board of Directors shall immediately appoint one of their number as a replacement in such office.
- 11.2 Except as otherwise provided, the Chairperson shall preside at all meetings of the Board of Directors and all General Meetings of members and, in the event of his not being present within 5 (five) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice Chairperson shall act in his stead, or failing the Vice Chairperson, a Chairperson appointed by the meeting.

12 DIRECTORS' EXPENSES

- 12.1 Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Directors. Save as aforesaid, Directors shall not be entitled to any remuneration for the performance of their duties in terms hereof, unless the Association in a General Meeting otherwise resolves.

13 POWERS AND DUTIES OF DIRECTORS

- 13.1 Subject to the express provisions of these Articles, and provided that the Directors shall not cause the Association to undertake business or do any act not falling within the general scope of the objectives set forth in the Memorandum of Association, the Directors shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of a Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by the Act or by these Articles required to be exercised or done by the Association in General Meeting, subject however to such Rules as may have been made by the Association in General Meeting or as may be made by the Directors from time to time.
- 13.2 Save as specifically provided in these Articles, the Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, Attorneys, Advocates, architects, engineers, a Managing Agent and any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors and on such terms as the Directors shall decide.
- 13.3 The Directors shall further have power:
- 13.3.1 to require that any works being constructed upon the Property be supervised to ensure that the provisions of these Articles and the Rules are complied with and that all work is performed in a proper and workmanlike manner. "Works" for the purposes of this Article shall mean construction works of any sort in relation to any repairs to existing structures within common areas upon the Property save for works of *any* nature undertaken to or on erven upon which sectional title schemes are situated; and
- 13.3.2 to issue an architectural and environmental design and maintenance manual in respect of the Property. This entitlement shall also apply to or on erven upon which sectional title schemes are situated in terms of Regulation 30(3) of the Sectional Titles Act.
- 13.4 The Directors shall not be entitled to exercise the following powers on behalf of the Association, unless with the prior resolution obtained by ordinary resolution of the Association in General Meeting first being obtained:

- 13.4.1 the sale, alienation, hypothecation, mortgage, lien of, or any encumbrance upon, any portion of the Property or any portion thereof, including the common areas; and/or
- 13.4.2 the borrowing of any sum of money or the provision of any guarantee, suretyship, intercession or other form of security except in the ordinary and regular course of the conduct of the business of the Association; and/or
- 13.4.3 the incurring of any operational or capital expenditure in excess of such monetary limits as may be fixed by the Association in General Meeting from time to time; and/or
- 13.4.4 the grant of any right to exclusive use, occupation or to lease any amenity or common area situated upon the Property, which shall include (without limiting the generality thereof), the club house, kiosk, farm, farm buildings and the waterfront amenities for any period longer than one day and not previously disclosed by the Directors at an Annual General Meeting of the Association; and/or
- 13.4.5 any arrangement with any neighboring or adjacent property or estate pertaining to rights of access to the Property, the common areas or any amenities situated upon the Property.
- 13.5 The Directors shall have the right to co-opt on to the Board any person or persons chosen by it subject to the other provisions hereof. However, in so doing, the Directors shall adhere to the provisions of Article 9.1 and, as far as possible, to the principle that the Board of Directors shall be representative of the precincts in the manner prescribed in Article 9.1.
- 13.6 The Directors shall be entitled to appoint committees consisting of such number of their members and any other members of the Association, as they may 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.
- 13.7 The Directors shall be entitled to appoint an architectural review and aesthetics committee which shall consist of:
 - 13.7.1 a practicing professional architect duly qualified to practice as such on his own account in the Republic of South Africa; and
 - 13.7.2 1 (one) Director.
- 13.8 A resolution signed by all the Directors present in the Republic at the time, shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors. Despite the foregoing, a resolution approved by a majority of the Directors after circulation of the proposed resolution to all Directors for comment by email or otherwise, shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors.

13.9 A Director may not:

13.9.1 Hold any other office or office for profit in the Association; or

13.9.2 Act by himself or by his firm in a professional capacity for the Association; or

13.9.3 Have any direct or indirect interest in any contract or any arrangement entered into or on behalf of the Association;

unless the Association in General Meeting shall have provided by ordinary resolution its prior approval in respect of any office, office for profit, appointment or interest and subject to such terms and conditions as may be determined by the Association in General Meeting. A Director shall be disqualified from acting as such, in the event of any breach on his part of the provisions of this Article 13.9.

13.10 The Directors shall cause Minutes to be made of:

13.10.1 All appointments of committees, officers, employees and such persons specified in Article 13.6;

13.10.2 The names at the Directors present at each meeting of the Directors or any committee;

13.10.3 All resolutions and proceedings at every General Meeting of the Association;

13.10.4 All of the meetings of the Directors or any committee and all resolutions passed by the Directors in terms of these Articles.

13.11 In the exercise of their powers in terms of the Act, these Articles and the Rules, the Directors shall at all-time act reasonably.

14 GENERAL MEETINGS OF THE ASSOCIATION

14.1 The Association shall within 6 (six) months after the end of each financial year hold its Annual General Meeting in addition to any other General Meeting during the year.

14.2 Such Annual General Meeting shall be held at such time and place as the Directors shall decide from time to time, subject to the venue being within the Magisterial District of the Association.

14.3 All Meetings other than Annual General Meetings shall be called General Meetings.

14.4 The Directors may, whenever they think fit, convene a General Meeting, and a General Meeting shall also be convened on the written requisition made one twentieth of the members of the Association addressed to the Board of Directors.

- 14.5 A General Meeting of the Association convened on the requisition of Members representing not less than one twentieth of the total voting rights of all the Members of the Association and such members having at the date of the lodgment of the requisition, a right to vote at General Meeting of the Association shall be convened by the Board of Directors and in default, may be convened by the requisitions as provided by and subject to the provisions of the Act.

15 NOTICES OF MEETINGS

- 15.1 Subject to the provisions of the Act relating to Meetings of which special notice is required to be given, an Annual General Meeting and a Meeting called for the passing of a Special Resolution shall be called by 21 (twenty-one) clear days' notice in writing at the least, and a Meeting of the Association, other than an Annual General Meeting or a Meeting for the passing of a Special Resolution, shall be called by at the least fourteen (14) days' notice in writing.
- 15.2 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 is given and shall specify the place, the day and the hour of the Meeting and, in case of special business, the general nature of the business, and shall be given, in a manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association at a meeting of Members, to such persons as are, under these Articles, entitled to receive such notices from the Association, provided that a Meeting of the Association shall, notwithstanding 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 a majority in number of the Members having right to attend and vote at the Meeting.
- 15.3 The accidental omission to give notice of a Meeting to, or the non-receipt of notice of a Meeting by, any person entitled to receive notice shall not invalidate the proceedings of that Meeting.
- 15.4 The Association shall comply with the provisions of the Act as to giving of notice and the circulation of statements on the requisition of members.

16 QUORUM

- 16.1 No business shall be transacted at any Annual or General Meeting unless a quorum is present when the meeting commences and proceeds to do business. In the event the quorum is lost during the meeting, the meeting will stand adjourned as per Article 16.3.
- 16.2 The quorum necessary for the holding of any Annual or General Meeting shall be 20% (twenty *per centum*) of the members present in person or by proxy and being entitled to vote and provided that at least 1(one) member is present in person from each precinct.

- 16.3 If within half an hour from the time appointed for the holding of an Annual or General Meeting, a quorum is not present, alternatively a quorum is lost during the meeting, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place as the Chairperson of the meeting shall appoint, without further notice 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.
- 16.4 In the event that a meeting is requested by the members of the Association as envisaged in terms of Article 14.4 and Article 14.5 and no quorum is present, the meeting is dissolved and will not stand adjourned.

17 AGENDA AT MEETINGS

- 17.1 In addition to any other matters required by the Act or this Memorandum of Incorporation to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 17.1.1 The consideration of the Chairperson's report; and
 - 17.1.2 The fixing of the number of Directors; and
 - 17.1.3 The election of Directors; and
 - 17.1.4 The consideration of any other matters raised in the notice convening the meeting, including any ordinary or special resolutions proposed for adoption by such meeting; and
 - 17.1.5 The consideration of the Association's Auditor's Report inclusive of the annual financial statements of the Association; and
 - 17.1.6 The fixing of the remuneration for the Auditors; and
 - 17.1.7 The consideration and approval of the Annual Financial Statements for the preceding year of the Association; and
 - 17.1.8 The consideration of the budget and levies imposed by the directors of the Association for the forthcoming financial year; and
 - 17.1.9 The ratification of the Rules (including penalties) and any amendments thereto as per the Act; and
 - 17.1.10 Directions to be given and restrictions to be placed on the Directors for the forthcoming financial year.

18 PROXIES

- 18.1 A member may be represented at an Annual or General Meeting by a proxy, who shall be a member of the Association or any person nominated in terms of Article 5.3 hereof.
- 18.2 A member, except the chairperson acting in his capacity as chairperson, may not be the bearer of more than 10 (ten) proxies.
- 18.3 The instrument appointing a proxy shall be in writing, dated and signed by the member concerned or his agent, duly authorised in writing, but need not be in a particular form provided that, where a member is more than 1 (one) person, a majority of those persons who shall sign the instrument appointing a proxy on such member's behalf.
- 18.4 The instrument appointing a proxy and the Power of Attorney or any other authority under which it is signed shall be tabled at the meeting at which the person named in the instrument proposes to vote.
- 18.5 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 18.6 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Directors at any time before a vote is taken in respect of which the proxy exercises such vote.

19 VOTING

At every General Meeting:

- 19.1 Every member in person or by proxy and entitled to vote (save for a Body Corporate or Cove which shall have no voting right in its capacity as such) shall have 1 (one) vote for each erf or unit registered in his name.
- 19.2 If an erf or unit is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
- 19.3 Any member who is the registered owner of undeveloped land on the Property shall have 1 (one) vote for each separate piece of land registered in his name.

- 19.4 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 (including penalties), if any, which shall be lawfully due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any Annual or General Meeting. Members who are at the time of the meeting commencing to business in arrears in respect of any levies, or any other sum due to the Association, shall be required to provide sufficient proof of payment before being permitted to cast their vote.
- 19.5 At any Annual or General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairperson or any member. Unless a poll is so demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negated, an entry to that effect will be made in the book containing the minutes of the proceedings of the Association and shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 19.6 The demand for a poll may be withdrawn.
- 19.7 If a poll is duly demanded it shall be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 19.8 Scrutineers shall be elected by the Directors to determine the result of the poll.
- 19.9 If a poll is demanded on the election of a Chairperson or on a question of adjournment, it shall be taken forthwith. A poll demanded on any other question shall be taken at such time and manner 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.
- 19.10 Every resolution and every amended resolution proposed for adoption by an Annual or General Meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 19.11 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority.
- 19.12 Unless any member present in person or by proxy at a General Meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, 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 lost, with or without a record of the number of votes recorded in favor of or against such motion, shall be conclusive evidence of the votes so recorded.

20 ACCOUNTS

- 20.1 The accounts and books of the Association shall be open to inspection of members on reasonable written notice to the Association and at all reasonable times during business hours.
- 20.2 Once in each financial year the accounts of the Association shall be examined and the correctness thereof ascertained by the Auditors according to the Act and to be reported to the members at the Annual General Meeting of the Association by a written report done by the Auditors.

21 SERVICE OF NOTICES

- 21.1 All notices intended or required to be given by the Association to any member shall be given in writing, either personally, by pre-paid registered post or by electronic notice.
- 21.2 A notice by the Association to any member shall be regarded as validly given if it is delivered personally to the member, or sent by prepaid post to him at his registered address or transmitted via e-mail at an e-mail address provided by the member to the Association in terms of Article 23.1.
- 21.3 A member entitled to a notice shall be bound by every notice given in terms of Article 21.2.
- 21.4 The Association shall not be bound to enter any person in the register of members until that person gives the Association a physical address, postal address and e-mail address for entry on the register.
- 21.5 Any notice if given by post, shall be deemed to have been served on the day following that on which the letter or envelope containing such notice is posted, and in proving the giving of the notice sent by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.

22 DOMICILIUM CITANDI ET EXECUTANDI

- 22.1 Each member shall notify the Association in writing of a physical address as well as an email address and which physical address shall be his *domicilium citandi et executandi* for the purpose of receiving notices in terms of these Articles or any process and, failing such notice, such member's unit or erf shall be his *domicilium citandi et executandi*.
- 22.2 Any change of a member's *domicilium citandi et executandi* must be furnished in writing to the Association or the Managing Agent on behalf of the Association, as the case may be.

23 INDEMNITY

- 23.1 Every Director, servant, agent and employee of the Association and any Manager or Managing Agent, its employees, nominees or invitees, shall be indemnified by the Association against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into or any act or deed done by such person or persons in the discharge of their respective duties, including in the case of a Director, his duties as Chairperson.
- 23.2 Without prejudice to the generality of the foregoing, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.

24 MEDIATION AND ARBITRATION

- 24.1 Should any dispute of whatsoever nature arise at any time between the members, or between the members and the Association, then either party:
- 24.1.1 may declare a dispute by delivering the details thereof to the other party and the Association; and
- 24.1.2 request that such dispute be referred without legal representation to mediation by a single mediator at a place and time to be determined by the mediator.
- 24.2 Within 14 (fourteen) days of the delivery of the declaration of a dispute and request that such dispute be referred to mediation and in the absence of the parties agreeing to a mediator, the chairperson of the Association, failing him any director of the Association, shall nominate the mediator which not necessary be a member of the Association.
- 24.3 The mediator will convene and conduct the mediation process at such venue, date and process as he in his sole discretion may determine.
- 24.4 The costs of mediation shall be determined by the mediator and shall comprise:
- 24.4.1 the mediator's expenses; and
- 24.4.2 any fee which shall have been previously paid by the parties.
- 24.5 The said costs shall be borne equally by the two parties and shall be due and payable to the mediator on presentation to them of his written account.
- 24.6 If, within 14 (fourteen) days of the appointment of a mediator or such extension as the parties may agree the dispute remains unresolved, or despite mediation the dispute has not been resolved, then the dispute shall be determined by arbitration as hereinafter prescribed.

- 24.7 The arbitrator shall be selected by agreement between the parties or, failing such agreement, nominated on the application of either party by the Chairperson for the time being of the Johannesburg Society of Advocates or his nominee within 14 (fourteen) days of the failure of mediation.
- 24.8 The arbitrator shall, at his entire discretion, determine whether the reference to him shall be made in the form of written and/or oral representations and/or such other procedure or rules providing that, in making this determination, he shall consult the disputing parties and be guided by their desires of the form in which the said representations are to be made.
- 24.9 The Arbitrator shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued.
- 24.10 Upon every or any such reference, the costs of and incidental to the reference and award shall be in the discretion of the Arbitrator, who may determine the amount thereof, or direct same to be taxed as between Attorney and client or as between party and party and shall direct by whom and to whom and in what manner the same shall be borne and paid.
- 24.11 The arbitrator shall, within a reasonable period thereafter, hand down in writing an award and shall include in his award detailed reasons leading to the award.
- 24.12 The arbitrator shall deliver a copy of his award to each party.
- 24.13 The award of the Arbitrator shall be final and binding on the parties hereto unless the parties agreed to a right to appeal.
- 24.14 The arbitration clause contained herein does not preclude the owners from approaching a Court for any relief.

25 RESTRICTION ON TRANSFER OF LAND OR A UNIT

- 25.1 No member shall transfer his erf or unit, or any portion thereof, or allow the transfer of any interest, shareholding or membership interest in respect of a Corporate Body, Company or Close Corporation (being the registered owner of an erf or unit) unless:
- 25.1.1 the Association, under the hand of 2 (two) Directors (or the Manager or the Managing Agent, if so appointed and authorised), has certified in writing that the member has fulfilled all his financial and other obligations to the Association in respect of the period up to and including the date specified in such certificate, and the transfer takes place prior to or on that date; and
- 25.1.2 all outstanding building disputes which may have arisen between the Association and the member have been resolved to the Directors' reasonable satisfaction; and

- 25.1.3 the building and any structures of the member Transferor conform to the plans approved by the Association and the Local Council and also in possession of the Association.
- 25.2 No member shall transfer an erf or unit unless the proposed transferee has been made aware of the existence of the Memorandum and Articles of the Association and the transferee's obligations with regard thereto and the proposed transferee has undertaken in writing to become bound thereto.

26 RESTRICTION OF BUILDING PERIOD

- 26.1 All construction on any undeveloped erven or units on the Property shall commence within 5 (five) years from the date of acceptance of this Memorandum of Incorporation by members of the Association.
- 26.2 Construction shall be completed within 12 (twelve) months from the date of commencement.
- 26.3 Commencement in this context shall incorporate the approval of building plans by the local authority of Madibeng and the payment of the builders deposit to the Association, the amount of which deposit shall be determined by the Directors from time to time.

27 GENERAL

- 27.1 Whenever they consider that the appearance of any land or building of a member or members is such as to be unsightly or injurious to the amenities of the surrounding area(s) or the Property, the Directors may serve notice upon such member or members to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member or members failing within a reasonable time to comply with the notice, the Directors may enter upon the property concerned and take such steps as may be necessary to address the unsightly or injurious condition and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the Association.
- 27.2 No member shall commence with the construction of any building or structure, or any additions or alterations thereto, or any works of whatsoever nature unless he has submitted to the Directors for examination and approval or refusal such plans for such building, structure, alteration or addition as the Directors may require and such plans have been approved in writing by the Directors or their nominee(s) prior to commencement of construction or site preparation. The Directors shall have the power in approving any plan, to impose such conditions as they may deem fit.

- 27.3 The owner/s of any undeveloped land shall be responsible for the maintenance thereof failing which the Association shall be entitled, after having given the owner of such land reasonable notice to attend to such maintenance and the owner has neglected to react to such notice, alternatively failed to attend thereto to the satisfaction of the Association, carry out the necessary maintenance without giving notice to the owner thereof and debit the owner with the cost thereof.
- 27.4 The Association may require any member to maintain the sidewalk adjacent to his Property and in the event of such member failing to so maintain such sidewalk to the satisfaction of the Association, the Association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to debit the member concerned with the costs thereof.
- 27.5 The Association may enter into agreements with members for the provision of amenities and services to the members and to levy a reasonable charge in respect of the provision thereof.
- 27.6 In the event of the Association electing to provide a security service and/or any other services for members on the Property, all members shall be obliged:
- 27.6.1 to permit the installation of any equipment on any erf or unit for the purpose of such services as may be determined by the Association from time to time;
- 27.6.2 to make payment of the charges raised by the Association in respect of such services;
- 27.6.3 abide by such terms and conditions of the provisions of such services as may be laid down by the Association from time to time.
- 27.7 The Directors may delegate such of their powers to a Manager or a Managing Agent as they may determine subject to any restriction imposed or direction given at any general meeting of the Association.

28 AMENDMENT

This Memorandum of Incorporation shall only be capable of being varied, altered, added to or retracted by a Special Resolution of members.

29 WINDING UP, DEREGISTRATION OR DISSOLUTION

- 29.1 The Association may, with the consent of the Local Authority, be voluntarily wound-up as contemplated in Section 80 of the Act by way of a Special Resolution of its Members or Creditors.
- 29.2 Should the Association be wound-up each Member will be liable to contribute to the Assets of the Association to an amount of R100,00 (One Hundred Rand) for:

- 29.2.1 payment of the Debts and Liabilities of the Association;
- 29.2.2 the Costs, Charges and Expenses of the Winding-Up.
- 29.3 Upon Dissolution of the Association its Net Assets must be contributed to another non-profit Company.

30 RESERVES

- 30.1 The Directors may set aside out of the profits of the Association or contingencies as budgeted for and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the Directors be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Association, for repairing, improving or maintaining any Property of the Association, for meeting losses on realisation of, or writing down investments either individually or in the aggregate, or for any other purpose to which profits of the Association may appropriately be applied.
- 30.2 Pending such application such sums may either be employed in the business of the Association (without being kept separate from other assets of the Association) or be invested. The Directors may divide the reserve into such special reserves as they think fit and reallocate the amounts of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of special reserves into which the reserve may have been divided.