

MEMORANDUM OF INCORPORATION

MOSSEL BAY GOLF ESTATE HOME OWNERS ASSOCIATION (RF) NPC

REGISTRATION NO : 1999/001249/08

1. NAME OF COMPANY

The name of the company is :

**MOSSEL BAY GOLF ESTATE HOME OWNERS ASSOCIATION
(RF) NPC**

2. INCORPORATION

2.1 The company is incorporated as a non-profit company, as defined in the Act.

2.2 The company is incorporated in accordance with, and governed by –

2.2.1 the unalterable provisions of the Act that are applicable to non-profit companies;

2.2.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this memorandum; and

2.2.3 the provisions of this memorandum.

3. DEFINITIONS AND INTERPRETATIONS

3.1 In this memorandum, the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them :

“the Act”	the Companies Act, No 71 of 2008 (as amended).
“alienate”	to dispose of an erf or unit or part thereof and includes alienation by way of sale, exchange, donation, intestate or testate succession, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolutive condition and “alienation” shall have a corresponding meaning.
“architect”	such architect who shall be a practicing professional architect, duly qualified to practice as such for his own account in the Republic of South Africa, as appointed by the director and who will assist in the implementation of the architectural guidelines and serve on the architectural review committee.
“architectural review committee”	a committee appointed by the directors in terms of article 20.6.
“architectural guidelines”	the architectural guidelines for the development for the control of all aspects of the design of and improvements or alterations to buildings, and landscaping within the development as amended from time to time, and to which members are required to adhere and ‘guidelines’ shall have a corresponding meaning.
“article”	means an article of this memorandum;
“the association”	the Mossel Bay Golf Estate Home Owners Association, a non-profit company in terms of the Act, and "the company" shall have a corresponding meaning.
“auditors”	the auditors of the association appointed in accordance with the Act.
“body corporate”	a body corporate of a sectional title scheme, as defined in the Sectional Titles

Act, No 95 of 1986 (as amended) established on any portion of the development.

“chairman”	the chairman of the board of directors.
“common areas”	the land included within the boundaries of the development not forming part of an erf or areas not included in a sub-association, including roads, private open spaces, public open spaces, conservation areas, recreational facilities and amenities within the development, which are intended for general use and benefit of the members.
“common property”	shall have the meaning ascribed to it in the Sectional Titles Act, No 95 of 1986.
“constitution”	the constitution of a sub-association and/or the Management rules and Conduct rules of a body corporate.
“contractor”	an accredited building contractor in terms of this memorandum, employed by a member or where applicable a body corporate for the construction of improvements.
“development”	the area generally known as the Mossel Bay Golf Estate and its sub-developments, and/or any subdivisions thereof, and/or any extensions thereto as approved by the local authority, and the term “Mossel Bay Golf Estate” or “the Estate” shall have a corresponding meaning.
“directors”	the directors of the company and "board of directors" shall have a corresponding meaning.
“due date”	in relation to an amount owing to the association, the date for payment in full determined by the directors or otherwise determined in terms of this memorandum.
“Environmental Management Plan (EMP)”	the environmental management plan applicable to the development as

	determined by law, as amended from time to time.
“erf”	in relation to the development, any unimproved piece of land intended for a unit to be built thereon and registrable in the Deeds Registry.
“financial year”	the financial year of the association, being from 1 July to 30 June of each year.
“golf club”	the Mossel Bay Golf Club, its members and invitees.
“golf course”	the Mossel Bay golf course operated by the golf club.
“guest”	any person staying or residing in a unit of a member on a non-paying basis.
“improvements”	any structure of whatever nature constructed or erected or to be constructed or erected on an erf, or on common property, or on the common areas.
“levy” or “levies”	means the levy or levies referred to in article 11;
“local authority”	the local authority having jurisdiction over the development, namely the Mossel Bay Municipality and its successors-in-title.
“managing agent”	any person appointed by the association as an independent contractor, or as an employee, to undertake any of the functions of the association.
“member”	a member of the association.
“occupier”	any person in occupation or in possession of a unit or erf.
"Ordinance"	the Land Use Planning Ordinance, Cape Ordinance No 15 of 1985, as amended, and all regulations published thereunder.

“owner”	the registered owner from time to time of a unit or erf registered as such in the Deeds Registry.
“person”	includes a natural person, legal person, an association of persons, a trust and a partnership, as the case may be.
“the private open spaces”	all areas generally designated as private open spaces in the development for the general use of members.
“the public open space”	the area leased from the local authority from 1 January 1999 to 30 December 2098 as Nature Reserve.
“recreational facilities”	the swimming pools and suchlike facilities together with the associated buildings erected or constructed within the development for the use and enjoyment of the members for recreational purposes.
“the roads”	such roads including driveways, which may be constructed in the development.
“rules”	such reasonable rules that the directors and/or the association may make from time to time in terms of the provisions of this memorandum, but for the avoidance of doubt it is provided that such rules shall not be regarded as rules relating to the governance of the company as contemplated in section 15(3) of the Act.
“section”	with reference to the Sectional Titles Act, No 95 of 1986, a section shown as such on a sectional plan as defined in the said Act.
“sectional title unit”	with reference to the Sectional Titles Act, No 95 of 1986, a section shown as such on a sectional plan together with an undivided share in the common property as determined in accordance with the participation quota of that section in terms of the Sectional Titles Act, 1986.

“services”	the provision of the services of water, sewerage, electricity, drainage, telecommunications, refuse removal, fire fighting, libraries, community centre, transport, security and suchlike other utilities and amenities as may from time to time be provided by the association.
"Site Management Plan (SMP)"	the site management plan applicable to the development as determined by law, as amended from time to time.
“sub-associations”	the home owners associations or bodies corporate formed as governing bodies for the sub-developments, with the Mossel Bay Golf Estate Home Owners Association as principal governing body.
“sub-developments”	portions of the development, governed by sub-associations.
“this memorandum”	the memorandum of incorporation (as amended from time to time).
“trustees”	the governing body of a sub-association.
“unit”	a dwelling unit as defined in the Ordinance with or without outbuildings and whether held in terms of the Sectional Titles Act, No 95 of 1986 (as amended), or situated on an erf, which may be registered at the Deeds Registry.
“vice-chairman”	the vice-chairman of the board of directors.
“works”	construction works of any sort in relation to any improvement within the development which shall include, construction of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts, golf course, country club, walls, fences, paving and landscape architectural features.
“writing”	written, printed, typewritten, lithographed or any other mechanical process or partly one and partly the other modes of representing or producing words in a visible form.

- 3.2 Unless the context clearly indicates a contrary intention -
- 3.2.1 the singular shall include the plural and vice versa; and
- 3.2.2 a reference to any one gender shall include the other genders; and
- 3.2.3 a reference to natural persons includes legal persons and vice versa.
- 3.3 The headings to the respective articles are for reference purposes only and shall not be taken into account in the interpretation of these articles.
- 3.4 Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed by the association, and shall be given prior to the member taking action.
- 3.5 In the event of a member consisting of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this memorandum.
- 3.6 All references in this memorandum to an erf shall apply *mutatis mutandis* in respect of a unit : Provided that should there be any discrepancy between the provisions set out in this memorandum and the management or conduct rules of the sectional title scheme concerned, the provisions of this memorandum shall prevail.
- 3.7 Should the development contain sectional title units, the owners of such units shall be members of both the body corporate of such sectional title scheme and of the company.
- 3.8 When any number of days is prescribed in this memorandum, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 3.9 Any notice which is required to be in writing may be given by electronic communication or faxed to the addressee's e-mail address or fax number of which the person concerned notified the company or which he normally uses in his communication with the company.
- 3.10 Any word or expression which is defined in the Act and which is not otherwise defined in this memorandum shall have the meaning assigned thereto in the Act.

- 3.11 Words and expressions defined in any sub-article shall, for the purpose of the article to which that sub-article forms part and in subsequent articles, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-article.
- 3.12 Where figures are referred to in words and in numerals in this memorandum, the words shall prevail if there is any conflict between the two.
- 3.13 If any provision of this memorandum is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this memorandum.
- 3.14 If any provision in a definition in this memorandum is a substantive provision conferring rights or imposing obligations on any of the members then, notwithstanding that it is only in the definition article of this memorandum, effect shall be given to it as if it were a substantive provision in the body of this memorandum.

4. OBJECTS AND POWERS OF THE COMPANY

- 4.1 Subject to any other provisions stated in this memorandum the objectives of the association shall be the following:
- 4.1.1 To serve as an owners' association for the members, to promote, advance and protect the communal interests of the members generally in the development.
- 4.1.2 To manage, administer, maintain, control and insure, where necessary, the common areas within the development and all aspects of common interest to the members.
- 4.1.3 To take transfer of, maintain and insure, where necessary, the roads, the private open space and improvements thereupon in the development and control the usage thereof and of the facilities belonging to the association or falling under its control.
- 4.1.4 To control all aspects of the exterior design of all buildings, improvements and landscaping within the development.
- 4.1.5 To ensure compliance with the legal requirements of any local authority, including the conditions of establishment imposed by any competent authority.

- 4.1.6 To ensure that all erven other than those used as private and public open spaces and roads, shall be used for single residential purposes only unless otherwise approved by 60% of the members in general meeting, subject to such conditions as the meeting may determine : Provided that no final approval in terms of the Mossel Bay Town Planning Scheme and the Land Use Planning Ordinance No 15 of 1985 as on 1st January 2007 shall be affected by any such decision.
- 4.1.7 To ensure that no subdivision, rezoning, consent use or departure as defined in the Ordinance or any suchlike deviations are permitted in respect of any erf or unit unless approved by 60% of the members in general meeting, subject to such conditions as the meeting may determine : Provided that no final approval in terms of the Mossel Bay Town Planning Scheme and the Land Use Planning Ordinance No 15 of 1985 as on 1st January 2007 shall be affected by any such decision.
- 4.1.8 To enter into services agreements and other necessary agreements with the local authority or any other authority or supplier of services in connection with the development.
- 4.1.9 In general :
- 4.1.9.1 To ensure the maintenance and promotion of harmony and security in the physical and social environment of the development.
- 4.1.9.2 To require members and where applicable, bodies corporate, to maintain at all times the external appearances of their properties in a clean and tidy condition and to maintain high standards in this regard so as to ensure that the appearance of their properties is both aesthetically pleasing and desirable when viewed from the outside and further to take steps to enforce the maintenance of such standards where deemed necessary in the opinion of the directors.
- 4.1.9.3 To protect and promote the interests of the association, sub-associations and members, as far as the development is concerned.
- 4.1.9.4 To control, manage and administer the development for the benefit of all members.
- 4.1.10 To create suitable rules for the management of the development, including such rules of conduct, as the directors may deem necessary, for purposes of which it is provided that such rules shall

not be regarded as rules relating to the governance of the company as contemplated in section 15(3) of the Act.

- 4.1.11 To control the transfer of erven and units in the development and ensure compliance with the conditions imposed by the local authority and conditions imposed in this memorandum.
- 4.1.12 To establish and control of a fund to defray the expenses of the association relating to maintenance, repairs, renewal, upgrading, security, insurance, landscaping, statutory rates, taxes and charges and administrative expenses, including reasonable provision for future expenses resulting from maintenance, repairs, renewal and upgrading when necessary.
- 4.1.13 To determine and collect levies for the purposes of the said fund from members.
- 4.1.14 To enforce members' obligations in terms of this memorandum and any law, bylaw, ordinance, proclamation, regulation or condition relating to the development.
- 4.2 The association shall have the powers to perform such acts as are necessary and reasonably required to accomplish the fulfilment of the foregoing objects including, but not restricted, to the powers specifically contained in this memorandum.
- 4.3 Except to the extent necessarily implied by the stated objects, the purposes and powers of the company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.
- 4.4 The company is subject to the restrictive conditions and requirement for the amendment of such condition in addition to the requirements set out in section 16, as set out in articles 10.7, 42 and 44.
- 4.5 Upon dissolution of the company, its net assets must be distributed in the manner determined in accordance with the provisions set out in article 43.2.
- 4.6 The company shall apply all of its assets and income, however derived, to advance its stated objects, as set out in this memorandum.
- 4.7 The company shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or who was an incorporator of the company, or who is a member or director, or person appointing a director, of the company, except as reasonable remuneration for

goods delivered or services rendered or expenses incurred, as a payment of any amount due and payable in terms of a bona fide agreement, as a payment in order to advance a stated object of the company or in respect of any legal obligation binding on the company as more fully set out in item 1(3) of Schedule 1 of the Act.

5 MEMORANDUM OF INCORPORATION AND COMPANY RULES

- 5.1 This memorandum may be altered or amended in the manner set out in section 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) read with article 42.1.
- 5.2 The authority of the company's board of directors to make rules for the company, as contemplated in section 15(3) is limited and restricted to the extent set out in article 13.
- 5.3 The board must notify all members in writing of any rules made in terms of article 13.
- 5.4 The company must publish a notice of any alteration of this memorandum or the rules by notifying all members thereof in writing.

6 OPTIONAL PROVISIONS OF COMPANIES ACT, 2008 DO NOT APPLY

The company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act.

7 MEMBERS OF THE COMPANY

- 7.1 As contemplated in item 4(1) of Schedule 1 of the Act, the company has members, who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the company.
- 7.2 The association shall maintain at its registered office a register of members of the association and the register of members shall be opened to inspection, subject to the procedures determined by the board.
- 7.3 Membership of the association is limited to persons who are owners of a unit or an erf in the development.

- 7.4 Membership of the association shall be automatic and compulsory, such membership commencing automatically when a person becomes the registered owner of a unit or erf in the development, and ceasing automatically when he ceases to be an owner of a unit or erf : Provided that such termination of membership shall not absolve the person concerned from any liability of the member towards the association relating to any period before such termination.
- 7.5 Each member shall for the duration of his membership of the association, also be a member of the sub-association created for the area within which his unit or erf is situated. membership to the sub-association shall be involuntary and compulsory. The provisions of the constitution or management rules and conduct rules of the sub-association concerned shall bind every member, but this memorandum will take precedence over such constitution or management rules and conduct rules should any condition therein be contrary to this memorandum.
- 7.6 Where any unit or erf is owned by more than one person, all the registered owners of the unit or erf together shall be deemed to be one member of the association, and to have the rights and obligations of one member of the association, but provided however that all co-owners of any unit or erf shall be jointly and severally liable for the due performance of any obligation to the association.
- 7.7 Where the unit or erf is owned by a partnership, syndicate or trust it shall be deemed to be one member of the association and have the rights and obligations of one member of the association, but provided however that all directors, members, shareholders and beneficiaries concerned shall be jointly and severally liable for the due performance of any obligations to the association.
- 7.8 No member shall let or otherwise part with occupation of any unit, erf or part thereof owned by him within the development, whether temporarily or otherwise unless the proposed occupier has undertaken in writing in favour of the association and the owner that such occupier shall be bound by all the terms and conditions of this memorandum and the rules. The owner shall furnish the managing agent with such undertaking.
- 7.9 The directors may provide for the issue of a membership certificate, which certificate shall be in such form as the director may determine.
- 7.10 The rights and obligations of a member shall not be transferable and every member shall:

- 7.10.1 Further the objects and interests of the association to the best of his ability.
- 7.10.2 Observe the provisions of this memorandum and all rules made by the association and/or the directors and the constitution and rules of any sub-association.
- 7.10.3 Observe and adhere to the architectural guidelines and Environmental Management Plan.
- 7.10.4 Observe and adhere to all conditions in terms of which the development was approved and the terms and conditions of the deed of sale in terms of which the member acquired the erf if it was a first transfer.

8 RIGHTS OF MEMBERS

8.1 Members' authority to act

It is recorded that not every member of the company shall be a director of the company.

8.2 Members' right to information

In addition to the rights to access information set out in section 26(1), a member of the company has the further rights to information as set out in article 36.2 of this memorandum.

8.3 Representation by concurrent proxies

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.

8.4 Authority of proxy to delegate

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.

8.5 Requirement to deliver proxy instrument to the company

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 varied to the extent set out in article 27.6.

8.6 **Deliberative authority of proxy**

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.

8.7 **Record date for exercise of member rights**

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).

9 SUB-ASSOCIATIONS

9.1 The following sub-associations, consisting of home owners associations or bodies corporate, may be established for the sub-developments of Mossel Bay Golf Estate:

9.1.1 Home owners associations in respect of erven and units other than sectional title units:

9.1.1.1 San Vicente Town Home Owners Association;

9.1.1.2 Alvor Village Home Owners Association;

9.1.1.3 Albufeira Village Home Owners Association;

9.1.1.4 The Island Village Home Owners Association;

9.1.1.5 San Bartolomeo Home Owners Association;

9.1.1.6 Pennina Close Home Owners Association.

9.1.2 Bodies corporate in respect of sectional title units:

9.1.2.1 San Vicente Body Corporate;

9.1.2.2 Oporto Village Body Corporate.

9.2 Each sub-association shall have its own constitution which shall be formulated and approved by its members. The constitution of a sub-association will be binding upon its members.

9.3 Each sub-association shall be empowered to approve a budget and to determine its own levies relating to expenses, which are not of a

general nature to the development, and shall collect such levies and carry out other administrative functions as determined from time to time in accordance with this memorandum and the constitutions of the sub-associations.

- 9.4 In the event of conflict between the provisions of this memorandum and the constitution of a sub-association, the provisions of this memorandum shall prevail.
- 9.5 Membership of a sub-association shall not replace or be instead of membership of the association but shall be in addition thereto.

10 ALIENATION

- 10.1 No member shall in any manner alienate a unit or erf in the development, unless it is a condition of the agreement of alienation, whatever form it takes, that:
- 10.1.1 The proposed transferee shall bind himself to the satisfaction of the association, as a stipulation for the benefit of the association, to become a member of the association upon transfer of the unit or erf to him; and
- 10.1.2 The registration of transfer of that unit or erf into the name of the transferee, shall *ipso facto* constitute the transferee as a member of the association.
- 10.2 The provisions of article 10.1 above shall apply *mutatis mutandis* to any alienation of an undivided share in a unit or erf and shall further apply to the alienation of any land within the development.
- 10.3 The registered owner of a unit or erf may not resign as a member of the association or of any sub-association. Such membership shall only terminate upon transfer of the erf or unit concerned to a subsequent owner.
- 10.4 No member ceasing to be a member of the association or sub-association for any reason nor any executor, curator, trustee or liquidator of any such member, shall have any claim or interest in or right to the funds or other property of the association or sub-association.
- 10.5 The association may claim from any member or his successor-in-title any arrears of levies and interest or other sums due by him to the association at the time of his ceasing to be a member.

- 10.6 The following servitude will be registered against the title deed of every erf or unit in the development namely :
- 10.6.1 The owner of an erf or unit or any interest therein shall at the date of registration of the erf or unit in the Deeds Office become a member of the association subject, however, to its rules.
- 10.6.2 The owner of an erf or unit shall only be entitled to sell or transfer in any manner (which includes the sale of shares in the case of a company, members interest in the case of a close corporation or the change of beneficiaries in the case of a trust, donation or testamentary or intestate dispositions) the erf or unit to a third party after such purchaser, his executor, trustees or assigns has first obtained the written consent of the association, which consent will not unreasonably be withheld.
- 10.7 The above servitude shall be applicable *ad infinitum* on every **erf** or **unit** in the development and may only be varied or cancelled with the written consent of the company, approved by special resolution at a general meeting.

11 LEVIES

- 11.1 The directors shall from time to time impose levies upon the members for the purpose of meeting all the expenses which the association has incurred or to which the directors reasonably anticipate the association will be put in the attainment of its objects or the pursuit of its business.
- 11.2 The directors shall not less than thirty (30) days prior to the end of each financial year or as soon thereafter as reasonably possible, prepare and serve upon every member at the address chosen by him a budget in reasonable detail of the amount which shall be required by the association to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as may have resulted from the preceding year. The directors may include in such budget an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 11.3 In the event of the directors for any reason whatsoever failing to prepare and serve the budget referred to in article 11.2 above timeously, every member shall until service of such budget 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 11.2 above.

- 11.4 The budget referred to in article 11.2 shall make provision for at least the following:
- 11.4.1 Maintenance expenses in respect of the maintenance, repair, improvement and keeping in good order and condition of the roads, the private and public open spaces, common areas and facilities;
 - 11.4.2 Landscaping expense;
 - 11.4.3 Statutory rates, taxes and charges (excluding erven or units of owners which may be rated separately by the local authority);
 - 11.4.4 Expenses in respect of security;
 - 11.4.5 Insurance premiums;
 - 11.4.6 Expenses and charges in respect of services;
 - 11.4.7 Administrative expenses, including the cost of a managing agent (if applicable), payment of salaries and/or wages of employees of the association;
 - 11.4.8 Banking and auditing expenses;
 - 11.4.9 Provision for future maintenance and repairs or capital expenditure;
 - 11.4.10 Any awards to the Mossel Bay Golf Club;
 - 11.4.11 Such other items as the directors may determine.
- 11.5 The budget shall be approved, with or without amendments, at every annual general meeting.
- 11.6 The directors may, from time to time, impose special levies upon the members in respect of any expenses referred to in articles 11.1 and 11.4 and such special levies shall be paid in such manner and at such times as the directors may determine.
- 11.7 Liability for the payment of the levies to the association shall vest in the individual members and shall be collected by the association.
- 11.8 Following the approval of the budget, the directors shall pass a resolution in terms of which the total amount of the approved budget is apportioned to members according to such equitable apportionment as the directors may determine from time to time. In exercising their

discretion regarding equitable apportionment, the directors shall consider:

- 11.8.1 The number of households which may potentially be accommodated in a unit.
- 11.8.2 The usage of the unit, including usage as a guesthouse or for purposes of rental (in whole or in part).
- 11.8.3 Joint ownership to the extent that the dwelling is capable of being used simultaneously by more than one household.
- 11.8.4 The number of actual occupiers accommodated in the unit from time to time.
- 11.9 For the purposes of article 11.8, a household shall be considered to be a group of persons, whether owners of a particular unit or not, living together in a unit or portion of a unit, separately from another such group or groups.
- 11.10 Each sub-association shall apportion its expenses to its own members in the following manner:
 - 11.10.1 The expenses attributable and assigned to a particular home owners association shall be assigned equally to its members pro rata to each unit or erf held.
 - 11.10.2 The expenses attributable and assigned to a particular body corporate shall be assigned to its members or to the registered owners of units, pro rata to the participation quota of the members.
- 11.11 The levies as determined and apportioned by the directors to each member in accordance with article 11.8 shall become due and payable by each member immediately upon notification, provided that such levies shall be payable in equal monthly instalments, in advance on the first day of each and every month of the financial year to which the approved budget relates. Within thirty (30) days of the directors' resolution determining the levy apportionment, the directors shall notify each member in writing of the monthly amount payable by him in respect of the financial year concerned.
- 11.12 Where any unit or erf is owned by more than one person, such persons or owners shall be jointly and severally liable for the due performance of any obligation to the association in connection with such unit or erf.

- 11.13 Levies due by any member to the sub-association of which he is a member, shall be levied by and be payable to the sub-association and shall be recoverable by the sub-association.
- 11.14 The directors shall be empowered in addition to such other rights as the association may have in law against its members, to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate allowed in terms of any law that may be applicable. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.
- 11.15 If a member fails to pay its levies in full to the association on due date, the association may institute an action for the recovery thereof in any competent court.
- 11.16 A member shall be liable for all legal costs, including attorney and own client costs, collection commission, expenses, and other charges incurred by the association in obtaining the recovery of arrear levies or any other arrear amounts due to it, or enforcing compliance with this memorandum.
- 11.17 Any amount due by a member by way of a levy and/or interest accrued thereon shall be a debt due by him to the association. The obligations of a member to pay levies and interest thereon (if applicable), shall cease upon his ceasing to be a member, without prejudice to the association's right to recover from him arrear levies and interest. No levies or interest paid by a member shall under any circumstances be repayable to him by the association upon his ceasing to be a member.
- 11.18 A member's successor-in-title to a unit or erf in the development, shall, as from the date upon which he becomes a member pursuant to the transfer to him of that unit or erf, be liable to pay the pro rata levy and interest thereon (if applicable) attributable to that unit or erf.
- 11.19 No member shall, save as otherwise provided in this memorandum, be entitled to any of the rights, powers or privileges of membership of the association (including usage of the public open spaces or facilities and the right to attend a general meeting and to vote thereat) unless and until he shall have paid every levy, interest thereon (if applicable) and any other sum (if any) which may be due and payable to the association, from whatsoever cause arising (provided that the member shall have been given written notice of such indebtedness which is

overdue by more than 30 (thirty) days and shall have failed to comply with the notification).

12 COMMUNAL AREAS AND COMMUNAL FACILITIES

Common areas

12.1 The association shall take title to those areas of the common areas, which are registrable.

12.2 Neither the whole nor any portion of the common areas shall be:

12.2.1 Sold, let, alienated or otherwise disposed of or subdivided or transferred; or

12.2.2 mortgaged or encumbered in any manner whatsoever; or

12.2.3 subjected to any rights whether registered in a deeds registry or not, of use, occupation or servitude, save those enjoyed by the members in terms hereof; or

12.2.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities

without the specific prior written consent of the local authority and the sanction of a resolution of the association at a general meeting.

12.3 The association may permit the members, subject to the provisions of this memorandum, to use the private open spaces and roads and shall do so, unless by special resolution taken at a general meeting called for the purpose, it is otherwise resolved.

12.4 The directors may from time to time and whenever they deem it necessary, limit, restrict or temporarily suspend such use in relation to any part of such private open space and roads.

12.5 In the event of the association by ordinary resolution so deciding, the directors shall have power to take such measures as may be necessary to ensure that the general public with the exception of members, their guests, lessees and members of their families, and such other persons as the directors may reasonably permit, are excluded from the development.

12.6 The public will have reasonable access to the Nature Reserve via the existing public facilities in the form of hiking trails and paths. Due to its environmental sensitivity, the association in conjunction with the local

authority will control access to the aforesaid areas, subject to the conditions and requirements of the local authority, Cape Nature Conservation, and in accordance with the Environmental Management Plan (EMP) for the development.

- 12.7 The association will be responsible to manage and maintain in accordance with the Environmental Management Plan (EMP) the natural areas and open spaces within the development as well as to manage, rehabilitate and maintain the Nature Reserve and the common property or private open spaces where natural vegetation has been destroyed.

Recreational facilities

- 12.8 The association will own the recreational facilities within the development.
- 12.9 All members of the association will be entitled to use the recreational facilities subject to the rules referred to in articles 12.10 and 13.
- 12.10 The directors or the association in general meeting may from time to time prescribe rules governing the use by members, occupiers and any guests, of all or any of the recreational facilities and the management and the upkeep of these facilities.

Improvements to the Common areas

- 12.11 The directors may, if the members by resolution so decide, effect improvements of a luxurious nature on the common areas.
- 12.12 Non-luxurious Improvements
- 12.12.1 Should the directors wish to effect any improvements to the common areas, other than luxurious improvements referred to in article 12.11, they shall first give written notice of such intention to all members and such notice shall:
- 12.12.1.1 Indicate the intention of the directors to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and
- 12.12.1.2 Provide details of the improvement as to:
- (a) the costs thereof; and
 - (b) the manner in which it is to be financed and the effect upon levies paid by the members; and
 - (c) the need, desirability and effect thereof.

- 12.12.2 The directors shall, at the written request of any member, convene a general meeting in order to discuss and deliberate upon the proposals contained in the notice referred to in article 12.12.1, at which meeting the members may veto, amend or approve such proposals by way of a special resolution.
- 12.12.3 In the event of such a general meeting being called, the director shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any resolution ensuing therefrom.

13 CONDUCT RULES

- 13.1 Subject to the provisions of this memorandum, any restriction or direction given at a general meeting of the association or any condition imposed by the local authority, the directors may from time to time make, vary or modify rules which shall be binding on the members, inter alia, in regard to:
- 13.1.1 The preservation of the natural environment, vegetation and flora and fauna in the development including the right to control, and if necessary, order the removal of vegetation. The right to prohibit and/or control the erection of fences and walls whether upon or within the boundaries of any erven, and the right to prohibit any interference with the landscaping of the development, including the indigenous vegetation planted on the sidewalk;
- 13.1.2 The right to prohibit, restrict or control the keeping of any animal, which the directors regard as dangerous or a nuisance;
- 13.1.3 The conduct of any persons in the development for the prevention of nuisance of any nature to any member;
- 13.1.4 The regulation of the number of occupiers permitted in any one unit;
- 13.1.5 The use of services, entertainment and recreation areas, amenities and facilities, including the right to make reasonable charge for the use thereof;
- 13.1.6 The standards and guidelines for security systems for all buildings, outbuildings, walls and structures of any nature, including the standards and guidelines for the installation of security systems;

- 13.1.7 The standards and guidelines for the architectural design of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts, and all additions and alterations to any such buildings, outbuildings or structures erected or to be erected in the development, and in particular to control the design and colour of the exterior of such buildings, outbuildings or structures and the materials used on such exterior to ensure an attractive, aesthetically pleasing character to all the buildings in the development;
- 13.1.8 The siting of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations thereto and the imposition of controls for safety purposes in respect of all or any of the aforesaid;
- 13.1.9 The standards, guidelines and controls for all site works, buildings, structures, installations and projections on the properties in the development including aerials, pergolas, side walls, swimming pools, tennis courts, awnings, jacuzzis, carports, paved pathways and landscaping features and works as well as the right to set standards, guidelines and controls for the erection of double-story units;
- 13.1.10 For the furtherance and promotion of any of the objects of the association and/or for the better management of the affairs of the association and/or for the advancement of the interests of members and/or occupiers in the development;
- 13.1.11 For the maintenance of all buildings, outbuildings, structures, security systems, improvements of any nature and landscaping within the development;
- 13.1.12 The control of the operations and movements of builders, sub-contractors, their employees, agents or assigns within the development and the control without limitation of all construction activities in the development;
- 13.1.13 Obtaining building, alteration and landscaping deposits from each member or proposed member prior to the commencement of any building, alterations and/or landscaping so as to compensate any party for any destruction or damages which might have arisen as a result of such building, operations and or landscaping being effected. Such deposits shall be refunded to the member, less any deductions aforementioned, free of interest within a reasonable period after the completion of the building, alterations and/or landscaping;

- 13.1.14 The control of operations and movements of estate agents within the development, which shall include control of their methods of sale, resale, and/or advertising within the development;
- 13.1.15 The use by members, the members of their households, their guests and lessees, of the roads, the golf area and open space, including the right to prohibit, restrict or control such use of the roads and open space or any portions thereof as may from time to time be necessary or expedient;
- 13.1.16 The use of land within the development and the prevention of the conduct of any business activity whatsoever in any unit : Provided that no final approval in terms of the Mossel Bay Town Planning Scheme and the Land Use Planning Ordinance No 15 of 1985 as on 1st January 2007 shall be affected by such decision;
- 13.1.17 The use of parking areas;
- 13.1.18 The placing of movable objects on erven, common areas and common properties, including the parking and storing of boats, caravans, golf cars, trailers and so forth and the placing of movable objects upon the outside of buildings, including the power to remove any such objects;
- 13.1.19 The keeping of flammable substances;
- 13.1.20 The right of access of members to any portion of the land;
- 13.1.21 Generally, any rule, which the directors, in their sole discretion, feel would be to the benefit of the association and its members.
- 13.2 For the enforcement of any of the rules by the directors in terms hereof, the directors may:
 - 13.2.1 Give notice to the member concerned requiring him to remedy such breach within the period as the directors may determine; and/or
 - 13.2.2 Take or cause to be taken such steps as they may consider necessary to remedy the breach of the rules of which the member may be guilty, and debit the costs of so doing to the member concerned, which amount shall then be deemed to be a debt owing by the member concerned to the association; and/or
 - 13.2.3 Impose a system of fines or other penalties in accordance with article 40. The amounts of such fines shall be determined and

reviewed in accordance with the provisions of article 40.3;
and/or

- 13.2.4 Take such other action including proceedings in Court as they may deem fit; and/or
- 13.2.5 Prevent the registration of transfer of a unit or erf if the owner thereof is in breach of any condition.
- 13.3 In the event of the rules made in terms of this memorandum being in conflict with any rules by any sub-association, the rules made in terms of this memorandum shall take precedence.
- 13.4 In the event of the directors instituting any legal proceedings against any member or occupier within the development for the enforcement of any of the rights of the association in terms hereof, the association shall be entitled to recover all legal costs so incurred from the member or occupier concerned, calculated on the attorney and client scale.
- 13.5 Should any of the rules be breached by any of the member's family members, employees or guests or by the occupier of his unit or by the family members, employees or guests of such occupier, 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.
- 13.6 Should any member dispute the fact that he has committed a breach of any of the rules, a committee of three directors appointed by the chairman for the 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 chairman may direct : Provided that the directors may instead follow the procedures provided for in terms of article 40.
- 13.7 Any fine imposed upon any member shall be deemed to be a debt due by the member to the association and shall be recoverable by ordinary civil process.
- 13.8 Notwithstanding the foregoing the directors may in the name of the association enforce the provisions of any rule by civil application or action in a Court of competent jurisdiction and for this purpose may appoint such attorney and counsel as they may deem fit.
- 13.9 Notwithstanding the above, in the event of any member being persistently in breach of any article of the articles of association or any rules made in terms hereof, or being in breach thereof and failing to

remedy such breach, the directors may after not less than seven (7) days notice in writing to the member concerned that they intend so to do, discontinue any service provided to the member by the association for such period as the directors may deem fit.

- 13.10 The association may in a general meeting itself make any rules which the directors may make and may in a general meeting vary or modify any rules made by it or by the directors from time to time, but for the avoidance of doubt it is provided that such rules shall not be regarded as rules relating to the governance of the company as contemplated in section 15(3) of the Act.
- 13.11 Each member undertakes to the association that he shall comply with any rules made in terms of this memorandum.
- 13.12 All rules (as defined in article 3), including but not limited to conduct rules and architectural guidelines in respect of the development in existence on the date of approval of this memorandum in general meeting shall for all purposes be deemed to be concurrently approved.

14 ARCHITECTURAL GUIDELINES

- 14.1 The architectural guidelines referred to in this memorandum may be amended, substituted, added to or repealed at the instance of the directors, subject to the directors discretion to interpret the provisions of the guidelines and the power of the directors to allow minor deviations or delegate a discretion to allow minor deviations, to the architectural review committee or such other person or committee appointed by the directors. All rulings by the architectural review committee or such appointed person or committee on any deviations shall be subject to the confirmation and approval of the directors.
- 14.2 The association shall be entitled to:
 - 14.2.1 Having regard to the architectural guidelines frame, implement and enforce conditions on members in order to harmonize the architectural styles and design criteria of and the materials and colours to be used in all buildings erected within the scheme including any refurbishment, alterations or additions thereto.
 - 14.2.2 Do such acts as are necessary to accomplish the purposes expressed or implied herein which acts shall include, the examination and endorsement of the relevant building plans as necessary for any construction, renovation and /or alterations within the development.

- 14.2.3 The directors may obtain professional advice from an independent architect in cases which, in the architectural committee's sole discretion, are contentious or where the architectural committee can not reach agreement amongst its members, or in cases where there is a dispute with the applicant, and to do so at the cost of the applicant but only after allowing the applicant the right to modify such application to resolve the matter.
- 14.2.4 Impose a scrutiny fee on members for the services as mentioned herein.
- 14.2.5 Determine the period within which building work must commence and the period within which building work must be completed within the time period referred to in article 30.1.
- 14.3 The directors may in liaison and with the consent of the local authority amend, amplify, clarify or add to the provisions of the architectural guidelines.
- 14.4 In the event of the provision of the architectural guidelines being amended or added to and where such amendment or additions will materially affect any further development of any property in the development, the directors shall by written notice inform all members of the amendment or addition to the architectural guidelines.
- 14.5 All buildings and other structures erected on any erven within the development shall comply with the provisions of the architectural guidelines.

15 BOARD OF DIRECTORS

- 15.1 The board of directors of the association shall consist of not less than four (4) and not more than eight (8) members. However, the directors may, in their discretion, fill any vacancy in their number and/or co-opt additional suitable members to the board, provided that such co-opted members shall be limited to a maximum of two (2) in number at any one time. Provided further that no less than 70% of the directors shall have voted in favour of the resolution. A co-opted director need not necessarily be a member of the association.
- 15.2 Every director shall be an owner or the duly authorised representative of an owner which is a company, close corporation, trust, consortium, partnership or other suchlike entity. Every director shall reside in the development as his permanent residence or within the municipal district of Mossel Bay.

- 15.3 Not later than seven (7) days before the date on which the annual general meeting is to take place, members must in writing nominate their proposed directors for election at that annual general meeting.
- 15.4 No person may be appointed as a director if he or the principal referred to in article 15.2 is in arrear with his levy payments.
- 15.5 The directors in carrying out their fiduciary duties are required to exercise the utmost good faith towards the company and its members and may not act beyond the powers of the company as set out in this memorandum. The powers which this memorandum and the members confer on the directors must be exercised only by them acting collectively as a board. Their fiduciary duties require that individually:
- 15.5.1 they act with the required degree of care and skill;
 - 15.5.2 they avoid conflict of interest and use their powers only for the benefit of the company;
 - 15.5.3 they act only within their powers and use their powers only for the purposes for which they are conferred;
 - 15.5.4 they do not use information acquired in their capacity as director for personal gain;
 - 15.5.5 they retain their independence of action and vote independently and not in their own interests or in the interest of a member or members who placed them in office or another director;
- 15.6 The managing agent or an employee of the association may not be a director, unless he is a member of the association.
- 15.7 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a director of the company, a person must satisfy the additional eligibility requirements and qualifications set out in this article 15.

16 REMOVAL AND ROTATION OF BOARD OF DIRECTORS

- 16.1 The following provisions shall apply in connection with the rotation of directors :

- 16.1.1 At the first annual general meeting of the company after the date of registration of this memorandum in terms of the Act, one-third of the directors shall retire from office, and at the annual general meeting in every subsequent year, one-third of the directors for the time being, or if their number is not an even number, the number nearest to one-third, shall retire from office.
- 16.1.2 The 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.
- 16.1.3 A retiring director shall be eligible for re-election.
- 16.2 A director shall be deemed to have vacated his office as such upon :
- 16.2.1 his/her having become disqualified to act as a director in terms of the provisions of the Act;
- 16.2.2 his/her being removed from office as provided in terms of section 71 of the Act;
- 16.2.3 his/her estate being sequestrated, either provisional or finally;
- 16.2.4 his/her resigning from such office in writing;
- 16.2.5 his/her having ceased to be a member of the association;
- 16.2.6 his/her becoming disentitled to exercise a vote in terms of article 11.19 :
- provided that anything done in the capacity of a director in good faith by a person who ceases to be a director, shall be valid until the fact that he is no longer a director has been recorded in the minute book of the association.
- 16.3 Upon any vacancy occurring in the board of directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the board of directors, and the director so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose stead he is appointed, was last elected a director.
- 16.4 The directors shall appoint from their number a chairperson and a vice-chairperson as more fully set out in article 17.1.

17 CHAIRPERSON AND VICE-CHAIRPERSON

- 17.1 At the first meeting of the directors, subsequent to the annual general meeting, the board of directors shall elect the chairperson and vice-chairperson who shall hold their respective offices until the next annual general meeting held after their said appointments, provided that the office of the chairperson and vice-chairperson shall ipso facto be vacated by the 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 any of the aforesaid offices at any time, the board of directors shall immediately appoint one of their number as a replacement in such office.
- 17.2 Save as otherwise provided in this memorandum, the chairperson shall preside at all meetings of the board of directors and at all general meetings of the members and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the board of directors or by the members.
- 17.3 The vice-chairperson shall assume the powers and duties of the chairperson in the absence of the chairperson or his inability or refusal to act as chairperson, and shall perform such other duties as may from time to time be assigned to him by the chairperson of the board of directors.

18 BOARD OF DIRECTORS EXPENSES AND REMUNERATION

- 18.1 The directors shall be entitled, with the approval of the board, to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as directors.
- 18.2 The directors shall not be entitled to any remuneration or rebate in levies in respect of the performance of their duties as such, save as may be sanctioned by the members in general meeting.
- 18.3 The company may not provide direct or indirect financial assistance to a director or to a person related to any such director.

19 PROCEEDINGS OF BOARD OF DIRECTORS

- 19.1 The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit subject to any provision of this memorandum.

- 19.2 Meetings of the directors shall be held at least once every two (2) months. The chairman always has the right to convene meetings of directors, in a manner as may be decided by the directors from time to time. The chairman must call a meeting if required to do so by a director who has the support in writing of two (2) other directors by giving to the other directors not less than fourteen (14) days written notice of a meeting, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 19.3 The quorum necessary for the holding of any meetings of the directors shall be fifty percent (50) of the directors personally present. Any resolution passed by the board of directors shall be carried on a simple majority of all votes cast. Should there be an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 19.4 Each director shall have one vote.
- 19.5 The directors shall cause the minutes of each meeting to be kept which minutes shall be reduced to writing and certified as correct by the chairman as soon as is reasonably possible after such meeting. All minutes of directors meetings shall, after certification, be placed in a directors' minute book, which shall be kept in accordance with the provision of the law relating to keeping minutes of meetings of directors of companies. The directors' minute book shall be open for inspection at all reasonable times by any director, the auditors, the members and the managing agent.
- 19.6 Save as otherwise provided in this memorandum, the proceedings at any directors' meeting shall be conducted in such manner and form as the chairman of the meeting shall direct.
- 19.7 A resolution signed by all the directors shall be valid in all respects as if it had been duly passed at a meeting of the board of directors duly convened.
- 19.8 Notwithstanding any other provisions of this memorandum no director who directly or indirectly has any interest in (financially or otherwise), holds any position with, is employed by or is a party to any agreement with any third party may -
- 19.8.1 be present during any discussion at a directors' meeting of any matter in relation to such third party; or

- 19.8.2 represent the association in any discussions or negotiations with such third party; or
- 19.8.3 in any manner, directly or indirectly, influence or attempt to influence any decision by the directors or the association in respect of such third party.

For purposes of this article 19.8 an indirect interest or agreement shall include any interest or agreement whatsoever which such director's spouse, a trust of which he is a trustee or a beneficiary or a company, close corporation, partnership or other association of persons of which he or his spouse is a member or in which any of them holds any position, may have with such third party.

- 19.4 In addition to such other powers and duties as may be delegated to him or her by the board from time to time, the chairperson shall be entitled to determine that a meeting of the board shall be conducted by electronic communication or one or more directors may participate in a meeting by electronic communication in accordance with the provisions of section 73(3) of the Act.

20 FUNCTIONS, POWERS AND DUTIES OF DIRECTORS

- 20.1 Subject to the express provisions of this memorandum, 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 the managing agent, and save as may be expressly provided in this memorandum, 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 this memorandum required to be exercised or done by the association in general meeting, subject nevertheless to any provisions of the Act, and to such conditions as may be prescribed by the association in general meeting from time to time, provided that no determination made by the association in general meeting shall invalidate any prior act of the board of directors which would have been valid if such determination had not been made.
- 20.2 Without prejudice to the generality of article 20.1, the directors shall ensure that there is included in the contract of appointment of any managing agent, a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of the contract between master and servant, the association may, without notice, cancel such contract of appointment and the managing agent shall have no claim

whatsoever against the association or any of the members as a result of such cancellation.

- 20.3 Any one or more of the members or mortgagees of units or erven may, if the managing agent is in breach of the provisions of his contract, or if he is guilty of any conduct which at common law would justify the termination of a contract between master and servant, request the directors of the association to terminate the contract in terms of the provisions referred to in article 20.2. The directors shall consider such request and shall take such decision thereon as they see fit.
- 20.4 Save as specifically provided in this memorandum, the directors shall at all times have the right to engage on behalf of the association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the directors on such terms as the directors shall decide, subject to any of the provisions of this memorandum.
- 20.5 Without in any way limiting the powers granted, the duties and powers of the directors shall further specifically include to:
- 20.5.1 Consider and approve deviations from the architectural guidelines, Environmental Management Plan, Fire Management Plan, Site Management Plan and maintenance manual in respect of the development.
- 20.5.2 Issue directives pertaining to works within the development, inclusive of to require that any works being constructed within the development shall be supervised to ensure that the provisions of this memorandum and of the rules are complied with and that all work is performed in a proper manner.
- 20.5.3 Appoint committees consisting of such number of their members and other persons, including the managing agent, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, together with the further power to vary or revoke such appointments and delegations as the directors may from time to time deem necessary.
- 20.5.4 Determine what constitutes appropriate standards for residential living, maintenance, repairs, additions to and improvements of all erven and common property in the development in accordance with the provisions of the architectural guidelines. The directors shall be entitled to require any member (or where applicable a

body corporate) to repaint or renovate his improvements if in the reasonable opinion of the directors such improvements require essential repairs or have become dilapidated.

- 20.5.5 Make, enter into and carry out agreements with third parties on behalf of the association for any purposes of the association.
- 20.5.6 Employ on behalf of the association, agents, servants and any other party and the payment of such persons.
- 20.5.7 Take steps in all matters of common interest in respect of the association and, without detracting from the generality thereof, such as sewage, electricity supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable.
- 20.5.8 Institute or defend actions in the name of the association and appoint legal representatives for such purpose.
- 20.6 The directors have the power to appoint an architectural review committee.
 - 20.6.1 The architectural review committee shall consist of:
 - 20.6.1.1 an architect;
 - 20.6.1.2 a minimum of one director;
 - 20.6.1.3 Such persons, suitably qualified, but not necessarily members of the association, as the directors may determine.
 - 20.6.2 All plans for buildings, outbuildings, structures, additions, alterations, improvements and plans for all works shall be submitted by the directors to the architectural review committee and the directors shall not approve any plan in terms of article 32, unless such plan shall first have been approved by the architectural review committee. The directors may if they deem fit, delegate to the architectural review committee any of their functions and powers in terms of articles 14 and 32.
- 20.7 The directors shall not be entitled to undertake on behalf of the association any works of a capital nature not included in the capital expenditure budget approved by resolution of the members of the association in general meeting, without the sanction of a resolution of the association in general meeting.

- 20.8 The directors may, in addition to the powers conferred upon them in terms of the above, make conduct rules (referred to in article 13) not inconsistent with this memorandum or any rules prescribed by the association in general meeting for the furtherance and promotion of any of the objects of the association, for the better management of the affairs of the association and for the advancement of the interests of members.
- 20.9 The association may in general meeting by ordinary resolution make any conduct rules which the directors are in terms of articles 20.8 and article 13 entitled to make and shall be entitled to cancel, vary or modify any rules made by it or by the directors from time to time.
- 20.10 The directors may, should they so decide, investigate any suspected or alleged breach by any member or director of any provisions of this memorandum in such reasonable manner as they shall decide from time to time and impose penalties in accordance with the procedure stipulated in article 40.
- 20.11 The directors shall have the rights to vary, cancel or modify any of its decisions and resolutions from time to time.
- 20.12 The directors shall further have power:
- 20.12.1 Whenever they consider that the appearance of any land or building vested in a member or members or under the control of any sub-association is unsightly or injurious to the amenities of the surrounding area or the development generally:
- 20.12.1.1 To serve notice on such member or members or such sub-association to take such steps as may be specified in the notice to remove such unsightly or injurious conditions within such reasonable time as may be specified within the notice;
- 20.12.1.2 In the event of the member or members or sub-association failing to comply with such notice within the time period stipulated therein, the directors may instruct the managing agent or any other person to take such steps as may be necessary and to recover the costs thereof from the member or members or sub-association concerned, which costs shall be deemed to be a debt owing to the association.
- 20.12.2 To determine the routine maintenance requirements of the exterior of each and every building within the development and to instruct the managing agent, the member or the sub-association

(as applicable) to attend to such requirements from time to time. In respect of the maintenance of buildings on the common areas, the directors shall instruct the managing agent to attend to such maintenance requirements from time to time and the members hereby agree that the managing agent may, when so instructed by the directors, take such action as may be required and recover the costs from the association, and the association shall in turn be entitled to recover the costs from the members concerned by way of the levy.

- 20.12.3 To determine the routine maintenance requirements of:
 - 20.12.3.1 All open space and roads in the development;
 - 20.12.3.2 All other land within the development not covered by buildings whether held by the association or by members in undivided shares or otherwise, or whether under the control of any sub-association; and
 - 20.12.3.3 To instruct the managing agent to attend to such maintenance requirements from time to time. The members hereby agree that the managing agent may, when so instructed by the directors, take such action as may be required and recover the costs from the association and the association shall in turn be entitled to recover the costs from the members concerned by way of the levy.
- 20.13 The association and/or the managing agent through their respective servants, agents or contractors, shall for the purpose of performing any function in terms of this memorandum be entitled to access to any unit and to the surrounds thereof at all reasonable times.

21 INDEMNITY

- 21.1 To the extent not prohibited in terms of section 78 of the Act, every director, servant, agent and employee of the association and any managing agent, his employees, nominees or invitees, shall be indemnified by the association against all costs, losses and expenses (inclusive of travelling expenses), which such person or persons may incur or become liable for by reason of any contract entered into or by any act or deed done by such person or person in the discharge of their respective duties including in the case of a director, his duties as chairman or vice-chairman. 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.

- 21.2 To the extent not prohibited in terms of section 78 of the Act, a director shall not be liable for the acts, receipts, neglects or defaults of the auditors or any of the other director, whether in their capacities as director, or as chairman or vice-chairman or for any loss or expense sustained or incurred by the association through the insufficiency or deficiency of title to any property acquired by the directors for or on behalf of the association or for the insufficiency or deficiency of any security in or upon which any of the monies of the association shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or trust or gross negligence.
- 21.3 The company may purchase insurance to cover any expenses and liability it may lawfully incur in terms of the provisions of articles 21.1 and 21.2.

22 DEFAMATION PRIVILEGE

Every member of the association and every director shall be deemed by virtue of his membership or, as the case may be, his holding office as a director, to have waived as against every other member, the chairman, every other director, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the association, or the directors, or any sub-committee, all claims and rights of action which such member or director might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such member or director, or any reference to such member or director, made at any meeting of directors, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this constitution, being a statement, report, complaint, notice or reference defamatory to such member or director, or otherwise injurious to the dignity, reputation, business or financial interest of such member or director, whether such statement be true or false.

23 GENERAL MEETINGS OF THE ASSOCIATION

- 23.1 The association shall within 6 (six) months after the end of each financial year or within such shorter period as the Act may require, hold a general meeting as its annual general meeting in addition to any other general meetings during the year, and shall specify the meeting as such in the notices of such meetings.
- 23.2 Such annual general meeting shall be held at such time and place in the Republic of South Africa as the board of directors shall decide from time to time.
- 23.3 All general meetings other than annual general meetings shall be called special general meetings.
- 23.4 The board of directors may, whenever they think fit, convene a special general meeting. A special general meeting may also be convened by the members on a requisition made *mutatis mutandis* in terms of section 61 of the Act, or should the board of directors not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.
- 23.5 The company shall conduct a general meeting by electronic communication or allow participation in a meeting by electronic communication only as and when so determined in advance by the board of directors, and subject to subsections (2) and (3) of section 63 of the Act.
- 23.6 Every member shall be notified of all the general meetings and shall be entitled to attend and speak at all the general meetings.

24 NOTICES OF MEETINGS

- 24.1 An annual general meeting shall be called by written notice in which 15 (fifteen) business days' notice is given. An extraordinary general meeting shall be called by written notice in which 10 (ten) business days' notice is given. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting, and in the case of special business, in addition to any other requirements contained in this memorandum, the general nature of that business, shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the directors to such persons as are under this memorandum entitled to receive such notices from the association. Notice of the annual

general meeting or an extraordinary general meeting shall be given as set out in article 35.

- 24.2 A general meeting of the association shall, notwithstanding that it is called by shorter notice than that specified in this memorandum, be deemed to have been duly called if it is so agreed by all the members entitled to attend and vote thereat.
- 24.3 The association shall comply with the provisions of sections 61 and 65 of the Act as to giving of notices and circulating statements on the requisition of members.
- 24.4 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this memorandum, or in terms of the Act, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at any meeting.
- 24.5 Notwithstanding any other provisions of this memorandum, every notice of a general meeting shall comply with the provisions of section 62(3) of the Act.

25 AGENDA AT ANNUAL GENERAL MEETING

- 25.1 In addition to any other matter required by the Act or this memorandum to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:
 - 25.1.1 The consideration of the chairman's report to the members;
 - 25.1.2 The election of directors;
 - 25.1.3 The consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
 - 25.1.4 The consideration of the financial statements of the association for the preceding financial year;
 - 25.1.5 The consideration of the report of the auditors and the fixing of remuneration for the auditors;
 - 25.1.6 The appointment of auditors;

- 25.1.7 The approval of the levy for the ensuing financial year following said annual general meeting.

26 QUORUM

- 26.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 26.2 The quorum necessary for the holding of any general meeting shall be eighty (80) members entitled to vote, of which fifty (50) must be present in person and thirty (30) members may be represented by proxy. A person other than a natural person being a member of the association and present through a duly authorized representative shall be deemed to be a member personally present for the purposes of this article.
- 26.3 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 at such other place as the chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present in person or by proxy shall be a quorum.

27 PROXIES

- 27.1 A member may be represented at a general meeting by a proxy, who need not be a member of the association. The instrument appointing a proxy, whether for a specified meeting or otherwise, shall be in writing signed by the member concerned or his agent, duly authorised thereto in writing, and shall be in the form below or to the effect of the form below, or in such other form as the directors may approve, in either case under the heading of or referring to the association's name.
- 27.2 If the appointee is a corporate body, the power of attorney shall be signed in the manner which and by the person who binds that corporate body.
- 27.3 The agent under a power of attorney of a member is entitled, if so authorised by the power of attorney, to vote on behalf of and represent such member at any meeting of the association.
- 27.4 A member may appoint more than one proxy to act on his behalf on the same occasion.

27.5 The directors may, if they think fit, send out with the notice of any meeting, forms of proxy for use at the meeting.

Proxy

Mossel Bay Golf Estate Home owners Association
(Association incorporated under Section 21)

I, We of _____
being a member(s) of the abovenamed association, hereby appoint

of _____
or failing him _____
of _____

or failing him the chairman of the meeting as my/our proxy to vote for me/us and on my/our behalf at the annual general meeting or general meeting (as the case may be) of the association to be held on the _____ day of _____ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution No.....			
Resolution No.....			
Resolution No.....			
Resolution No.....			

(Indicate instruction to proxy by way of a cross in the space provided above).

Unless otherwise instructed, my/our proxy may vote as he thinks fit.

Signed this _____ day of _____

Signature

(Note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and to vote in his stead, and such proxy need not also be a member of the association.)

27.6 The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed shall be deposited at the registered office of the company or at such other place as the notice of the meeting concerned may require, not later than at the time stated in such notice : Provided that it shall not be more than 48 (forty eight) hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid.

28 PROCEDURE AT GENERAL MEETINGS

28.1 The chairman shall preside as such at all general meetings, provided that should he not be present within 10 (ten) minutes after the time appointed for the holding thereof, then the vice-chairman shall act as chairman at such meeting, provided further that should the vice-chairman also not be present within 10 (ten) minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall appoint a chairman for the meeting, who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.

28.2. The chairman may, with the consent of any general meeting at which a quorum is present, and shall if so decided by the majority of the members present or represented and entitled to vote at the meeting, adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned, the company shall upon a date not later than three days after the adjournment, give notice of the meeting that is postponed or adjourned in such form and manner as the directors may determine.

28.3 Members of the association shall, subject to articles 11.19 and 29.5, be entitled to attend all general meetings and shall, subject to the discipline exercised by the chairman, be allowed to speak thereat.

29 VOTING RIGHTS OF MEMBERS

29.1 Every member shall, subject to articles 11.19 and 29.5, be entitled to vote in person or by proxy and shall have one vote for each unit or erf registered in his name.

- 29.2 Unless the chairman of the meeting otherwise directs, or unless a poll be demanded, all voting shall be on a show of hands of the members present in person or by proxy and entitled to vote. Any member may, either before or immediately after the declaration by the chairman of the result of the show of hands, demand a poll and in the event of a poll being demanded, such poll shall be taken in such manner as the chairman may direct. A poll demanded on the election of a chairman 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 chairman 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. A demand for a poll may be withdrawn.
- 29.3 Every resolution and every amendment of a resolution proposed for adoption at a general meeting shall be seconded at the meeting, and if not so seconded, shall be deemed not to have been proposed.
- 29.4 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 of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 29.5 Save as expressly provided in this memorandum, no person other than a member, duly registered, who is not in arrears by more than 30 (thirty) days with payment of every levy and other sum (if any) due and payable to the association in respect of or arising out of his membership, and who is not in breach of any of his obligations under this memorandum (provided that he shall have been given written notice of such breach and shall have failed to remedy such breach within the time specified in such notice) under the constitution or rules of any relevant sub-association in the development, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting. A member who is in arrears with any amount or in breach of any of his obligations as set out in this Article 29.5 shall not be entitled to speak and vote at any general meeting.
- 29.6 Unless any member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the correctness or validity of the procedure of such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be

deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded.

30. MEMBERS OBLIGATION TO BUILD

- 30.1 Owners of erven shall be obliged within four (4) years after 10 July 2007 to commence with the erection of a dwelling house and to complete such dwelling house (as evidenced by the issue of a certificate by the local authority) within twelve (12) months thereafter and shall comply with the conditions of this memorandum when effecting such work.
- 30.2 Should an owner fail for any reason whatsoever to comply with the provisions of article 30.1, then at any time after such failure to comply, the association shall have the right to impose sanctions or penalties on such owners in accordance with article 40.

31. GENERAL AUTHORITY TO ENTER INTO AGREEMENTS WITH MAJOR FINANCIAL IMPLICATIONS

- 31.1 The directors shall not have the power, save with the prior approval of 60% of the members of the association either present in person or by proxy at a general meeting, of which notice of intention of such resolution was given, to enter into any agreements creating material financial obligations.
- 31.2 For purposes of this Article 31 "material financial obligations' shall mean an amount of R150 000-00 (one hundred and fifty thousand Rand) per financial year or such other amount as determined by the members in annual general meeting in accordance with the provisions of Article 31.1.
- 31.3 Should, in terms of sub-article 31.1, a 60% representation of members either in person or by proxy not be achieved at such general meeting, the meeting may not be adjourned to a later date as a result thereof and the proposed resolution shall for all purposes be deemed to have been withdrawn.

32 NEW BUILDINGS OR STRUCTURES AND CHANGES OR ALTERATIONS THERETO COUNTRY CLUB

32.1 Without the written approval of the directors, a member or sub-association shall not be entitled to:

32.1.1 Erect any new buildings and/or structures of any nature whatsoever on his unit or erf or on the common property.

32.1.2 Make any changes or alterations or improvements to existing buildings and/or structures on his erf or on the common property, inclusive of the following:

32.1.2.1 Change the colours of the exterior walls of the building concerned, nor the colours of the exterior of the doors, window frames and any appurtenances, nor any fixture or fitting including door and window handles, locks, numbering, knockers and similar ornaments on the exterior thereof;

32.1.2.2 Construct or remove any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds, shutters, awnings or ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon the construction of the building with such items of the same nature and similar appearance;

32.1.2.3 Make any additions or extensions to the buildings or erect any further buildings or structures or fences, whether of a temporary or permanent nature, upon any land vested in him in the development;

32.1.2.4 Remove any fixtures, fittings, doors, windows, nor to demolish any portion of the exterior of any building.

32.2 The approval of the directors as contemplated in article 32.1 shall be given:

32.2.1 After detailed plans of the proposed work has been submitted to the directors, or to any person or committee appointed and nominated by the directors; and

32.2.2 If the directors or their nominee are satisfied that the proposed work is in accordance with the architectural guidelines, for the

purposes of which the directors or their nominee shall be the sole arbiter and their decision shall be final and binding on the member; and

- 32.2.3 If the member has made payment of any costs, which may be incurred in obtaining this approval, including the costs, and scrutiny fee of the directors and/or their nominee, such costs to be based on the recommended tariff of the Institute of South African Architects, for work of a similar nature; and
- 32.2.4 If the member has paid to the directors the requisite building deposit, as determined by the directors from time to time, which amount will be held in trust by the directors subject to article 33.
- 32.3 The provisions of this article shall not be interpreted as detracting from the sole and final responsibility of the local authority to approve or reject building plans. Approval of building plans will not be granted by the local authority without the prior written approval of the association thereto, which approval shall be evidenced by an endorsement by the architectural review committee.
- 32.4 Having obtained the approval of the local authority, the member shall comply with all terms, conditions and changes imposed by the directors and/or such person or committee nominated by them and to the conditions and standards imposed by the local authority insofar as these may be additional to the requirements of the guidelines read with the plans.
- 32.5 A member may undertake planting, landscaping or gardening activities on an erf or exclusive use area or make any alterations to any landscaping or vegetation existing when he acquires his unit, provided however that such gardening activities conforms to:
 - 32.5.1 The requirements stipulated in the Environmental Management Plan (EMP) and the architectural guidelines pertaining to:
 - 32.5.1.1 The nature of the gardening activities, which may be carried on therein;
 - 32.5.1.2 The plant material and types approved by the association as being compatible with the environment which may be used and the locations in which they may be planted.
 - 32.5.2 Any further conditions or directions imposed by the directors or their nominee.

33 BUILDING DEPOSITS

- 33.1 Each member or sub-association shall, when submitting to the directors for approval, the detailed plans for the construction of any building and/or improvements, or alterations or additions to existing improvements on his erf or common property, in terms of article 32, pay to the association an interest free deposit in an amount to be determined from time to time by the directors, which amount shall be retained by the association in trust until completion by the member or sub-association and /or the contractor of such work.
- 33.2 Upon completion of all such building and other activities, the directors shall if they are satisfied that no damages has been effected by the member or his contractors or sub-association to the common areas, common property and/or landscaped areas within the development and that the work has been constructed in accordance with the duly approved plans, release the building deposit to the member or sub-association free of interest.
- 33.3 In the event of any landscaped area and/or the common areas/common property having incurred damage due to such work, the member or sub-association shall within fifteen (15) days of a written request by the directors to do so, rectify the damage to the satisfaction of the directors, failing which, the directors shall be entitled to appoint an independent contractor to repair the damage and the amount paid as a building deposit shall be utilized to defray the expenses of the independent contractor. The directors shall be entitled to recover the shortfall from the member or sub-association, if the building deposit is insufficient to cover the cost of repairs of such damage.

34 RISK

- 34.1 Any person using any of the services, land, sporting or recreational facilities of the association does so entirely at his own risk, and no person shall have any claim against the association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.
- 34.2 No person shall have any claim against the association in respect of fire or any substance, liquid or gas escaping from the property of the association and causing damage to any person or property of any member, provided however that the association shall take such

reasonable steps in its power to prevent or minimize the effect of such escape or fire hazard.

34.3 Each and every member individually hereby indemnifies and holds harmless the association against all and any claims of whatsoever nature which may be brought or any cause of action which may arise against the association by that member, members of his family or any person within the development at the invitation or under control of the member concerned, whatsoever the nature of such claim and howsoever arising.

34.4 The proximity of the property to the Mossel Bay Golf Club course carries with it the possibility of damage to a dwelling or injury to a member, his guests, other occupants or employees on the property, as result of a wayward golf ball and no person shall have any claim against the association caused by such an incident.

35 SERVICE OF NOTICES

35.1 Notices may be given by the association to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic supplied by him to the association for the giving of notices to him. It shall, however, be competent for the association to give any notice to a member by telefax or e-mail where the member has advised the association in writing of his telefax number or e-mail address which the member normally uses in his communication with the association.

35.2 Notice of every general meeting shall be given -

35.2.1 to every member of the association;

35.2.2 to the auditor for the time being of the association.

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

35.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

35.4 The signature to any notice given by the association may be written or printed, or partly written and partly printed.

- 35.5 Any notice by fax or electronic communication shall be deemed to have been received by the addressee on the day of successful transmission of such notice.
- 35.6 When a given number of days notice or notice extending over any period is required to be given, the days of service shall not be counted in such number of days or period.
- 35.7 The address, constituting the *domicilium citandi et executandi* of the association will be the registered office of the association or its principal place of business.
- 35.8 The *domicilium citandi et executandi* of each member shall be the street address of the member's unit or erf or at such other address within the Republic of South Africa as may be directed from time to time by such member in writing.

36 ACCOUNTING RECORDS

- 36.1 The board of directors shall cause such accounting records as are prescribed by section 28 of the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such account accounting records as are necessary fairly to present the state of affairs and business of the association and to explain the transactions and financial position of the trade or business of the association.
- 36.2 The board of directors shall from time to time with due regard to section 30 of the Act, determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the association or any of them shall be open to inspection by members not being members of the board of directors, and no member (not being a director) shall have any right of inspecting any accounting records or documents of the association except as conferred by the Act or authorized by the board of directors.
- 36.3 The board of directors shall from time to time, in accordance with section 30 of the Act, cause to be prepared and laid before the association in general meeting such financial statements as are referred to in that section.
- 36.4 A copy of the annual financial statements which are to be laid before the association in annual general meeting shall, not less than 15 (fifteen) business days before the date of the meeting, be sent to every member of the association and the Registrar provided that this

article shall not require a copy of those documents to be sent to any person of whose address the association is not aware.

- 36.5 An auditor shall be appointed in accordance with Part C of Chapter 3 of the Act.

37 DIVIDENDS

No dividends shall be declared or paid by the association whatsoever.

38 GENERAL

- 38.1 Should any member fail to pay any amount owing to the association on due date, such amount shall bear interest at the prime rate plus 2% charged by the association's principal bankers from time to time as certified by any manager or accountant of such bank (whose appointment and authority and the period during which such rate applied need not be proved) which shall be prima facie proof of such rate of interest, payable from the due date until the date of payment.
- 38.2 The provisions of these articles shall be binding upon all members and, insofar as they may be applicable, to all persons occupying any erf or unit by, through or under any member, whatever the nature or legal basis of such occupation.
- 38.3 Notwithstanding that members hold title to their units individually and notwithstanding that a sub-association is accorded certain powers and duties in respect of a sub-development, it is recorded that the development is of a homogeneous nature and that the association shall be vested with overall control of all matters affecting the development.
- 38.4 No resolution for the winding-up of the association and the transfer of its assets shall be taken unless the association shall have made adequate provision for the rights of members to obtain access to their sections and their rights of exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the member concerned, if the member so requires.
- 38.5 No latitude, extension of time or other indulgence which may be given or allowed to any member or director in respect of the performance of any obligations in terms of this memorandum and the rules, and no delay or forbearance in the enforcement of this memorandum or the rules, shall in any circumstances be construed to be an implied consent or election or operate as a waiver or a novation of or

otherwise affect the rights of the association or any member from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of this memorandum and the rules.

39 BREACH

39.1 The directors may on behalf of and in the name of the association institute legal proceedings against members who are in breach of any of the provisions of this memorandum.

39.2 The directors may on behalf of and in the name of the association serve notice on such member in breach, calling upon him to remedy such breach within a time specified in such notice and failing timeous compliance:

39.2.1 Enter upon the erf or unit or exclusive use area, (as the case may be) to take such action as may be reasonably required to remedy the breach and the member concerned shall be liable to the association for all costs so incurred, which costs shall be due and payable upon demand; and/or

39.2.2 Call upon such member in writing to remove or alter within a specified period any portion of the improvements or any addition erected contrary to the provisions of this memorandum and, failing which, the matter shall be referred to a special meeting of the association convened to afford members the opportunity to give directives to the directors. The resolution of the association at such meeting shall be binding upon such defaulting member and shall be implemented by the directors; and/or

39.2.3 Institute proceedings in any court of competent jurisdiction for such relief as the directors may consider necessary and such member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief; and/or

39.2.4 If any member fails to make payment on due date of levies or other amounts payable by such member, the directors may give notice to such member requiring him to remedy such breach within such period as the directors may determine and should he fail to timeously remedy his breach, the directors may, on behalf of the association, institute legal proceedings against such member without further notice and such member will be liable for and shall pay all legal costs on the scale as between attorney

and own client together with collection commission and any other expenses and charges incurred by the association in obtaining recovery, including interest and any arrear amounts.

- 39.3 Nothing in the foregoing shall derogate from or in any way diminish the right of the association to institute proceedings in any court of competent jurisdiction for recovery of any money due by any member arising from any cause of action whatsoever or for any other relief.
- 39.4 In the event of any breach of any provisions of this memorandum by family members, employees or guests of a member or by the lessees or occupiers of a member's erf or unit, or their family members, employees or guests, such breach shall be deemed to have been committed by the member himself but, without prejudice to the foregoing, the directors shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the member.

40 IMPOSITION OF PENALTIES

- 40.1 If the conduct of an owner or occupier or the family members, guests or employees of the owner or occupier constitutes a nuisance in the opinion of the directors, or if any such person contravenes any provision of these presents, the guidelines or the rules, the directors may, without prejudice to any other rights or remedies which the directors may have in law or in terms of these presents:
- 40.1.1 by written notice inform the owner of the nuisance or contravention and warn the owner that if he fails to remedy the contravention, or persist in such conduct or contravention, or if such conduct or contravention is repeated, a penalty will be imposed on the owner; or
- 40.1.2 by written notice impose a penalty on the owner, which notice shall state the reasons for the imposition of the penalty, if despite the written notice referred to in article 40.1.1, the owner fails to remedy the contravention, or if the owner persist in the conduct or contravention, or if such conduct or contravention is repeated; or
- 40.1.3 summarily and without warning, by written notice impose a penalty on the owner, which written notice shall state the reasons for the imposition of the penalty.

- 40.2 The penalty imposed under articles 40.1.2 or 40.1.3 above, becomes due on the date of the written notice and must be paid within 30 (thirty) days from the date of the written notice. Should the penalty remain unpaid it shall be added to the levies due by the owner in terms of these presents and be recovered from the owner in the same manner as applies to arrear levies, together with interest at the rate applicable to arrear levies. Payment of penalties will take preference above levies and any payment received after the imposition of a penalty shall be deemed to be allocated firstly to the payment of the penalty irrespective of any allocation by the owner.
- 40.3 The directors may from time to time determine the categories of contraventions and the amounts of the penalties in respect of first and subsequent contraventions, subject to the review and confirmation thereof by the association in general meeting.
- 40.4 A penalty may be imposed in respect of each separate contravention. In the event of a continuing contravention, the owner shall be deemed to be guilty of a separate contravention for every 24 hours or part thereof during which such contravention continues and shall be liable in respect of each such separate contravention.
- 40.5 An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the association in obtaining the recovery of arrear levies, or any other arrear amounts, including penalties due and owing by such owner to the association, or in enforcing compliance with these presents, the guidelines or the rules.
- 40.6 An owner may within 30 (thirty) days of the date of the written notice referred to in articles 40.1.2 or 40.1.3, lodge an objection against the penalty imposed with the directors.
- 40.7 Upon receipt of the objection, the directors may:
- 40.7.1 withdraw or reduce the penalty, or
- 40.7.2 schedule a directors' meeting for the purpose of considering the objection and invite the owner to attend, or to be represented.
- 40.8 At the directors' meeting referred to in article 40.7.2 above, the owner or his representative shall have the right to:
- 40.8.1 present his case;
- 40.8.2 present any evidence, including the calling of witnesses, to substantiate his case;

- 40.8.3 cross-examine any person called as witness in support of the charge;
- 40.8.4 have access to documents produced in evidence;
- 40.8.5 produce mitigating factors.
- 40.9 The failure of the owner or his representative to attend the directors' meeting referred to in article 40.7.2 above shall not render the proceedings at the meeting void. Should the owner or his representative not attend the directors' meeting without providing a reasonable request for postponement, the directors may, in their sole discretion, continue with the meeting and consider the objection in the absence of the owner.
- 40.10 Upon the conclusion of the directors' meeting, the directors shall deliberate the evidence and if so resolved, they may:
 - 40.10.1 uphold the penalty; or
 - 40.10.2 withdraw or reduce the penalty.
- 40.11 Any notice to an owner in terms of this clause, will be regarded as having been properly given if such notice is:
 - 40.11.1 delivered to the owner by hand, in which event it shall be regarded as having been received on delivery; or
 - 40.11.2 delivered by registered post to the owner to his *domicilium citandi et executandi*, in which event it shall be regarded as having been received on the 4th day after the date of postage; or
 - 40.11.3 delivered to the owner by fax or e-mail to the fax number or e-mail address of the owner, in which event it shall be regarded as having been received on the date of transmission.

41 DISPUTE RESOLUTION

- 41.1 Should any dispute arise between members or between a member and the company or between a member and directors out of or in regard to -
 - 41.1.1 the interpretation of;
 - 41.1.2 the effect of;

- 41.1.3 their respective rights or obligations under; or
- 41.1.4 a breach of (save for non-payment of levies or any other amount due by a member) of,
- this memorandum, such dispute shall, save for article 41.2, be decided by arbitration in the manner set out in this article.
- 41.2 In respect of any claim arising from non-payment of levies or any other amount due by a member to the association in terms of this memorandum and matters referred to in article 41.7, the association and directors shall not be obliged to refer the matter to arbitration and shall not be precluded from instituting proceedings in any court of competent jurisdiction.
- 41.3 The arbitration referred to in article 41.1 shall -
- 41.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and
- 41.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within thirty (30) days after it is demanded; and
- 41.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this article provide otherwise.
- 41.4 The arbitrator shall be a practising counsel or attorney of not less than seven (7) years standing appointed by agreement between the parties to the arbitration within seven (7) days of being called upon to make such appointment and failing such agreement within the seven (7) day period, appointed by the President of the Cape Law Society.
- 41.5 The arbitrator shall, in giving his award, have regard to the principles contained in the provisions of this memorandum, and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision.
- 41.6 The arbitrator's decision shall be presented within ten (10) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may

determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the association as he in his sole discretion may deem fit.

- 41.7 Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings -
- 41.7.1 shall be final and binding on each of them; and
 - 41.7.2 shall be carried into effect immediately; and
 - 41.7.3 may be made an order of any Court to whose jurisdiction the parties are subject.
- 41.8 Notwithstanding anything to the contrary contained in this article, the directors shall be entitled to institute legal proceedings on behalf of the association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this memorandum.

42 AMENDMENT OF MEMORANDUM AND SPECIAL RESOLUTIONS

- 42.1 All and any amendments or variations or additions to this memorandum shall be subject to the approval on a poll of not less than 75% (seventy five percent) of the voting rights exercised on the resolution at a general meeting convened specifically for such purpose or at an annual general meeting of the company. The notice of such meeting shall be set out in specific terms the proposed amendments of these articles.
- 42.2 The provisions of article 42.1 shall apply *mutatis mutandis* in respect of all special resolutions other than special resolutions referred to in article 42.1.

43 INCOME TAX EXEMPTION

The following provisions shall apply if the company applies for and is granted tax exemption in terms of the Income Tax Act :

- 43.1 The company is not permitted to distribute any of its funds to any person other than to a similar organization.
- 43.2 On dissolution the remaining assets of the company shall be distributed to a similar organization, which is also exempt from Income Tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act.

- 43.3 Any amendments to the memorandum must be submitted to the Commissioner for the South African Revenue Services.
- 43.4 The company is not or was not knowingly a party to, or does not knowingly permit or has not knowingly have permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.
- 43.5 Annual returns of Income Tax together with financial statements must be submitted to the South African Revenue Services.
- 43.6 Funds available for investment may only be invested in accordance with the conditions of approval of the South African Revenue Services.

44 LOCAL AUTHORITY REQUIREMENT

If the establishment of the association was a requirement of the approval of the development, this memorandum may not be amended without the approval of the local authority concerned.