

MEMORANDUM OF INCORPORATION
OF
THE SAN LAMEER
MASTER HOMEOWNERS ASSOCIATION
NON-PROFIT COMPANY
(No. 1977/000005/08)

November 2019

Republic of South Africa

Companies Act, 2008

Memorandum of Incorporation of a Non-Profit Company

Section 8 (1)

Registration No of Company

1977/000005/08

Name of company:

**THE SAN LAMEER MASTER HOMEOWNERS ASSOCIATION NON-PROFIT
COMPANY**

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1. Interpretation

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

- 1.1. "Additional Sales Agents" means the agents contemplated in article 6.4;
- 1.2. "Address" shall mean the address notified by a Member to the Company for purposes of service of any notice by the Company to the Member or if a Member has failed to notify the Company in writing of any such address, at the address of any Unit or Land owned by him and shall include in regard to Electronic Mail, any address furnished by the Member for such purpose;
- 1.3. "Annual General Meeting" means the meeting of Members held in terms of article 11.1;
- 1.4. "Annual Levies" shall bear the meaning as defined in article 9.2.2;
- 1.5. "Auditors" means the Auditors of the Company;
- 1.6. "Board" means the board of Directors of the Company from time to time;
- 1.7. "Business Unit" means a Sectional Unit or a Cluster Unit which is in terms of the Town Planning Scheme used for business purposes;
- 1.8. "Chairperson" means the chairperson of the Board, from time to time;
- 1.9. "Cluster Development" means a Residential Erf containing Cluster Units;
- 1.10. "Cluster Unit" means a dwelling unit (excluding a Sectional Unit but including a mini-sub and free-standing unit) capable of being situated on its own individual subdivision of a Residential Erf, tenure of which may be registered in the land register of the Deeds Registry Office, including its undivided share in the common property of the Residential Erf it is erected on;
- 1.11. "Company" means the San Lameer Master Homeowners Association Non-Profit Company as represented by the Board;
- 1.12. "Companies Act" means the Companies Act 71 of 2008, as amended from time to time or any statute which replaces it;
- 1.13. "CSOS" means the Community Schemes Ombud Service established in terms of the CSOS Act;
- 1.14. "CSOS Act" means the Community Schemes Ombud Service Act 9 of 2011, as amended from time to time or any statute which replaces it;
- 1.15. "Deeds Registries Act" means the Deeds Registries Act, 1937, as amended from time to time or any statute which replaces it;
- 1.16. "Deeds Registry Office" means the office of the Registrar of Deeds, Pietermaritzburg;
- 1.17. "Director" means a member of the Board, or an alternate director of the Company and includes any person occupying the position of a Director or alternate director, by whatever name designated;
- 1.18. "Electronic Communication" has the meaning set out in section 1 of the Electronic Communications and Transactions Act and Transactions Act, 2002;
- 1.19. "Electronic Mail" means an e-mail as contemplated in section 1 of the Electronic Communications and Transactions Act and Transactions Act, 2002;
- 1.20. "Extraordinary General Meetings" means the meetings of Members held in terms of article 11.3;
- 1.21. "Financial Year" means the financial year of the Company which shall run from the first day of October in any year to the 30th day of September in the subsequent year unless otherwise required by law;
- 1.22. "Garage Unit" means a Unit referred to as "a garage unit" or a "golf cart unit", the tenure of which shall be registered in terms of the Sectional Titles Act, including its undivided share in common property of the erf it is erected on;
- 1.23. "General Meeting" means either an Annual General Meeting or an Extraordinary General Meeting;
- 1.24. "Hotel Property Owner" means the owner from time to time of Erf 101, San Lameer;
- 1.25. "House Rules" means such rules as may be introduced, modified or cancelled by the Board, in accordance with the provisions of articles 10.1 and 10.1.4 to regulate, inter alia, the use of Land, Units, Services and facilities in the Township, and includes any other rules, protocols, guidelines or policies adopted by the Board from time to time or imposed by any competent authority;
- 1.26. "in writing" includes, to the extent that the Directors so resolve, Electronic Mail or Electronic Communication but as regards any Member, only to the extent that such Member has notified the Company of an address to be used for the purposes of Electronic Mail;

- 1.27. "Land" means vacant property on a Residential Erf on which a Unit is to be erected, inclusive of the undivided share of the common property of the Residential Erf on which such Unit is to be erected;
- 1.28. "Levies" means Annual Levies and Special Levies;
- 1.29. "Local Authority" means the Local Authority having jurisdiction over the Township and meaning a City or Town Council and a Town Board or a Health Committee;
- 1.30. "Managing Director" means any person appointed by the Company as chief executive officer to undertake the management of the Township;
- 1.31. "Member" means the persons who become Members in terms of article 5.1;
- 1.32. "Memorandum of Incorporation" means this Memorandum of Incorporation of the Company;
- 1.33. "Open Areas" means such areas, which do not form part of a Unit, i.e. Land or Roads, being also unimproved areas, gardens, grounds/land belonging to the Company, parking areas and other areas under the control of the Company;
- 1.34. "Open Space" means such erven and/or lots in the Township having the zoning in the Town Planning Scheme of private open space as the Company may from time to time acquire;
- 1.35. "Profits" includes revenue and capital profits;
- 1.36. "Register" means the register of Members kept in terms of the Companies Act;
- 1.37. "Republic" means the Republic of South Africa;
- 1.38. "Residential Erf" means any erf upon which may be erected any Sectional Unit or Cluster Unit;
- 1.39. "Roads" means Roads and common area passageways, including passageways in the sectional title erven, as may be constructed in the said Township;
- 1.40. "Sectional Titles Act" means the Sectional Titles Act, 1986, as amended from time to time or any statute which replaces it;
- 1.41. "Sectional Title Development" means a development scheme in terms of section 1 of the Sectional Titles Act;
- 1.42. "Sectional Unit" means a dwelling unit, the tenure of which may be registered in terms of the Sectional Titles Act including its undivided share in the common property of the erf it is erected on;
- 1.43. "Services" means the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, firefighting, libraries, transport, security, safe-keeping of keys, reception services and such other utilities and amenities as may be provided by the Company;
- 1.44. "Special Levies" shall bear the meaning as defined in article 9.4;
- 1.45. "Statutes" means the Companies Act and any and every other statute or ordinance from time to time in force concerning companies and necessarily affecting the Company;
- 1.46. "STSM Act" means the Sectional Titles Schemes Management Act 8 of 2011 as amended from time to time or any statute which replaces it;
- 1.47. "Township" means the Township of San Lameer and all adjacent properties fenced in as part of the San Lameer Estate;
- 1.48. "Town Planning Scheme" means the San Lameer Town Planning Scheme as amended from time to time;
- 1.49. "Unit" includes a Sectional Unit, Cluster Unit, Business Unit and a Garage Unit, and the undivided share of the common property of the erf on which the Unit is erected;
- 1.50. "Unit Entitled" means a Unit, excluding all Garage Units and any portion of the undivided share of the common property of the erf on which the Unit is erected;
- 1.51. references to Members represented by proxy shall include Members represented by an agent appointed under a general or special power of attorney and references to Members present or acting in person shall include corporations represented or acting in the manner prescribed in the Companies Act;
- 1.52. expressions defined in the Companies Act, or any statutory modification thereof, in force at the date on which this Memorandum of Incorporation becomes binding on the Company shall have the meanings so defined;
- 1.53. words in the singular number shall include the plural and words in the plural number shall include the singular, words importing the masculine gender shall include females, and words importing persons shall include created entities (corporate or not);

- 1.54. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.55. expressions defined in this Memorandum of Incorporation shall bear the same meanings in schedules or annexures to this Memorandum of Incorporation which do not themselves contain their own definitions;
- 1.56. where any term is defined within the context of any particular Article in this Memorandum of Incorporation, the term so defined, unless it is clear from the Article in question that the term so defined has limited application to the relevant Article, shall bear the meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that the term has not been defined in this interpretation Article;
- 1.57. the contra proferentem rule shall not be applied in the interpretation of this Memorandum of Incorporation.

2. Preliminary

- 2.1. If the provisions of this Memorandum of Incorporation are in any way inconsistent with:
 - 2.1.1. an alterable or elective provision of the Companies Act, the provisions of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
 - 2.1.2. an unalterable or non-elective provision of the Companies Act, the unalterable or non-elective provision of the Companies Act shall prevail unless this Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict.
- 2.2. The Company is a juristic person which has all of the legal powers and capacity of an individual except to the extent that:
 - 2.2.1. a juristic person is incapable of exercising any such power, or having any such capacity; or
 - 2.2.2. this Memorandum of Incorporation or the Companies Act places restrictions on the powers of the Company.
- 2.3. The Company shall carry out all the functions and assume all powers as provided for in the STSMA of all bodies corporate of sectional schemes established within the Township. The controlling body of any sectional scheme shall assign all its functions and powers to the Company with effect from the date of establishment of each such body corporate.
- 2.4. The management rules contained in the relevant Annexure to the regulations published in terms of the STSMA shall not apply to any sectional scheme within the Township and shall be substituted with such management rules as the Company deems fit, provided that in the event that a conflict arises between this Memorandum of Incorporation (including any House Rules made under article 10) and the management rules of any sectional scheme or schemes within the Township then the provisions of the Memorandum of Incorporation (and the House Rules) shall prevail.
- 2.5. The provisions of this Memorandum of Incorporation (including any House Rules made under article 10) shall prevail notwithstanding the conduct rules of any sectional scheme within the Township, whether such conduct rules are the statutory rules in terms of the relevant Annexure to the Regulations published in terms of the STSMA or any subsequent substitutions or variations thereof.

3. Binding nature of this Memorandum of Incorporation

The provisions of this Memorandum of Incorporation shall be binding upon the Company, all Members and Directors, each Member having the obligation to provide a copy of this Memorandum of Incorporation to any person occupying any Unit or Land and to procure that such persons comply with the provisions of this Memorandum of Incorporation.

4. Incorporation and Nature of the Company

4.1. Incorporation and Objects

The Company is incorporated as a Non Profit Company with members, as contemplated in the Companies Act, with the following objects:

- 4.1.1. To promote, advance and protect the communal interests of Members and in particular in so promoting such interests, to provide, promote and maintain essential and community services (including the Services as defined), amenities and activities within the said Township.

4.2. Promotion of Main Object

The income and property of the Company, however derived, shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to any members of the Company, or its controlling or controlled Company. Nothing herein contained shall prevent the payment in good faith of reasonable remuneration of any officer or servant of the Company or to any agent or member thereof in return for any goods supplied or services actually rendered to the Company.

4.3. Transfer of Assets on Winding-up, Deregistration or Dissolution

Upon its winding-up, deregistration or dissolution, any assets remaining after satisfaction of all its liabilities shall be given or transferred to some other company, institution or association having objects similar to its main object as determined by the members of the Company at or before the time of its dissolution, or failing such determination by the Court.

4.4. Subscriptions and Levies

The Company shall be entitled to bind members to contribute by way of subscriptions and levies towards the funds of the Company and to enforce payment of, and to collect and receive from members such contributions and levies.

4.5. Compliance with this Memorandum of Incorporation

The Company shall be entitled to enforce compliance with its Memorandum of Incorporation and House Rules in such manner as it may deem fit, and, without limiting the foregoing, it may:

- 4.5.1. impose a system of fines or other penalties, as determined by the Board from time to time; and/or
- 4.5.2. suspend or limit Services; and/or
- 4.5.3. take such other lawful steps available to it in law, including steps to remedy any breach by a member, and debit the costs of doing so to the member concerned which amount shall be deemed to be a debt owing by the member to the Company; and/or
- 4.5.4. enforce the provisions of its Memorandum of Incorporation and House Rules by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or counsel as it may deem fit.

5. Members

5.1. Membership, resignation and cessation of membership

- 5.1.1. Any person who, in terms of the Deeds Registries Act and/or the Sectional Titles Act, is registered as the owner of any Unit or Land, as reflected in the records of the Deeds Registry Office, shall be deemed to be a Member. Membership of the Company, which includes Membership of the San Lameer Country Club, shall be limited to any person, who is so registered. For the avoidance of doubt it is recorded that the San Lameer Country Club is incorporated into and controlled by the Company and upon becoming a Member of the Company, Members automatically become members of the San Lameer Country Club.
- 5.1.2. Where any Unit or Land is registered in the records of the Deeds Registry Office in the names of more than one person, all such persons shall together count as 1 (one) Member and such co-owners shall nominate one of them to be the representative Member for the purposes of this Memorandum of Incorporation. Such nomination shall be made in writing to the Company within 7 (seven) days of such co-owners together becoming a Member of the Company in terms of this Memorandum of Incorporation. In the event of any co-owners failing to make the aforesaid nomination, then in that event, the Company shall presume, until notified otherwise by the co-owners in question in writing, that the owner listed first on the title deed to the property in question is the party nominated as the representative Member by the co-owners for all purposes of this Memorandum of Incorporation.
- 5.1.3. The executor of a deceased Member or the trustee of an insolvent Member will become a Member of the Company *ipso facto* upon receiving his appointment and will remain a Member, until he has resigned or ceases to be a member as contemplated in article 5.2.2. In case there is more than 1 (one) executor or trustee, in the respective estates, the executors or trustees thereof shall in each case count as 1 (one) Member, and shall in each case, for all purposes of the Company, be represented by one of their number duly authorised thereto to the satisfaction of the Chairperson.

5.2. No resignation as a Member

5.2.1. The registered owner of Land or a Unit may not resign as a Member of the Company.

5.2.2. A Member shall *ipso facto* cease to be a Member of the Company when he ceases to be the registered owner of a Unit or Land in the Township.

5.3. Membership certificate

The Board may by regulation, provide for the issue of a Membership certificate which certificate shall be in such form as may be prescribed by the Directors and subject to the provisions of the Companies Act.

5.4. Register

In the event of any Unit being owned in undivided shares by more than one owner or on the basis that each owner of an undivided share shall be entitled to occupy the Unit for a particular period in each year, the Directors shall cause to be kept a register of the name of each co-owner that may include the period during the year in which he is entitled to occupy the Unit.

6. Transfer of Units or Land and parting with occupation of a Unit or Land

6.1. Conditions to sales of Units or Land

6.1.1. A Member shall not in any manner alienate any Unit or Land unless it is a condition of the agreement of alienation that -

6.1.1.1. the Company has consented to the alienation (as contemplated in article 6.2 below) and the proposed transferee has bound himself in writing, to the satisfaction of the Company to become a Member of the Company, upon transfer of the Unit or Land to him; and

6.1.1.2. the registration of transfer of that Unit or Land into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Company.

6.1.2. The provisions of article 6.1.1 shall apply *mutatis mutandis* to any alienation of an undivided share of the common property of the erf on which a Unit is erected, or to be erected.

6.1.3. For the purposes of this article "alienate" means to alienate any Unit or Land or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition. In the case of an artificial person, such as a company, close corporation or trust, the material change in the "beneficial ownership" or in the "controlling interest" thereof, shall be deemed to constitute an alienation for the purposes of this Memorandum of Incorporation ("**Deemed Alienation**") and, in the event of there being any dispute as to whether there has been a material change in "beneficial ownership" or in the "controlling interest", such matter shall be referred to the Company's Auditors whose decision shall be final and binding.

6.2. Consent of the Company required for a transfer of a Unit or Land or any interest therein

No Unit or Land or any interest therein shall be alienated and there shall be no Deemed Alienation without the prior written consent of the Company. Such consent shall not be withheld unless:

6.2.1. the transferor has failed to comply with all of his obligations to the Company (which incorporates the San Lameer Country Club), including a situation where the Member concerned is indebted to the Company in any way in respect of Levies or other amounts which the Company may in terms hereof be entitled to claim from him or the Member concerned is indebted to San Lameer Villa Rentals Proprietary Limited;

6.2.2. where applicable, the proposed transferee has not agreed to become and remain a Member of the Company;

6.2.3. in those cases where Units are owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Unit at particular times during the year, the Company is not satisfied that the transferee of an undivided share in the Unit is aware of such arrangements and has bound himself to abide thereby;

6.2.4. in those areas where a Cluster Unit is to be transferred, the proposed transferee has not bound himself to the satisfaction of the Company, to become a Member of any residents' association formed specifically for the protection of the interests of the owners of subdivisions of the Residential Erf concerned, insofar as the conditions of establishment laid down by the relevant administrator require the establishment of such an association.

6.3. Administration fee

When a Unit or any Land is alienated or a Deemed Alienation occurs, the Member who has alienated any Unit or any Land (or deemed to have alienated any interest in any Unit or any Land) shall pay to the Company a fee, to be determined by the Board from time to time, to cover the administration expenses of the Company in respect of such alienation or Deemed Alienation.

6.4. Sales Agents

- 6.4.1. Only estate agents approved by the Company may market and sell any Unit or Land on behalf of a Member in addition to San Lameer Sales Close Corporation ("Villa Sales"), or any other estate agent appointed by the Company from time to time in addition to or in substitution of Villa Sales. Villa Sales are approved sales agents and occupy premises in the Township.
- 6.4.2. Additional sales agents may be nominated by the Board or by any Member from time to time for purposes of approval and appointment by the Board and any such nominations must be submitted in writing to the Board together with the curriculum vitae of the nominated agent/s. All sales agents nominated by any Member must satisfy the appointment criteria laid down by the Board from time to time in order to qualify for approval and appointment by the Board. Subject to article 6.4.4 below, the approval of sales agents nominated by any Member will only be effective for the duration of the mandate granted by that Member and once the mandate has been fulfilled or lapses or is terminated for any reason then the approval of that sales agent will also lapse but this shall not preclude a Member nominating that same agent for approval at any other time.
- 6.4.3. Sales agents will at all times be subject to the House Rules and all other conditions imposed on them by the Board from time to time.
- 6.4.4. The Board will have the right to terminate the approval of any sales agent/s in the event of them ceasing to satisfy the Board's approval criteria or breaching the House Rules or any other condition imposed on them by the Board from time to time.

6.5. Procedure for sales of Units or Land

- 6.5.1. When a Member wishes to sell his Unit or Land he shall, in his discretion, be entitled to dispose of the Unit or Land himself as a private sale alternatively he may appoint Villa Sales or any other approved sales agent as envisaged in article 6.4 above to arrange the sale of such Unit or Land on behalf of the Member concerned. The selling Member using the services of an approved sales agent nominated by him shall indemnify the Company against any loss or damage that may be suffered directly or indirectly as a result of the appointment of such sales agent/s. It will be the responsibility of the selling Member to negotiate the conditions of sale of his Unit or Land with the sales agent concerned and the Member will be liable for payment of all of such sales agent's commission. The relevant agreement of sale shall be subject to the approval of the Board.
- 6.5.2. The provisions of article 6.5.1 shall not operate either -
 - 6.5.2.1. to prevent or impede a sale in execution at the instance of any mortgagee; or
 - 6.5.2.2. to the prejudice of any mortgagee of any Unit or Land in the event of the insolvency or liquidation of the mortgagor thereof.

6.6. Prohibition on parting with occupation

No Member shall let or otherwise part with occupation of his Unit or Land whether temporarily or otherwise unless he has agreed with the proposed occupier of such Unit or Land as a *stipulatio alteri* in favour of the Company that such occupier shall be bound by all terms and conditions hereof and of the House Rules.

7. General Undertakings

Save as provided for herein the rights and obligations of a Member shall not be transferred and every Member shall:

- 7.1. further the objects and interests of the Company to the best of his ability;
- 7.2. observe all House Rules, provided that nothing contained in the Memorandum of Incorporation shall prevent a Member from ceding his rights in terms hereof as security to the mortgagee of that Member's Unit or Land;
- 7.3. ensure that no person, Member, company, close corporation or trust, as a Member of the Company, may adopt any memorandum of incorporation, constitution, user-agreement, scheme, resolution or deed in contrast or contrary to the Memorandum of Incorporation, or the House Rules.

8. Claims against and by the Company

- 8.1. No person ceasing to be a Member of the Company for any reason shall (nor shall any such person's executor, curator, trustee or liquidator) have any claim upon or interest in or right to the funds or other property of the Company.
- 8.2. The Company may claim from any Member or his estate, any arrears of levy and interest or any other sums due by him to the Company from time to time and/or at the time of him ceasing to be a Member.

9. Levies

9.1. Purpose of and determination of Levies

- 9.1.1. The Board shall from time to time, on the recommendation of the committee dealing with finance, hereinafter referred to as the Finance Committee, determine the Levies payable by Members for the purpose of:
 - 9.1.1.1. the Company meeting all the expenses which the Company has incurred, or which the Board as recommended by the Finance Committee reasonably believes the Company will incur in respect of maintenance, repair, improvement, and keeping in good order and condition of the Roads, open areas/spaces and Services, and/or of the exterior of any buildings, structures, erections and other improvements in the Township, including Units for which costs related to the maintenance, refurbishment or repair have specifically been provided and budgeted for by the Company; and/or
 - 9.1.1.2. the payment of all rates and other charges payable by the Company in respect of the property vested in it; and/or
 - 9.1.1.3. the payment for Services rendered to or by it; and/or
 - 9.1.1.4. the payment of the salaries and/or wages of the employees of the Company; and/or
 - 9.1.1.5. generally, the payment of all expenses necessarily or reasonably incurred or to be incurred in connection with the management of the Company, and the Township, including, without limitation, all and any expenses of a capital nature, reasonably or necessarily incurred in the attainment of the objects of the Company or the pursuit of its business.
- 9.1.2. In determining the Levies, the Board and Finance Committee, when recommending to the Board, shall take into account all expenses relating to Units administered by the Company.
- 9.1.3. In calculating the Levies payable by any Member, the Board as recommended by the Finance Committee, shall as far as reasonably practical:
 - 9.1.3.1. assign those costs arising directly out of the Unit or Land itself to the Member owning such Unit or Land;
 - 9.1.3.2. assign a proportion of those costs attributable generally to a particular Sectional Title Development or Cluster Development to the registered owners of Units in that Sectional Title Development or Cluster Development, as the case may be -
 - 9.1.3.2.1. *pro rata*, in the case of a Sectional Title Development to the participation quota of the Member concerned;
 - 9.1.3.2.2. in the case of a Cluster Development, *pro rata* to the fraction which would have been assigned to each Unit as a participation quota in terms of the Sectional Titles Act had the Cluster Development been a Sectional Title Development and all the cluster units thereon sections;
 - 9.1.3.3. assign those costs relating to the Township generally to the owners of all Units and Land equally, provided however that the Board and the Finance Committee, when recommending to the Board, may in any case where it considers it equitable so to do;
 - 9.1.3.4. assign to any Business Units such greater share of the expenses mentioned in article 9.1.1 above as it may consider reasonable in the circumstances;
 - 9.1.3.5. assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances; and
 - 9.1.3.6. assign to any Member a greater or lesser proportion of the cost of maintaining entertainment and recreation areas and facilities as it may consider reasonable in the circumstances.

9.2. **Notice of amount required to cover expenses and Annual Levies**

- 9.2.1. The Board after considering the recommendations from the Finance Committee shall not less than 30 (thirty) days prior to the end of each Financial Year, or as soon thereafter as is reasonably possible, prepare and serve a notice upon every Member an estimate in reasonable detail of the amount which shall be required by the Company to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding Financial Year ("**the Expenses and Annual Levies Notice**"). The Board and the Finance Committee, when recommending to the Board, may include in such Expenses and Annual Levies Notice an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 9.2.2. The Expenses and Annual Levies Notice shall specify the annual contribution payable by the relevant Member to such expenses and reserve fund ("**the Annual Levy**").

9.3. **Payment of Annual Levies**

- 9.3.1. Every Annual Levy shall be payable in equal monthly instalments due in advance on the first day of each and every month of the relevant Financial Year but subject to the right of the Company in the sole discretion of the Board to accelerate the payment of the balance of the Annual Levy in the event of a Member falling into arrears and failing to timeously pay any monthly instalment of the Annual Levy.
- 9.3.2. In the event of the Board for any reason whatsoever failing to prepare and serve the Expenses and Annual Levies Notice timeously, every Member shall until service of such estimate as aforesaid continue to pay the Annual Levy payable in respect of the preceding Financial Year and shall after delivery of the Expenses and Annual Levies Notice pay such Annual Levy as may be specified in the Expenses and Annual Levies Notice.

9.4. **Special Levies**

The Board and the Finance Committee, when recommending to the Board, may from time to time determine special levies payable by the Members, in addition to the Annual Levies, in respect of all such expenses as are mentioned in article 9.1, which were not included in the Expenses and Annual Levies Notice ("**Special Levies**") and the Board may in imposing such Special Levies further determine the terms of payment thereof.

9.5. **Interest on arrear Levies**

- 9.5.1. The Board after considering the recommendations from the Finance Committee shall be empowered, in addition to such other rights as the Company may have in law as against its Members, to charge interest from time to time upon arrear levies, compounded monthly in arrear, at the prime rate of interest charged by the Company's primary bank from time to time plus such rate as determined by the Board from time to time, provided that such rate of interest shall not exceed the rate laid down in the Prescribed Rate of Interest Act, 1975.
- 9.5.2. Any amount due by a Member by way of Levies and interest shall be a debt due by him to the Company.
- 9.5.3. The obligation of a Member to continue paying Levies after the date on which he ceases to be a Member, shall cease upon his ceasing to be a Member without prejudice to the Company's right to recover arrear Levies and interest owed up to the date of him ceasing to be a Member.
- 9.5.4. No Levies or interest paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member.
- 9.5.5. A Member's successor-in-title to a Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit, to pay the Levies and interest thereon attributable to that Unit.

9.6. **No rights or privileges if Levies in arrear**

No Member shall have any rights as or be entitled to any of the privileges of being a Member of the Company unless all Levies and interest thereon in terms of article 9.5 and any other sum (if any) which may be due and payable to the Company, from whatsoever cause arising, are paid up in full. In event of the payment of any Annual Levy, Special Levy or any other amount being disputed for any reason whatsoever, the Board may in its entire discretion elect to refer such matter to arbitration or mediation, in which case the Company and the relevant Member shall be bound by the decision of the arbitrator / mediator. In the event of such referral -

- 9.6.1. the arbitrator/mediator will be an accountant appointed by the President of the SAICA Eastern Region, or in the absence of such institute another similar authority which the Company might elect, where the dispute relates primarily to an accounting matter;
- 9.6.2. the arbitrator/mediator will be an advocate or attorney appointed by the Association of Arbitrators (Southern Africa) NPC where the dispute relates primarily to disputes of law or disputes of fact other than of an accounting nature; and
- 9.6.3. the arbitration/mediation will be held in terms of the Rules of the Association of Arbitrators (Southern Africa) NPC prevailing from time to time.

9.7. No set off or withholding

No Member shall withhold any payment in respect of Levies or interest or any other amount owing to the Company or may claim any set-off against any debt of the Company in such Member's favour, for whatever reason.

10. House Rules

10.1. General

- 10.1.1. Each Member undertakes to the Company that he shall comply with any House Rules made in terms of this Memorandum of Incorporation.
- 10.1.2. The Board may in addition to the powers conferred upon it in this Memorandum of Incorporation make any House Rules from time to time, which are not inconsistent with this Memorandum of Incorporation for —
 - 10.1.2.1. the furtherance and promotion of any of the objects of the Company;
 - 10.1.2.2. the better management of the affairs of the Company;
 - 10.1.2.3. the advancement of the interest of Members, for the conduct of Directors' meetings and General Meetings, and to assist in administering and governing its activities generally,
 and shall be entitled to cancel or amend any of the same from time to time.
- 10.1.3. In no way detracting from the generality of the aforesaid, the Directors may from time to time make, amend or cancel House Rules in regard to -
 - 10.1.3.1. the management, administration and control and the use by Members, the members of their households, their guests, lessees, of the Roads, Open Areas and Open Spaces, including the right to prohibit, restrict or control such use of the Roads, Open Areas and Open Spaces or any parts thereof as may from time to time be necessary;
 - 10.1.3.2. the preservation of the natural environment, vegetation and fauna in the Township;
 - 10.1.3.3. the use of parking areas;
 - 10.1.3.4. the right to keep animals in the Township and the right to prohibit, restrict or control that right;
 - 10.1.3.5. the use of Services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
 - 10.1.3.6. the control of business activities and the use of any business premises and/or Business Unit within the Township;
 - 10.1.3.7. the placing of moveable objects upon the outside of buildings, including the power to remove any such objects;
 - 10.1.3.8. the keeping of flammable substances;
 - 10.1.3.9. the conduct of any persons within the Township for the prevention of nuisance or inconvenience of any nature to any Member;
 - 10.1.3.10. the use of any Units and/or Land within the Township and the upkeep, aesthetics and maintenance of all buildings and other structures in the Township;
 - 10.1.3.11. where a Unit is owned in undivided shares, for regulating the use of such Unit by the co-owners thereof and their rights inter se;
 - 10.1.3.12. the imposition of financial penalties to be paid by Members of the Company and persons working in the Township;

10.1.3.13. the sale and letting of Units and/or Land in the Township and the levels of service and appointment criteria of sales agents and letting and other agents, engaged in the sale or lease of Units and/or Land in the Township;

10.1.3.14. levels of service and appointment criteria of contractors, consultants and other service providers employed to carry out work or perform any services in the Township;

10.1.3.15. the erection of all buildings and other structures in the Township (including but not limited to Services connections and the provision of Services to any Unit and/or Land in the Township;

and generally in regard to any other matter which the Board from time to time considers appropriate.

10.1.4. The Board must publish any House Rule to be made, cancelled or amended in terms of this article by way of notice to all Members within a reasonable time and any such House Rule (or amendment thereto or cancellation thereof) will take effect on the date specified in the notice.

10.1.5. Any House Rule (or amendment thereto or cancellation thereof) that takes effect as contemplated in article 10.1.4 above will remain binding on an interim basis until put to a vote at the next General Meeting of the Company and will become permanently binding if ratified by ordinary resolution of the Members. In addition, the Members may, in General Meeting, make recommendations to the Board on House Rules to be made, amended or cancelled from time to time.

10.2. Enforcement of the House Rules, breach and resolution of disputes

10.2.1. For the enforcement of any of the House Rules, the Directors may without prejudice to article 4.5:

10.2.1.1. take or cause to be taken such steps as they may consider necessary to remedy the breach of the House Rule by Members, their guests, lessees and all other persons with the Township and debit the cost of so doing to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the Company; and/or

10.2.1.2. impose a system of fines or other penalties; and/or

10.2.1.3. take such other action including proceedings in Court, as they may deem fit.

10.2.2. In the event of any breach of the House Rules by the members of any Member's household, or his guests, or lessees or any other person to whom the Member has given occupation or access to, the Member shall be liable as if such breach has 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.

10.2.3. In the event of any Member disputing the fact that he has committed a breach of any of the House Rules aforesaid or that the members of any Member's household, or his guests, or lessees or any other person to whom the Member has given occupation or access to has committed a breach of the House Rules, a committee of three Directors appointed by the Chairperson 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 Chairperson may direct. Any penalty imposed upon any Member shall be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.

10.2.4. Notwithstanding the foregoing, the Directors may in the name of the Company enforce the provisions of any House Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.

10.2.5. Notwithstanding the above, in the event of any Member being in persistent or flagrant breach of any article of this Memorandum of Incorporation and/or any House Rules, or being in breach thereof and failing to remedy such breach, the Board may, after not less than 7 (seven) days' notice in writing (and in appropriate circumstances and if applicable, under the authority of an order of Court) to the Member concerned that they intend so to

do, discontinue or limit the provision of any Services provided to the Member by the Company for such period as the Board may deem fit.

- 10.2.6. In such event the Member concerned shall have no claim for any damages arising from the discontinuation or limitation of any Services.
- 10.2.7. Where a Member disputes any act, decision or ruling by the Board, or where relevant notices by any sub-committees have been given to any Member in terms of this Memorandum of Incorporation, such dispute must be declared in writing (setting out full particulars of the dispute) within 7 (seven) days of such act, decision or ruling. Such declared dispute shall then be resolved by a tribunal appointed by the Chairperson of the Board, at such venue, date and time decided upon by the Chairperson. The tribunal may consist of Directors or any other Member or person not being a Member, at the choice of the Chairperson. The tribunal shall determine the form and method of resolving the dispute. Save for any rights provided for under the CSOS Act, the decision of the tribunal shall be final and binding.

11. Meetings of Members

11.1. Annual General Meetings

- 11.1.1. The Company shall, at such times as are in the Companies Act prescribed, but in any event not later than 6 (six) months after the end of each Financial Year, hold a General Meeting of Members to be known and described in the notice calling such meeting as an Annual General Meeting which meeting shall be in addition to any other General Meeting during that Financial Year, and shall specify the meeting as such in the notices, in terms of article 11.5 below calling it.
- 11.1.2. Such Annual General Meetings shall be held at such time and place, subject to the foregoing provisions, as the Directors shall decide from time to time.

11.2. Agenda items for Annual General Meetings

In addition to any other matters required by the Companies Act or this Memorandum of Incorporation to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 11.2.1. the presentation of the Board's report;
- 11.2.2. the election of directors;
- 11.2.3. the presentation of the Annual Financial Statements of the Company for the last Financial Year of the Company preceding the date of such Annual General Meeting including the report of the Auditors;
- 11.2.4. the noting of the Annual Levies and the insured values for the Financial Year during which such Annual General Meeting takes place;
- 11.2.5. the appointment of the Auditors for the ensuing financial year of the Company;
- 11.2.6. the consideration of any other matters, including any resolutions proposed for adoption in respect of such matters, of which prior notice has been given to and received by the Managing Director or the company secretary of the Company (including through Electronic Communication to the Managing Director or company secretary of the Company) during the six month period which expires on the 31st of October of any relevant year, for inclusion in the agenda.
- 11.2.7. the approval of House Rules made, amended or cancelled by the Board during the preceding year by way of an ordinary resolution.

11.3. Extraordinary General Meetings

- 11.3.1. All General Meetings other than Annual General Meetings contemplated in article 11.1 shall be called Extraordinary General Meetings.
- 11.3.2. The Directors may, whenever they think fit, convene an Extraordinary General Meeting, and an Extraordinary General Meeting shall also be convened on a requisition by Members representing not less than one-twentieth of the total voting rights of all the Members of the Company having at the date of the lodgement of the requisition a right to vote at General Meetings of the Company or, in default, may be convened by the requisitionists as provided by and subject to the provisions of the Companies Act. If at any time there shall not be within the Republic sufficient Directors capable of acting to form a quorum, any Director or any 2 (two) Members of the Company may convene a General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.

11.4. Venue of General Meetings

General Meetings shall take place at such place as shall be determined by the Board from time to time, provided however that such place be within the Township and furthermore that the Members may direct that the next Annual General Meeting of the Company shall be held at such other place as the Members may by simple majority resolve.

11.5. Notice of General Meetings of Members

11.5.1. Notice periods

11.5.1.1. An Annual General Meeting and a General Meeting called for the passing of a special resolution shall be called by 21 (twenty one) clear days' notice or 15 (fifteen) Business Days' notice, whichever is the longest, in writing at the least, and a meeting of the Company, other than an Annual General Meeting or a General Meeting for the passing of a special resolution, shall be called by 14 (fourteen) clear days' notice or 10 (ten) Business Days' notice, whichever is the longest, in writing at the least, provided that a General Meeting shall notwithstanding that it is called by shorter notice than that specified in this Memorandum of Incorporation, be deemed to have been duly called if all the persons entitled to vote at the General Meeting -

11.5.1.1.1. acknowledge actual receipt of the relevant notice;

11.5.1.1.2. are present at the General Meeting; and

11.5.1.1.3. waive notice of the General Meeting;

11.5.1.1.4. ratify the defective notice.

11.5.1.2. Provided that the Board has taken reasonable steps to give notice of a General Meeting, the accidental omission to give and/or the accidental giving of a defective notice (provided that by reason of such defect it is not misleading) of a General Meeting to, or the non-receipt of notice of a General Meeting by, any person entitled to receive notice shall not invalidate any action taken at that General Meeting.

11.5.2. Form of notice

11.5.2.1. The notice convening any General Meeting shall specify the place, the day and the hour of the General Meeting, and in the case of special business, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner set out in this Memorandum of Incorporation or in such other manner, if any, as may be prescribed by the Board to such persons as are under this Memorandum of Incorporation or in terms of the Companies Act entitled to receive such notices from the Company.

11.5.2.2. The Company shall comply with the provisions of the Companies Act as to giving of notice and circulating statements on the requisition of Members.

11.5.3. Manner of service of notices

11.5.3.1. A notice may be served by the Company upon any Member, either personally or by sending it through the post in a prepaid registered letter or, subject to article 11.5.4, by transmission by Electronic Communication, to such Member's Address, provided that copies of all notices sent to the Members shall be sent to the mortgagee (if any) of that Member's Unit or Land.

11.5.3.2. Any notice, if sent by prepaid registered post, shall be deemed to have been received 7 (seven) days after the day following that on which the letter was posted. The date of postage shall be the date as stamped by the postal Services and shall be sufficient proof of such postage by the handing in of such documentation relevant to indicate such date or date stamp. Such service shall be sufficient upon proof that the letter containing the notice was properly addressed and put into the Post Office as a prepaid registered letter. No other proof shall be necessary.

11.5.3.3. A Member shall be bound by every notice given in terms of article 11.5.3.1.

- 11.5.3.4. A document that is transmitted by Electronic Mail must be accompanied by a cover message in either case setting out the information required by Regulation 7(4) of the Regulations to the Companies Act.

11.5.4. Electronic Communication

- 11.5.4.1. To the extent permitted by the Companies Act from time to time but as regards any Member only to the extent that such Member has furnished an appropriate Address for Electronic Communication, any documents or notices referred to in this Memorandum of Incorporation, may be sent by Electronic Mail.
- 11.5.4.2. Any Member notifying the Company of an Address for the purposes of receiving Electronic Mail from the Company, shall be deemed to have agreed to receive documents and notices by Electronic Mail. Any amendment or withdrawal of any such notice from a Member, shall only take effect if signed by the Member and received by the Company.
- 11.5.4.3. Any document or notice sent by Electronic Mail, shall be deemed to be received by the Member on the date and at the time recorded by the computer used by the sender unless there is conclusive evidence that it was delivered on a different date or at a different time.

11.6. Chairing of General Meetings

The Chairperson shall preside as such at all meetings of Members, provided that should he not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Members present at such meeting entitled to vote, shall appoint a chairperson for the meeting from the other Directors present, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.

11.7. Adjournment of meetings of Members

The Chairperson may, with the consent of any General Meeting at which a quorum is present, and shall if so directed by 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 for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting, subject to compliance with the provisions of section 64 of the Companies Act, if applicable. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting, unless the location for the meeting is different from:

- 11.7.1. the location of the adjourned meeting;
- 11.7.2. a location announced at the time of the adjournment.

11.8. Rules applying to the conduct of General Meetings

Except as otherwise set forth in the Companies Act and/or this Memorandum of Incorporation, all General Meetings shall be conducted in accordance with such procedural rules as may be determined by the Board from time to time.

11.9. Proxies

- 11.9.1. A Member may be represented at a General Meeting by a proxy, who need not be a Member of the Company. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, either the representative Member (referred to in article 5.1.2) or a majority of those persons shall sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company the proxy may be signed by the chairperson of the board of directors of that company or by its secretary, and where an association of persons, by the secretary thereof.
- 11.9.2. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be deposited at the registered office of the Company or, where the proxy, power of attorney or other authority is to be delivered immediately before the commencement of the meeting, to the Chairman of the meeting, at any time before the commencement of the meeting, taking into account the reasonable time needed to process proxies before the Chairman declares the meeting open (or may be given to the Company and received by the Company through Electronic Communication, to be received by the Managing Director or the company

secretary in good time before holding the General Meeting (including an adjourned General Meeting) at which the person named in the form proposes to vote, and in default the form of proxy shall not be treated as valid unless the chairperson of the General Meeting determines in his discretion to treat it as valid at any time prior to the proposal of the first resolution. A Member shall be entitled, if any General Meeting is adjourned, to withdraw any proxy lodged in respect of the General Meeting and to lodge a new proxy in respect of the adjourned General Meeting in accordance with the foregoing. No form appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date when it was signed, except at an adjourned General Meeting unless otherwise specifically stated in the proxy itself.

- 11.9.3. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form.
- 11.9.4. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Board or by the chairman of the meeting before the vote is given.

11.10. Quorum for General Meetings

- 11.10.1. Save as herein otherwise provided, but subject to section 64(3) which requires at least three Members to be present at a meeting, a Members' meeting may not begin until sufficient Members are present (personally or represented by proxy or by a duly authorised representative in the case of a juristic person) at the meeting to exercise 10% (ten per cent) of all voting rights of all Members who are entitled to attend the meeting.
- 11.10.2. Subject to compliance with the provisions of section 64(5) the Companies Act if applicable, if within 30 (thirty) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the meeting then the Members present shall be a quorum, provided that, at least 3 (three) Members are present.
- 11.10.3. After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least three Members with voting rights entitled to be exercised at the meeting, or on that matter, are present at the meeting.

11.11. Voting rights

- 11.11.1. Subject to article 11.11.2, at every General Meeting -
 - 11.11.1.1. every Member in person or by proxy, and entitled to vote in terms of article 11.11.2 shall have 1 (one) vote for each Unit Entitled or Land registered in his name;
 - 11.11.1.2. if the Unit Entitled or Land is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote;
 - 11.11.1.3. the Hotel Property Owner in person or by proxy shall have 1 (one) vote for every 2 (two) hotel accommodation rooms, on Erf 101 San Lameer.
- 11.11.2. Save as expressly provided for in this Memorandum of Incorporation, no person other than a duly registered owner of a Unit or Land who has paid all his Levies, interest and any other amount, if any, which shall be due and payable to the Company in respect of or arising out of him being a Member, shall be entitled to vote on any matter, either personally or by proxy, at any General Meeting.
- 11.11.3. Unless the chairperson of the meeting otherwise directs all voting shall be in writing, by way of a secret poll, which shall be taken during the course of the meeting in such manner as the chairperson of the meeting may direct.
- 11.11.4. Notwithstanding the provisions of article 11.11.3 above, voting on the election of a chairperson of a General Meeting (if necessary) or on any question of adjournment, may be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

- 11.11.5. Every amendment of a resolution proposed for adoption by a General Meeting, shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 11.11.6. 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 the voting rights exercised on the resolution, 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.
- 11.11.7. A special resolution or the amendment of a special resolution, shall be carried on a majority of at least 75% (seventy five percent) of the voting rights exercised on the resolution.
- 11.11.8. In the case of an equality of votes, the chairperson of the General Meeting shall not be entitled to a second or casting vote.
- 11.11.9. Subject to the Companies Act, unless the Members present in person or by proxy at a General Meeting have before the closure of the meeting objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hand or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the chairperson of the meeting as to the result of any voting at the General Meeting.

11.12. Round robin resolutions

An ordinary resolution in writing signed by the holders of more than 50% (fifty percent) of the voting rights which may be exercised on the resolution and a special resolution in writing signed by the holders of at least 75% (seventy five percent) of the voting rights which may be exercised on the resolution, within 20 (twenty) business days after the resolution was submitted to them, has the same effect as if it had been approved by voting at a meeting of Members. The written resolution may be signed in counterparts. For the purposes of this article, "in writing" includes a resolution voted on electronically.

11.13. Meetings by Electronic Communication

General Meetings shall not be conducted by Electronic Communication.

12. Directors

12.1. Number of Directors and appointment

- 12.1.1. The Board shall consist of not less than 5 (five) nor more than 8 (eight) Directors.
- 12.1.2. Subject to articles 12.1.1, 0 and 12.3, the Board shall determine prior to each Annual General Meeting the number of Directors to be elected by Members at each Annual General Meeting.
- 12.1.3. A Director need not himself be a Member.
- 12.1.4. A Director shall be deemed to have agreed to be bound by all the provisions of this Memorandum of Incorporation.
- 12.1.5. The Board shall have the power to co-opt advisors to the Board for the purposes of assisting the Directors in carrying out any of their functions. Any persons so co-opted shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 12.1.6. A person becomes entitled to serve as a Director of the Company when that person has been appointed or elected in accordance with this article 12 and has delivered to the Company a written consent to serve as its Director.
- 12.1.7. Any failure by the Company at any time to have the minimum number of Directors required by the Companies Act or this Memorandum of Incorporation, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.

12.2. Appointment of Director by the Hotel Property Owner, of the Managing Director and of the President of the Golf Committee.

- 12.2.1. The Hotel Property Owner may appoint one Director (and one alternate to that Director) to the Board.
- 12.2.2. The Board shall have the right to appoint the chief executive officer of the Company as a director to the Board (as well as an alternate to him). Following his appointment to the Board in accordance with this clause 12.2.2, the chief executive officer shall serve as the Managing Director of the Company.
- 12.2.3. The member holding office as the President of the Golf Committee and duly elected in terms of the Golf Charter shall be appointed as a Director to the Board for as long as that person holds the office as the President of the Golf Committee. The Board may appoint an alternate director to serve in the place of the President of the Golf Committee on the Board.
- 12.2.4. The provisions of article 12.4.2 shall apply *mutatis mutandis* to the alternate directors contemplated in this article 12.2.

12.3. Nomination, voting, removal and rotation of Directors

- 12.3.1. Save for the Directors appointed in terms of article 12.2, nominations for the election of a Director, including those standing for re-election, must be received in writing at the Estate Office not less than 48 (forty-eight) hours prior to the commencement of the Annual General Meeting.
- 12.3.2. At the Annual General Meeting, the Members will vote on each nominee separately in the order in which their nominations were received at the Estate Office. The votes will be tallied at the meeting and those nominees receiving the highest number of votes will be regarded as duly elected, up to the maximum number of vacancies available as determined by the Board. If two or more successful nominees receive equal votes, they will all be included in the elected Board up to the maximum number of vacancies available; provided that if any need to be excluded because of the maximum then the order of voting will be determinative. For the avoidance of doubt, a nominee does not need to receive a particular minimum number of votes in favour to be elected; rather his or her support is measured against the support given for other nominees.
- 12.3.3. To ensure continuity in the Board and subject to Section 5(1)(b) of Schedule 1 of the Companies Act, and save for the Directors appointed in terms of article 12.2, Directors shall be elected for a period of at least 1 (one) year, but not for a period longer than 3 (three) years. The REMCO (referred to in article 12.11.2.3 below) shall recommend to the Board, at the first ordinary directors' meeting after the Annual General Meeting, which of the newly elected directors will serve what periods in order to ensure continuity and compliance with Section 5(1)(b) of Schedule 1 to the Companies Act.
- 12.3.4. Save for the Directors appointed in terms of article 12.2 and subject to article 12.3.3, and provided that at least one third of the Board members are elected each year as required in terms of Section 5(1)(b) of Schedule 1 of the Companies Act, each Director shall continue to hold office as such, from the date of his appointment to office and his acceptance of such appointment, until the first, second or third Annual General Meeting following his said appointment (as the case may be), at which meeting the Director shall be deemed to have retired from office as such. For the avoidance of doubt, there shall be no restriction on Directors appointed in terms of article 12.2 as regards time period of appointment of service as a Director and shall not be required to retire by virtue of tenure.
- 12.3.5. Notwithstanding any provision in this Memorandum of Incorporation to the contrary, save for the Directors appointed in terms of article 12.2 no person elected as a Director shall serve as a Director for longer than an uninterrupted period of 6 (Six) years, should he be elected for subsequent periods and shall, if he has served for an uninterrupted period of 6 (Six) years, not be eligible for re-election until a period of at least 1 (One) year has lapsed. For the avoidance of doubt, the foregoing shall not apply to Directors appointed in terms of article 12.2 and further any period of service as a Director, if served by reason of an appointment in terms of article 12.2 will not be taken into account, when applying the provisions of this article 12.3.5.

12.4. Nomination of alternate elected Directors

- 12.4.1. The Members may also appoint an alternate Director to each elected Director to act in the place of the elected Director in the event of his absence or inability to act as such Director,

and the provisions of article 12.3 shall apply mutatis mutandis to the election and retirement of any such alternate Directors.

- 12.4.2. A person may be appointed as alternate to more than 1 (one) Director. Where a person is alternate to more than 1 (one) Director or where an alternate Director is a Director, he shall have a separate vote, on behalf of each Director he is representing in addition to his own vote, if any.

12.5. Alternate Director: ceasing of appointment and remuneration

The alternate Directors, whilst acting, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease on the happening of any event which, if he were a Director, would cause him to cease to hold office in terms of this Memorandum of Incorporation or if the Director who he represents ceases to be a Director, or gives notice to the secretary of the Company that the alternate Director representing him shall have ceased to do so. An alternate Director shall look to the Director who appointed him for his remuneration.

12.6. Vacation of office, eligibility and qualifications and filling of vacancies

- 12.6.1. A Director shall immediately cease to hold office as such and a vacancy arises on the Board if:

- 12.6.1.1. he is no longer eligible to be a Director in terms of the Companies Act; or
- 12.6.1.2. he no longer qualifies to be a Director in terms of the Companies Act; or
- 12.6.1.3. his estate is sequestrated or he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency law for the time being in force, or if he makes any arrangement or composition with his creditors generally; or
- 12.6.1.4. he is mentally incapacitated or becomes of unsound mind as certified by a medical practitioner or confirmed by an order of court; or
- 12.6.1.5. he is absent for three consecutive regular meetings of the Board without obtaining prior leave or absence; or
- 12.6.1.6. he resigns his office by notice in writing to the Company; or
- 12.6.1.7. he dies; or
- 12.6.1.8. he is removed from office as provided for in the Companies Act; or
- 12.6.1.9. if he is also a Member and he is not entitled to exercise a vote in terms of article 11.11.2.

- 12.6.2. No Director or intending Director shall be disqualified by his office from contracting with the Company in any manner whatsoever provided that they have declared their interest.

12.7. Chairperson

- 12.7.1. The Directors shall appoint from their number a Chairperson.
- 12.7.2. Within 7 (seven) days of the holding of each Annual General Meeting, the Board shall elect the Chairperson, who shall hold office until the Annual General Meeting held next after his appointment, provided that the office of the Chairperson shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason.
- 12.7.3. In the event of any vacancy occurring in the aforesaid office at any time, the Board shall immediately appoint one of their number as a replacement in such office.
- 12.7.4. Save as otherwise provided in this Memorandum of Incorporation, the Chairperson shall preside at all meetings of the Board, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairperson and such other duties as may be prescribed by the Board or of Members.
- 12.7.5. The Board shall appoint one of their number as a replacement to assume the powers and duties of the Chairperson in the absence of the Chairperson or his inability or refusal to act as Chairperson, and to perform such other duties as may from time to time be assigned to him by the Board.

12.8. Directors remuneration and expenses

- 12.8.1. Directors shall be entitled to be paid all reasonable and *bona fide* expenses incurred by them in the performance of their duties as Directors and/or Chairperson, as the case may be.

- 12.8.2. The Directors shall be entitled to remuneration in respect of the performance of their duties in terms hereof.

12.9. Functions and powers of the Board

- 12.9.1. The business and affairs of the Company shall be managed by the Directors who may exercise all such powers of the Company as are not by the Companies Act or by this Memorandum of Incorporation required to be exercised by the Company at any General Meeting of Members (including without derogating from the generality of the foregoing or from the rights of the Members, the power to resolve that the Company be wound up), subject nevertheless to the provisions of this Memorandum of Incorporation, the Companies Act, the House Rules and to such regulations being not inconsistent with this Memorandum of Incorporation or the Companies Act, as may be prescribed by the Company at any General Meeting; but no regulation or House Rule made by the Company at such General Meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.
- 12.9.2. The Board shall have the power, in terms of section 15(3) of the Companies Act, to make, amend or repeal any necessary or incidental rules relating to the governance of the Company (distinct from the House Rules contemplated in article 10) in respect of matters that are not addressed in the Companies Act or this Memorandum of Incorporation.

12.10. Borrowing powers of Directors

- 12.10.1. Subject to the Companies Act, the Directors may in their discretion, from time to time, raise or borrow from any reputable financial institution (as determined in the sole opinion of the Board) any sums of money for the purposes of the Company.
- 12.10.2. Subject to the Companies Act and to a special resolution of the Members passed in General Meeting, the Directors may secure the payment or repayment of any sums of money borrowed or raised in terms of article 12.10.1 or the payment of any debt, liability or obligation whatsoever of the Company or of a third party, in such manner and upon such terms and conditions in all respects as they think fit, including without limitation by the mortgaging of the property of the Company or any part thereof.

12.11. Committees and delegation of power

- 12.11.1. Subject to the Companies Act, the Directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including the Managing Director as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 12.11.2. The Board may establish committees to deal with the following key areas:
- 12.11.2.1. Finance;
 - 12.11.2.2. Town planning and amenities;
 - 12.11.2.3. Remuneration and manpower("REMCO");
 - 12.11.2.4. Risk, audit and compliance;
 - 12.11.2.5. Environmental matters; and
 - 12.11.2.6. Liaison and marketing.
- 12.11.3. The powers of the committees and the powers of the Board, and the powers of the Company generally may be delegated to the Managing Director to such extent and upon conditions as the Board may determine from time to time, and such delegations may from time to time be revoked either in whole or in part or the conditions of such delegations changed as the Board may from time to time deem fit.

12.12. Proceedings of Directors

- 12.12.1. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Memorandum of Incorporation.
- 12.12.2. Meetings of the Directors shall be held on at least one occasion every quarter, provided that if all the Directors shall in writing have waived the above requirement in respect of a particular quarter, then no meeting of the Directors need to be held for that quarter.
- 12.12.3. Any Director may at any time summon a meeting of the Directors.

- 12.12.4. Unless otherwise resolved by the Directors, all their meetings shall be held at the Township.
- 12.12.5. Questions arising at any meeting of Directors shall be decided by a majority of votes.
- 12.12.6. The chairperson of a meeting of the Directors shall have a second or casting vote in the case of an equality of votes.
- 12.12.7. The Directors may determine what period of notice shall be given of meetings of Directors and may determine the means of giving such notice. It shall not be necessary to give notice of a meeting of Directors to any Director for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if he has appointed one, provided that such alternate is in the Republic.
- 12.12.8. The quorum necessary for the holding of any meetings of the Board shall be 3 (three) Directors present personally.
- 12.12.9. The Chairperson shall preside as such at all meetings of the Directors provided that should at any meeting of the Directors the Chairperson not be present within 5 (five) minutes after the time appointed for the holding thereof, then those Directors present shall appoint a chairperson for the meeting, who shall thereupon exercise all the powers and duties of the chairperson in relation to such meeting.
- 12.12.10. The Directors shall cause minutes to be taken of every Directors meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the chairperson of the meeting. All minutes of Directors meetings shall after certification as aforesaid be placed in a Directors' minutes book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of Companies. The Directors' minutes book shall be open for inspection at all reasonable times by a Director, the Auditors, the Members, and the Managing Director.
- 12.12.11. All competent resolutions recorded in the minutes of any Directors meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded.
- 12.12.12. Save as otherwise provided in this Memorandum of Incorporation, the proceedings at any Directors meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.
- 12.12.13. The Board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

12.13. Round robin resolutions

A resolution signed by all the Directors and recorded in the minute book, shall be valid in all respects as if it had been duly passed at a meeting of the Board duly convened.

12.14. Continuing Directors

The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this Memorandum of Incorporation as a quorum, the continuing Directors or Director may act only for the purpose of summoning a General Meeting of the Company. If there are no Directors or Director able and willing to act, and no specific provision is made in this Memorandum of Incorporation for the appointment of Directors, then any 2 (two) Members may summon a General Meeting for the purpose of appointing Directors.

12.15. Electronic participation in Board meetings

Except to the extent that the Companies Act provides otherwise, a meeting of the Board may be conducted by Electronic Communication, or one or more Directors may participate in a meeting by Electronic Communication, so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

12.16. Validity of acts of Directors and committees

As regards all persons dealing in good faith with the Company, all acts done by any meeting of the Directors or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been

duly appointed or was qualified or had continued to be a Director or was entitled to vote, as the case may be.

13. Other professional officers

Save as specifically provided otherwise in this Memorandum of Incorporation, the Directors shall at all times have the right to engage on behalf of the Company, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other person/s whatsoever, for any reasons deemed necessary by the Directors and on such terms as the Directors shall decide, subject to any of the provisions of this Memorandum of Incorporation.

14. Reserves

The Directors may set aside out of the income and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the Directors be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Company, for repairing, improving or maintaining any property of the Company, for meeting losses on realisation of or writing down investments either individually or in the aggregate, or for any other purpose to which income may appropriately and lawfully be applied. Pending such application such sums may either be employed in the business of the Company (without being kept separate from the other assets of the Company) or be invested. The Directors may divide the reserve into such special reserves as they think fit and re-allocate the amounts of such reserves either in whole or in part to other special or general reserves and may consolidate into 1 (one) reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Directors may also carry forward any income without placing them to reserve.

15. Accounts

- 15.1. Subject to section 26 of the Companies Act, the Company in General Meeting or the Directors, may from time to time make conditions and House Rules as to the time and manner of inspection by the Members of the annual financial statements of the Company. Subject to such conditions and House Rules, the annual financial statements of the Company shall be open for inspection at all reasonable times during business hours.
- 15.2. At each Annual General Meeting the Directors shall lay before the Company the audited annual financial statements for the immediately preceding financial year of the Company. The notice of the Annual General Meeting shall include the annual financial statements to be presented or a summarised form thereof.

16. Audit

- 16.1. Once at least in every Financial Year the accounts of the Company shall be audited by the Auditors.
- 16.2. The duties of the Auditors shall be regulated in accordance with the Statutes.

17. Indemnity

- 17.1. All Directors and the Managing Director are indemnified out of the funds of the Company against any liabilities *bona fide* incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, or in connection with any implications under the Statutes, in which relief is granted to any such person/s by the court.
- 17.2. Every Director, servant, and employee of the Company and the Managing Director are indemnified by the Company against losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including in the case of a Director, his duties as Chairperson. Without prejudice to the generality of the above, the Company 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, provided that any such act, deed or letter has been done or written on good faith.
- 17.3. A Director shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Directors, servants, employees and Managing Director, whether in their capacities as Directors or as Chairperson or for any loss of expense sustained or incurred by the Company through the **insufficiency** or deficiency of title to any property acquired by the Directors for or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested, or for any loss or damage arising from the insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by an 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 fiduciary duty or breach of trust.

18. Disclaimer

- 18.1. Any person entering the Township or using any of the Services, Land, sporting or recreational facilities of the Company, does so entirely at his own risk, and no person shall have any claim against the Company of whatsoever nature (including any claim for damages) nor for anything which may befall any person whilst upon the Township or during the course of such use, whether caused by the negligent conduct of the Company, its Directors, employees or the Managing Director, or otherwise.
- 18.2. No person shall have any claim against the Company, its Directors, employees or the Managing Director, or otherwise in respect of any fire or flooding, or any substance, liquid or gas escaping from the property of the Company and causing damage to any person or property of any Member. This shall include but not be limited to a person having no claim against the Company, its Directors, employees or the Managing Director, or otherwise for any loss sustained or damage caused to any person or property of any Member as a result of the lagoon on the Company's property flooding.
- 18.3. Each and every Member individually shall indemnify and hold harmless the Company against all and any claims of whatsoever nature which may be brought against the Company by the Member, Members of his family or any person within the township of San Lameer at the invitation of or under the control of the Member concerned, whatsoever the nature of such claim and howsoever arising.
- 18.4. The exclusions of liability and indemnity in this article will not apply in respect of any loss suffered by a person which is directly attributable to the criminal acts or gross negligence of the Company or any person acting for or controlled by the Company, if the Consumer Protection Act 68 of 2008 applies for the benefit of that person.

19. Access to persons lawfully within the Township

Notwithstanding that erven may be held either individually or in undivided shares by Members, Members shall be obliged at all times to allow any persons lawfully within the Township access over any erf by means of any formed or paved access way including drive-ways, parking areas and pathways.

20. Company vested with the overall control of all matters affecting the Township

- 20.1. Notwithstanding that Members hold title to their Units individually, and notwithstanding that in those cases where the Units concerned are held under the Sectional Titles Act, the body corporate as defined in that statute is accorded certain powers and duties, it is recorded that the development of the Township is of a homogenous nature and that the Company shall be vested with the overall control of all matters affecting the Township. To this end the Members agree:
 - 20.1.1. to do all in their power to procure that the body corporate in each Sectional Title Scheme in the Township shall delegate its powers, functions and duties to the Company, and in the event that any conduct rule of a body corporate is in conflict or inconsistent or irreconcilable with this Memorandum of Incorporation or the House Rules then this Memorandum of Incorporation or the House Rules shall prevail;
 - 20.1.2. in the event of any association of members being formed within the township, specifically for owners of certain erven or certain classes of Members, the Members forming such associations hereby agree to do all in their power to procure that the powers and duties of any such associations are delegated to the Company and any such association of members as stated above is *ipso facto* subjected to article 7.3 above;
- 20.2. The Company may in turn delegate the powers and duties delegated to it in terms of article 20.1.1 and 20.1.2 above to such other person or company as it may deem fit.

21. Limitations as regards Units, Land and buildings

- 21.1. Subject to the provisions of the Town Planning Scheme, no Member nor any body corporate in whom any property is vested may:
 - 21.1.1. change the colour of the exterior walls of the Unit or building concerned, nor the colour of the exterior of the doors and window frames thereof, nor any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;
 - 21.1.2. replace 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 construction of the Unit, with such items of the same nature and of similar appearance;
- 21.1.3. make any additions or extensions to the Unit or Land or 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 Township;
 - 21.1.4. remove any fixtures, fittings, doors, windows nor to demolish any portion of the exterior of any Unit or Land or building without the recommendation of the committee established under articles 12.11.2.2 and 23.1, referred to hereinafter as the Town Planning and Amenities Committee, and the approval of the Board.
- 21.2. In the event of the destruction of any Unit or building and the owner thereof deciding to rebuild such Unit or building, the plans for such rebuilding shall prior to such rebuilding taking place be submitted to the Company for the Town Planning and Amenities Committee' consideration and approval of the Board.
- 21.3. No structures, buildings, additions, alterations or renovations may be constructed on the Township by any Member or his nominee or agent, unless the plans and the specifications have been recommended by the Town Planning and Amenities Committee and approved by the Board and to the extent applicable by the Local Authority.
- 21.4. Such building shall comply with the provisions of the Town Planning Scheme.
- 21.5. No Member may undertake any planting, landscaping or gardening activities in any Residential Lot, or make any alterations to any landscaping or vegetation existing when he acquires his Unit, provided however that the Board may come to agreements with Members to permit such Members to undertake gardening activities in any area of any Residential Lot, which agreements shall inter alia lay down:
- 21.5.1. the areas to which they relate;
 - 21.5.2. the nature of the gardening activities which may be carried on therein;
 - 21.5.3. the plant material and types approved by the Company as being compatible with the environment which may be used and the locations in which they may be planted.
- 21.6. Notwithstanding that portions or the whole of Residential Erven may be held in undivided shares by any Members, the Board shall have power to allocate for the exclusive use of any single Member owning an undivided share in the erf concerned, in respect of each Unit held by him:
- 21.6.1. areas which shall not in the aggregate exceed fifty square metres for purpose of a carport and drying yard;
 - 21.6.2. a storeroom;
 - 21.6.3. staff quarters for domestic workers; provided however that the Board may allocate the exclusive use of staff quarters on any lot to any owner of a Unit in the Township, notwithstanding that such quarters are not upon the erf in which such owner owns an undivided share, subject however to any restrictions contained in any deed or servitude or agreement in terms whereof the Company is empowered to grant such exclusive use;
 - 21.6.4. any other area, facility or amenity which the Board in their discretion may deem it reasonable or desirable so to allocate. Such areas need not be contiguous to the Unit of the Member concerned, nor to one another.
- 21.7. The Board may in allocating areas as set out in article 21.6 above, lay down conditions regarding the maintenance and use of such areas.

22. Exclusive use agreements

The Company may at all times enforce and give effect to all the terms and conditions of any such exclusive use agreements, both as between itself and the Member concerned, and as between the Member concerned and any other person. The Managing Director may at any time remove any person from any area set aside for the exclusive use and enjoyment of any Member unless such Member advises the Managing Director that such person is entitled to be within such area.

23. The Town Planning and Amenities Committee

- 23.1. There is established under articles 12.11.1 and 12.11.2.2 hereof a committee known as the Town Planning and Amenities Committee, which shall consist of at least two independent specialists in the construction field and the Managing Director.
- 23.2. In addition to such other powers as may be conferred upon it by the Board, the Town Planning and Amenities Committee shall make recommendations to the Board, for approval by the Board, before

any action is taken, without prejudice to any other rights of the Company, either in terms hereof or at law:

- 23.2.1. whenever it considers that the appearance of any Unit, Land, building, structure, fixture or fitting vested in a Member or Members is such as to be unsightly or aesthetically not entirely harmonious with the ambience and character of the Township or injurious to the amenities of the surrounding area or the Township generally, to serve notice on such Member or Members to take steps as may be specified in the notice to eliminate such conditions within 21 (twenty one) days from date of such notice. In the event of the Member or Members failing to take such steps within the time stated, the Town Planning and Amenities Committee may request the Managing Director or any other agent to take such steps and such Member or Members shall be liable for the costs incurred to give effect thereto. By choice any matter referred to in this Article may be dealt with in terms of the tribunal as set out in article 10;
- 23.2.2. to determine the routine maintenance requirements of the exterior of each and every Unit or building within the Township owned by a Member and to instruct the Managing Director to attend to such requirements from time to time. The Members hereby agree that the Managing Director shall be entitled whenever the Town Planning and Amenities Committee decides such routine maintenance is required, to proceed therewith and to recover the costs thereof from the Company which shall in turn recover the costs thereof by way of the levy account from the Member concerned;
- 23.2.3. from time to time to determine the routine maintenance requirements -
 - 23.2.3.1. of all open space and Roads in the Township, in accordance with the provisions of the Town Planning Scheme;
 - 23.2.3.2. of all other ground within the Township not covered by buildings whether held by the Company or by Members either individually or in undivided shares;and to instruct the Managing Director to attend to such maintenance requirements from time to time. The Members hereby agree and consent that the Managing Director may, when so instructed by the Town Planning and Amenities Committee acting only if so approved by the Board, take such action as may be required by the Committee and recover the cost from the Company, which shall in turn be entitled to recover the costs from the Members concerned by way of such Member's levy account.
- 23.3. The Board may, notwithstanding the above, enter into an agreement with any Member in relation to the maintenance of any Land or Unit to permit such maintenance to be performed by the Member concerned himself, subject to such conditions as the Directors may deem fit.
- 23.4. The maintenance of Services and the open space shall be controlled by the Town Planning and Amenities Committee on behalf and as directed by the Board.
- 23.5. For purposes of exercising its functions in terms hereof the Board, Town Planning and Amenities Committee, or any of its members, and the Managing Director shall be entitled to access any Unit and to the surrounds thereof at all reasonable times.

24. Roads, Open Areas and Open Spaces

- 24.1. Neither the whole nor any portion of the lots defined as Roads and Open Space and comprising lot numbers 59, 61 - 64, 69 - 74, 76 - 98 and 100 inclusive ("**the Roads and Open Spaces Lots**") shall be sold, let, alienated, otherwise disposed of, subdivided or transferred except in the circumstances laid down in the Conditions of Establishment of the Township.
- 24.2. The Roads and Open Spaces Lots -
 - 24.2.1. shall not be mortgaged;
 - 24.2.2. shall not be subjected to any rights, whether registered in a Deeds Registry Office or not, of use, occupation or servitude, save as specified in the Conditions of Establishment of the Township, and save for such rights as are enjoyed by the Members in terms hereof,without the sanction of a resolution voted on in favour by Members holding 75% (seventy five per cent) of the all the voting rights of those Members present and voting at a meeting of the Company.
- 24.3. The Company may permit the Members, subject to the provisions of this Memorandum of Incorporation, to use the Roads, Open Areas and Open Spaces and shall do so unless by special resolution taken at an Extraordinary General Meeting called for the purpose, it is otherwise resolved.
- 24.4. The Board may from time to time and whenever they reasonably deem it necessary, limit, restrict, or suspend such use in relation to any part of such Roads, Open Areas and Open Spaces.

24.5. The Board shall take such measures as are 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 Board may reasonably permit, are excluded from the Township.

25. Units in need of repair

In the event of any portion of the exterior of any Unit, building or structure requiring repair, the Managing Director shall advise the owner thereof in writing of the required repair. The owner may thereupon either effect the repair himself, or instruct the Managing Director to do so at the owners cost. In the event of the owner failing to make the necessary repair within 21 (twenty one) days of the written notice referred to above, the Managing Director shall be empowered by the Board to effect such repair itself, and to recover the cost either from such owner direct or from the Company, in which event the Company may recover such cost from the owner concerned either by way of the levy account or otherwise as it deems fit.

26. Sporting, social and recreational amenities and facilities

26.1. The Board shall have control of all sporting, social and recreational facilities and amenities within the Township and may lay down such rules as it may consider necessary from time to time for the use of any such amenities by Members, including the charging of such fees as it may deem reasonable for the use thereof.

26.2. The Board may establish or permit the establishment of clubs or associations of Members to control and regulate the use of any sporting, social or recreational facilities, and may delegate to the Committee of such clubs any or all of its functions, powers and duties in relation to the particular facility or amenity concerned as it may deem fit.

26.3. Any club or association established under article 26.2 of this Memorandum of Incorporation shall be governed by a Charter which will preserve the particular rights and privileges of the members of those clubs and associations. These Charters can only be approved or amended at an Annual General Meeting by means of a Special Resolution.

27. Works of a capital nature

The Company shall not undertake any unbudgeted works of a capital nature, without the sanction of an ordinary resolution of the Company in General Meeting, unless the Board determines that circumstances are of such a crucial nature that the work cannot be unnecessarily delayed.

28. Managing agent

The Board 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 Company may, without notice and the sole discretion of the Company, cancel such contract of appointment, and the managing agent shall have no claim whatsoever against the Company or any of the Members as a result of such cancellation.

29. Winding-up

29.1. If the Company shall be wound up the liquidator shall comply with the provisions of Schedule 1 of the Companies Act, concerning Non-Profit Companies, and article 4.3 of the Company's Memorandum of Incorporation.

29.2. No resolution for the winding-up of the Company and the transfer of its assets as set out in Schedule 1 of the Companies Act concerning Non-Profit Companies, and article 4.3 of the Memorandum of Incorporation of the Company, may be proposed or passed unless the Company shall have made adequate provision for the rights of Members to obtain access to their Units 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.

30. Costs

In no way detracting from the generality of any other provision of this Memorandum of Incorporation, in the event of the Company incurring any legal costs as a result of any breach of this Memorandum of Incorporation or House Rules by any Member or in any other legal dispute with a Member, the Company shall be entitled to recover, on demand, all such legal costs from such Member on an attorney and own client scale (alternatively the highest permissible scale of legal fees) in full whether or not legal action is actually instituted.

31. Amendments to the Memorandum of Incorporation

The Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b) of the Companies Act.