

# **THE HILLS HOMEOWNERS ASSOCIATION NPC**

## **Memorandum of Incorporation**

**Memorandum of Incorporation unique to**  
**THE HILLS HOMEOWNERS ASSOCIATION NPC**  
**Registration Number : 2007/016285/08**

1 **Interpretation**

1.1 Definitions

In this Memorandum of Incorporation, and, unless the context requires otherwise, the following words and expressions shall have the meaning assigned to them hereunder -

- 1.1.1 **“Act”** means the Companies Act, 71 of 2008, as amended;
- 1.1.2 **“Aesthetics Committee”** means the aesthetics committee appointed by the Company and which shall have such powers and functions as may be assigned to it by the Company;
- 1.1.3 **“Alienate”** means the alienation of any Erf / Stand / Unit or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, change in shareholding of a company or membership in a close corporation or the beneficial interest in a trust, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and alienate shall have a corresponding meaning;
- 1.1.4 **“Architectural and Landscaping Guidelines”** means the architectural and landscaping guidelines applicable to any and all improvements on the Development and/or the Estate;
- 1.1.5 **“Articles”** means the articles of the Memorandum for the time being of the Company;
- 1.1.6 **“Authorised Representative”** means a person authorised to act as the representative of any natural person, company or an association of persons, as the case may be;
- 1.1.7 **“Board”** means the Board of the Company;
- 1.1.8 **“Chapter”** means with reference to a Chapter by number refers to the corresponding Chapter of the Act;
- 1.1.9 **“Common Facilities”** means all facilities which form part of the Estate and which are intended for the shared use of all Homeowners (and their invitees) in the Estate which may include all or any of a clubhouse, gymnasium and/or fitness centre (whichever is applicable) including such additional facilities as the Developer may determine from time to time and includes the Common Property, but excluding any area earmarked for development by the Developer;
- 1.1.10 **“the Common Property”** means jointly those areas forming part of the Estate comprising of *inter alia* road servitudes, parks and the like (whichever is applicable), all of which are intended for the shared use of all Homeowners including their invitees;
- 1.1.11 **“Company”** means The Hills Homeowners Association NPC, Registration Number: 2007/016285/08 or any other name under which it may in future be known;
- 1.1.12 **“Conduct Rules”** means the Estate Rules, which shall govern the conduct of all owners, residents, visitors and occupants of Erven and Units in the Estate. The Estate Rules shall be provided by the Directors to each owner, who irrevocably undertakes to strictly abide to the Estate Rules, as it moreover appears from Annexure “A” (Handbook for Residents & Conduct Rules) attached hereto, the contents of which are to be incorporated herein by reference;
- 1.1.13 **“Council”** means the City of Tshwane Metropolitan Municipality and including its successors in title;
- 1.1.14 **“Deeds Office”** means the registration office in Pretoria as described in the Registration of Deeds Act, Act 47 of 1937, as amended;
- 1.1.15 **“Developer”** means Century Property Developments Proprietary Limited, Registration Number: 2002/023633/07, or any other subsidiary or Person (as herein defined), being the owner of the Properties which form part of the Estate (as the case may be), and includes its successors in title or assigns;

- 1.1.16 **“Developer Director”** means a director appointed by the Developer;
- 1.1.17 **“the Development”** means the Estate forming part of:
- 1.1.17.1 Remaining Extent of Portion 1077 of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.17.2 The Hills Extension 3 Township situated on Portion 1078 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.17.3 The Hills Extension 4 Township situated on Portion 1079 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.17.4 The Hills Extension 5 Township situated on Portion 1085 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.17.5 The Hills Extension 6 Township situated on Portion 1084 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.17.6 The Hills Extension 7 Township situated on Portion 1109 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.17.7 Portions 1 to 54 of Erf 906 The Hills Extension 6 Township, Registration Division JR, Gauteng;
  - 1.1.17.8 including Erf 915 and the New Township, as it moreover appears from Annexure “B” attached hereto; but
  - 1.1.17.9 excluding:
    - 1.1.17.9.1 the area marked in red (Erven 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 17, 22, 23, 25 and 26) constituting the proposed townships to be known as The Hills Extensions 8 and 10 to 15; and
    - 1.1.17.9.2 Erven 6, 18, 19 and 21 (the proposed townships to be known as The Hills Extensions 16, 19, 20 and 21),

therefore not forming part of the Development and Development Area, remaining subject to Article 1.1.17, as it moreover appears from Annexure “B” attached hereto;
- 1.1.18 **“Development Area”** means, subject to article 1.1.17, the land comprising Portion 72 (a portion of portion 1) and Portion 73 (a portion of portion 1) of the farm Rietfontein 375, Registration Division JR, Gauteng, which shall include the development of Erf 915 and the New Township, excluding:
- 1.1.18.1 the area marked in red (Erven 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 17, 22, 23, 25 and 26) constituting the proposed townships to be known as The Hills Extensions 8 and 10 to 15; and
  - 1.1.18.2 Erven 6, 18, 19 and 21 (the proposed townships to be known as The Hills Extensions 16, 19, 20 and 21),
- which do not form part of the Development and Development Area, as it moreover appears from Annexure “B” attached hereto;
- 1.1.19 **“the Development/Aesthetics Approval”** means the approval by the Aesthetics Committee or its nominee for the consideration evaluation and approval of the development of and/or improvements to Erven and Units in and in respect of the Townships known as The Hills Extension 3, The Hills Extension 4, The Hills Extension 5, The Hills Extension 6, The Hills Extension 7, the proposed The Hills Extension 18, including any other township or property which the Developer wishes to incorporate under the Memorandum, however forming part of the Development Area;
- 1.1.20 **“Development Period”** means the period during which the Developer may attend to and complete the remainder of the Development, being the earlier of:
- 1.1.20.1 the period until all Stands and/or Units (including the Stands/Units in Erf 915 and the New Township) in the Estate have been transferred from the Developer to new registered Homeowners;

- 1.1.20.2 until such time as the Developer notifies the Company that the Development Period has come to an end; or
- 1.1.20.3 31 May 2032;
- 1.1.21 **“Director”** means a Member of the Board of the Company, as contemplated in Section 66, or an alternate director of the Company and includes any Person occupying the position of a director or alternate director, by whatever named designated, which shall deem to include a Developer Director and Member Director;
- 1.1.22 **“Erf”** means any erf, portion or subdivision of the Development Area and includes all improvements thereon, which shall deem to include a stand, and “Erven” shall have a corresponding meaning;
- 1.1.23 **“Erf 915”** means Erf 915 situated in the township known as The Hills Extension 7, which shall comprise of approximately 13 (thirteen) residential 1 or residential 2 stands of which the Company shall purchase 2 (two) stands at a predetermined price of R1 600 000,00 (One Million Six Hundred Thousand Rand) per stand (totalling R3 200 000,00) plus transfer costs and ancillary disbursements to be used for multi-purpose courts or padel courts (with ancillary structures), as will more fully appear from Annexure X3 annexed hereto;
- 1.1.24 **“Estate”** means the Development Area as may be phased or subdivided from time to time;
- 1.1.25 **“Estate Manager”** means the estate manager appointed by the Board in terms of the Articles;
- 1.1.26 **“Estate Rules”** means Conduct Rules;
- 1.1.27 **“Facilities”** means all and any facilities or amenities of whatever nature which may be provided within the Development Area and forming part of the Common Property;
- 1.1.28 **“Financial Year”** means the financial year of the Company which shall run from the date of establishment of the Company until the last day of February next and thereafter from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.29 **“Homeowner/Registered Owner”** means an owner of an Erf or Unit which has been registered by the Registrar of Deeds in accordance with the provisions of the Deeds Registries Act, 47 of 1937, as amended;
- 1.1.30 **“the Manual”** means the Architectural and Landscaping Guidelines according to which all development of and/or improvements to any Erf or Unit in respect of the Townships or situated in the Development Area, will be undertaken, which shall be subject to the prior Written approval and supervision by the Aesthetics Committee;
- 1.1.31 **“Member”** means a Member of the Company as referred to in Article 2.5 and includes owners of Erven and Units in The Hills Extension 3, The Hills Extension 4, The Hills Extension 5, The Hills Extension 6, The Hills Extension 7, Erf 915 and the New Township forming part of the Development Area”;
- 1.1.32 **“Member Director”** means a director appointed by the Members;
- 1.1.33 **“Memorandum”** means this Memorandum of Incorporation of the Company;
- 1.1.34 **“month”** means a calendar month;
- 1.1.35 **“New Township”** means the proposed township to be known as The Hills Extension 18 on proclamation in terms of the City of Tshwane Land Use Management By-laws, 2016 read in conjunction with the Spatial Planning and Land Use Management Act, 16 of 2013 and the Deeds Registries Act, 47 of 1937, formally known as Erven 9 and 16 forming part of the Development and Development Area as set out in Annexure B annexed to the Memorandum, which will consist of 162 (one hundred and sixty two) Stands;
- 1.1.36 **“the Office”** means the registered office of the Company as it moreover appears from the Act;
- 1.1.37 **“Person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.1.38 **“Private Sale”** means the sale introduced, negotiated and concluded directly between the Registered Owner and any purchaser of any Erf or Unit without the intervention (whether directly or indirectly) of any third party;

- 1.1.39 **“the Properties”** means the:
- 1.1.39.1 Remaining Extent of Portion 1077 of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.39.2 The Hills Extension 3 Township situated on Portion 1078 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.39.3 The Hills Extension 4 Township situated on Portion 1079 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.39.4 The Hills Extension 5 Township situated on Portion 1085 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.39.5 The Hills Extension 6 Township situated on Portion 1084 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.39.6 The Hills Extension 7 Township situated on Portion 1109 (a portion of portion 1077) of the farm Rietfontein 375, Registration Division JR, Gauteng;
  - 1.1.39.7 Portions 1 to 54 of Erf 906 The Hills Extension 6 Township, Registration Division JR, Gauteng; and
  - 1.1.39.8 including Erf 915 and the New Township, as it moreover appears from Annexure “B”;
  - 1.1.39.9 but excluding:
    - 1.1.39.9.1 the area marked in red (Erven 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 17, 22, 23, 25 and 26) constituting the proposed townships to be known as The Hills Extensions 8 and 10 to 15; and
    - 1.1.39.9.2 Erven 6, 18, 19 and 21 (the proposed townships to be known as The Hills Extensions 16, 19, 20 and 21),

therefore not forming part of the Development and Development Area, remaining subject to Article 1.1.17, as it moreover appears from Annexure “B” attached hereto;
- 1.1.40 **“Regulation”** means a reference to a regulation by number refers to the corresponding regulation of the Companies Regulations of 2011, as amended;
- 1.1.41 **“residential erf / erven”** means any erf designated for residential use, and any reference to residential erven shall mean more than one residential erf;
- 1.1.42 **“Rules”** as contemplated in section 15 (3), means the Conduct Rules referred to in Article 1.1.12;
- 1.1.43 **“School”** means the school business which is to operate on amongst others a portion of Erf 490 and a portion of Erf 913 (consolidation of Erven 489 and 491) The Hills Extension 4 Township (which may further include any other erven in the Estate) together with all related school and leisure facilities, fully furnished and equipped and which will trade under the name Reddford House (or any other approved name) or a similar school in respect of quality of finishes and standard of education, which may consist of *inter alia*:
- 1.1.43.1 early learning and junior primary;
  - 1.1.43.2 senior primary;
  - 1.1.43.3 college;
  - 1.1.43.4 administrative building;
  - 1.1.43.5 hall;
  - 1.1.43.6 sport fields;
  - 1.1.43.7 tennis courts;
  - 1.1.43.8 swimming pool; and
  - 1.1.43.9 all related school and leisure facilities,
- as it moreover appears from Annexure “C”;
- 1.1.44 **“Secretary”** means any Person or body corporate appointed by the Board to perform the statutory secretarial duties of the Company;
- 1.1.45 **“Section”** means with reference to a section by number, refers to the corresponding section of the Act;

- 1.1.46 **“Services”** means the supply of water, sewerage, refuse removal, electricity, telecommunications, television cables, security, maintenance of Common Property, garden maintenance and such other utilities and services as are provided by the Company or any other supplier of services to the Estate, from time to time;
- 1.1.47 **“Stand”** means a residential stand (whether or not a Unit has been erected thereon) forming part of the Estate, which shall deem to include a residential erf;
- 1.1.48 **“These Presents”** means the Memorandum, as originally framed or as amended from time to time by special resolution;
- 1.1.49 **“Townships”** means the townships proclaimed and to be proclaimed as The Hills Extension 3, The Hills Extension 4, The Hills Extension 5, The Hills Extension 6, The Hills Extension 7 and the New Township and Erf 915 comprising the Development Area, which shall deem to include the Properties and the Estate;
- 1.1.50 **“Unit”** means a residential Unit (whether free standing and/or high density) registerable in accordance with the provisions of the Sectional Titles Act, 95 of 1986, as amended and Units shall have a corresponding meaning;
- 1.1.51 **“in Writing”** means writing, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form. “Written” will have a corresponding meaning; and
- 1.1.52 **“year”** means a calendar year.
- 1.2 Words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act.
- 1.3 Words importing the singular shall include the plural, and words importing the masculine, feminine and neuter shall include the others of such genders; and words importing Persons shall include Bodies Corporate, and vice versa in each instance.
- 1.4 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of the Articles.

## 2 **Incorporation and Nature of the Company**

### 2.1 **Incorporation**

The Company is incorporated as a non profit company, as defined in the Act with the following objects:

- 2.1.1 The main object of the Company is the owning, managing, controlling and rendering of Services related to amongst others the Common Property of the Townships for the mutual benefit, jointly and severally, of the Homeowners of Stands and Units in the Estate.
- 2.1.2 The Company shall have the following ancillary objects:
- 2.1.2.1 To ensure compliance by Members with the conditions of establishment of the Townships in respect of the Properties, with particular reference to the conditions dealing with aesthetic and building regulations and requirements, and where necessary to ensure that the Council enforces such conditions of establishment.
- 2.1.2.2 To act as a liaison between the Members and the Council regarding the landscaping and aesthetic usage of the Properties and the buildings erected or to be erected on the Stands or any other matter.
- 2.1.2.3 To exercise control over the rights created and still to be created over the Stands or Units on the Properties and to formulate Rules and by-laws for the control of buildings, walling, fencing, exterior lighting, signage, aesthetic planning and landscaping of the Properties and the Stands or Units and to ensure compliance with such Rules and by-laws by Members.
- 2.1.2.4 To implement and control the principal concepts of the Development relating to the security, architecture, landscaping, parking, signage and advertising, exterior finishing and maintenance as detailed by urban designers, landscape architects and ecological planners of the Properties appointed by the Company and in particular as stated in the Architectural and Landscaping Guidelines and Conduct Rules.

- 2.1.2.5 To implement and ensure compliance by Members with the co-ordinated landscaping plan for the Properties, as will more fully appear from the Architectural and Landscaping Guidelines.
- 2.1.2.6 To ensure that each Member maintains his/her/its Stand or Unit in a clean and tidy condition and adheres to the specifications imposed by the Company relating to the landscaping and ecological planning. In the event of any Member failing to adhere to the specifications and maintenance of his/her/its Stand or Unit, the Directors shall be entitled, but not obliged, to perform the necessary acts and Services and recover from such Member the costs thereof.
- 2.1.2.7 To undertake the maintenance of street verges and where required by Members to maintain the vegetation and landscaping on any individual Stand or Unit against payment to the Company of a special levy.
- 2.1.2.8 To administer the general security arrangements on the Properties, with particular reference to controlling access and the nature and type of security to be provided from time to time, excluding the security arrangement of any particular building on a Stand or Unit.
- 2.1.2.9 To consent or declare any proposed consolidation, subdivision/rezoning of any Stand or Unit valid and to stipulate the landscaping and certain aesthetic conditions, which shall apply prior to such rezoning and subdivision, if approved. It is however recorded that the Developer shall, during the Development Period, be entitled to:
  - 2.1.2.9.1 subdivide any Stand or property owned by the Developer before or after proclamation;
  - 2.1.2.9.2 rezone any Stand or Property owned by the Developer for the purpose of subdivision and may furthermore develop any sectional title scheme within the aforesaid Townships on any Stand and/or Properties,

and the Company and its Members irrevocably consent to such rezoning and/or subdivision and/or sectional title development to the required density, however subject to the master development plan annexed hereto as Annexures "D1" to "D4" read in conjunction with the Council's spatial development framework (including any amendment thereto by a competent authority or other applicable policy). It is further recorded that the provisions hereof may not be amended by special resolution without the Developer's prior Written consent.
- 2.1.3 The Company is incorporated in accordance with, and governed by -
  - 2.1.3.1 the unalterable provisions of the Act, that are applicable to Non Profit companies;
  - 2.1.3.2 the alterable provisions of the Act that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
  - 2.1.3.3 the provisions of this Memorandum.
- 2.2 **Objects and Powers of the Company**
  - 2.2.1 The Objects of the Company are as set out in article 2.1.1 and, except to the extent necessarily implied by the stated objects, the purposes and the powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.
  - 2.2.2 The Company is not subject to any restrictive conditions on changing the Memorandum, as contemplated in section 15(2)(b) of the Act, nor is prohibited from amending any particular provision of the Memorandum, as contemplated in section 15(2)(c) of the Act, save as contemplated in the Memorandum.
  - 2.2.3 The Company—
    - 2.2.3.1 must apply all of its assets and income, however derived, to advance its stated objects, as set out in the Memorandum; and
    - 2.2.3.2 subject to article 2.2.3.1, may—
      - 2.2.3.2.1 acquire and hold securities issued by a profit company; or

- 2.2.3.2.2 directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 2.2.4 The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any Person who is or was an incorporator of the Company, or who is a Member or Director, or Person appointing a Director, of the Company, except—
- 2.2.4.1 as reasonable—
- 2.2.4.1.1 remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
- 2.2.4.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
- 2.2.4.2 as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that Person or another;
- 2.2.4.3 as a payment in respect of any rights of that Person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 2.2.4.4 in respect of any legal obligation binding on the Company.
- 2.2.5 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company—
- 2.2.5.1 no past or present Member or Director, or Person appointing a Director, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 2.2.5.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts—
- 2.2.5.2.1 having objects similar to the Company's main object; and
- 2.2.5.2.2 as determined—
- 2.2.5.2.2.1 in terms of the Memorandum;
- 2.2.5.2.2.2 by its Members at or immediately before the time of its dissolution; or
- 2.2.5.2.2.3 by the court, if the Memorandum, or the Members fail to make such a determination.
- 2.2.6 The Company may not—
- 2.2.6.1 amalgamate or merge with, or convert to, a profit company; or
- 2.2.6.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- 2.2.7 Any proposal to—
- 2.2.7.1 dispose of all or the greater party of the Company's assets or undertaking; or
- 2.2.7.2 amalgamate or merge with another non-profit company,
- must be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113, respectively.
- 2.2.8 Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in article 2.2.7.
- 2.2.9 The Company may grant loans only to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.

- 2.2.10 The Company may only invest funds available for investment with a registered financial institution as described in section 1 of the Financial Institutions Act of 1984, as amended, and in a security listed on a licensed Stock Exchange as defined in the Stock Exchange Control Act, No. 1 of 1985, as amended.
- 2.2.11 The Company may enter in to indemnities, guarantees and suretyships and secure payment thereunder in any way only with one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.12 The Company may
- 2.2.12.1 make donations provided that no donations may be made to present or former incorporators, Members or Directors; and
- 2.2.12.2 pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees.
- 2.2.13 The Company shall have the following ancillary objects to:
- 2.2.13.1 take transfer of the Stands which constitutes the Common Property that will be owned by the Company for the benefit of its Members;
- 2.2.13.2 enter into agreements of servitude for the benefit of its Members or any adjacent property development;
- 2.2.13.3 manage, oversee and control all security aspects of the Townships;
- 2.2.13.4 enter into agreements for the provision of any services with any competent authority or any other third party, *inter alia* including the provision of access to the Townships, water, electricity and sewerage, services to the Company and where required, to supply such services to the various Members;
- 2.2.13.5 administer and enforce the Architectural and Landscaping Guidelines and the Estate Rules;
- 2.2.13.6 control the registration of transfer of Stands and Units in the Townships and ensure compliance with all conditions imposed by the Council when approving the rezoning and/or subdivision of the Properties comprising the Development Area. Insofar as the Development Area is concerned, the provisions of article 2.1.2.9 shall mutatis mutandis apply;
- 2.2.13.7 act as assignee of all the powers and functions of any body corporate in any sectional title scheme forming part of the Townships;
- 2.2.13.8 exercise control over the rights created and still to be created over the Stands and Units in the Development and to formulate Estate Rules and by-laws for the control of buildings, walling, fencing, exterior lighting and to ensure compliance with such Estate Rules and by-laws by the Members;
- 2.2.13.9 ensure that each Member maintains his/her/its Stand or Unit in a clean and tidy condition and adheres to the specifications imposed by the Company relating *inter alia* to landscaping. In the event of any Member failing to adhere to the specifications and maintenance of his/her/its Stand or Unit, the Directors shall be entitled, but not obliged, to perform the necessary acts and services and recover from such Member the cost thereof;
- 2.2.13.10 undertake the maintenance of street verges and where required by Members to maintain the vegetation and landscaping on any Stand or Unit against payment to the Company of a special levy;
- 2.2.13.11 consent or declare any proposed consolidation, subdivision, rezoning of any Stand valid and to supervise the landscaping and certain aesthetic conditions, which shall apply prior to such rezoning and subdivision, if approved. It is however recorded that the Developer shall, during the Development Period be entitled to subdivide any Stand or property owned by it before or after proclamation alternatively rezone same for the purpose of subdivision and may furthermore develop any sectional title scheme within the Estate and upon any Stand and/or Stands, and the Company and its Members irrevocably consent to the said rezoning and/or subdivision and/or sectional title development to the required density subject to the master development plan annexed hereto as Annexures "D1", "D2", "D3" and "D4" read in conjunction with the Council's spatial development framework (including any amendment thereto by a competent authority or other applicable policy) . It is further recorded that

the provisions hereof may not be amended by special resolution without the Developer's prior Written consent being obtained;

- 2.2.13.12 ensure compliance, implementation and enforcement, in respect of the Townships, of any condition imposed by any authority in terms of the Land Use Planning Ordinance, 15 of 1985, the Environment Conservation Act, 73 of 1989, The National Environmental Management Act of 1998 or any other planning or environmental legislation, including any environmental plan approved in respect of the Townships / Estate;
  - 2.2.13.13 maintain, repair, improve and keep in good order and condition the Common Property and the responsibility for the payment of all rates and taxes, all service charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the Common Property and/or for payment of the salaries and/or wages of the employees of the Company and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Company, and the Company's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Company or the pursuit of its principle business;
  - 2.2.13.14 impose levies upon the Members for the purpose of meeting all the expenses that the Company has incurred or to which the Board reasonably anticipate the Company will incur in the attainment of the objects of the Company in pursuit of its business, however subject to the provisions herein contained;
  - 2.2.13.15 ensure that all provisions of These Presents are complied with by all Members / parties bound thereby; and
  - 2.2.13.16 promote, advance and protect the Townships / Estate and the interests of the Company and all its Members.
- 2.2.14 It is further recorded that the Members for the time being of any body corporate of any sectional title scheme in the Estate shall be liable as Members to pay the levies imposed in terms of this Memorandum.
- 2.2.15 Pursuant to the objects of the Company, the body corporate of any sectional title development in the Township will not function independently, but shall assign its functions and powers to the Company.

### 2.3 **Memorandum and Conduct Rules**

- 2.3.1 This Memorandum may be altered or amended only-
  - 2.3.1.1 in compliance with a court order in the manner contemplated in section 16(4);
  - 2.3.1.2 at any other time if a special resolution to amend it—
    - 2.3.1.2.1 is proposed by—
      - 2.3.1.2.1.1 the Board; or
      - 2.3.1.2.1.2 Members entitled to exercise at least 5% (five percent) of the voting rights that may be exercised on such a resolution; and
    - 2.3.1.2.2 is adopted at a Members meeting, or in accordance with section 60;
  - 2.3.1.3 by the Board, or an individual authorised by the Board, in accordance with section 17, to alter the Conduct Rules, or its Memorandum, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by—
    - 2.3.1.3.1 publishing a notice of the alteration, in any manner required or permitted by the Memorandum or the Rules;
    - 2.3.1.3.2 filing a notice of the alteration;
  - 2.3.1.4 in implementing a business rescue plan pursuant to section 152(6)(b); and
  - 2.3.1.5 in any event, only with the prior written approval of the Developer during the Development Period.

### 2.3.2 **Conduct Rules**

- 2.3.2.1 The Board may make, amend or repeal any necessary or incidental Conduct Rules relating to the governance of the Company in respect of matters that are not addressed in this Act or the Memorandum, by—
- 2.3.2.1.1 publishing a copy of those Conduct Rules, in any manner required or permitted by the Memorandum, or the Conduct Rules; and
- 2.3.2.1.2 filing a copy of those Conduct Rules at the Company's Office.
- 2.3.2.2 A rule contemplated in article 2.3.2.1-
- 2.3.2.2.1 must be consistent with this Act and the Memorandum, and any such rule that is inconsistent with the Act or the Memorandum is void to the extent of the inconsistency;
- 2.3.2.2.2 takes effect on a date that is the later of—
- 2.3.2.2.2.1 10 (ten) business days after the rule is filed in terms of article 2.3.2.1.2; or
- 2.3.2.2.2.2 the date, if any, specified in the rule.
- 2.3.3 The Board must publish the Conduct Rules made in terms of article 2.3.2 by delivering a copy of those Conduct Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.
- 2.3.4 The Company must publish a notice of any alteration of the Memorandum or the Conduct Rules, made in terms of article 2.3.2.1, by delivering a copy of those alterations or Conduct Rules to each Member using any of the delivery methods contemplated in section 6 of the Act.
- 2.3.5 Subject to any restriction imposed and direction given at a general meeting of the Company, and subject thereto that it must be equitable, the Directors may from time to time make Conduct Rules in regard to:-
- 2.3.5.1 the architectural design, construction, quality and building materials of any proposed building to be erected on any Stand or Unit in the Townships and as approved by the Aesthetics Committee;
- 2.3.5.2 determine from time to time Conduct Rules with regard to the security, vegetation, landscaping, parking, signage, advertising and maintenance of any Stand or Unit or building or the Properties itself (the Conduct Rules may not be amended without the Developer's written consent during the Development Period should such amendment affect the Developer's right to develop the Development Area and/or the Alienation of any Stand or Unit forming part thereof);
- 2.3.5.3 the furtherance and promotion of any of the objects of the Company and/or the better management of the affairs of the Company and/or for the advancement of the interests of Members of the Stands or Units;
- 2.3.5.4 the maintenance of all buildings, outbuildings, structures, electricity, water and sewerage reticulation, improvements of any nature and landscaping on a Stand or in respect of a Unit;
- 2.3.5.5 the right of reasonable access to any Stands or Units in order to affect the maintenance of any matter referred to above;
- 2.3.5.6 the placing of moveable objects upon or outside the buildings included in the Estate (including the power to remove any such objects);
- 2.3.5.7 the storing of flammable or other harmful substances including gas;
- 2.3.5.8 the conduct of any Persons within the Estate and the prevention of nuisance of any nature to any Homeowner and/or Member;
- 2.3.5.9 the use of the Stands and Units within the Estate;
- 2.3.5.10 the use of roads, pathways and other Common Facilities including appropriate traffic calming measures;
- 2.3.5.11 the management, administration, control and use of the Common Facilities;

- 2.3.5.12 the maintenance of all buildings, outbuildings and structures;
- 2.3.5.13 conditions with regard to the use and/or supply of electricity, water, sewerage reticulation, gas on or about the Estate; and
- 2.3.5.14 the keeping of pets.
- 2.3.6 For the enforcement of any of the Conduct Rules made by the Directors in terms hereof, the Directors may:-
- 2.3.6.1 take or cause to be taken such steps as they may consider necessary to remedy the breach of a rule of which the Member may be guilty, and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or
- 2.3.6.2 impose a system of fines or other penalties. The amounts of such fines shall be determined by the Board and subsequently reviewed and confirmed at each annual general meeting of the Company; and/or
- 2.3.6.3 take such other action including proceedings in court, as they may deem fit.
- 2.3.7 In the event of Directors instituting any legal proceedings against any Member or resident of a Stand or Unit for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client.
- 2.3.8 In the event of any breach of the Conduct Rules by the Members or any Member's household or his guests or invitees or the like, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken steps against the Person actually committing the breach as they in their discretion may deem fit.
- 2.3.9 In the event of any Member disputing the fact that he/she/it has committed a breach of any of the Conduct Rules, a committee of three Directors appointed by the chairperson for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the rules of natural justice shall be observed) as the chairperson may direct.
- 2.3.10 Any fine imposed upon any Member shall as aforesaid, be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.
- 2.3.11 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company enforce the provisions of any Conduct 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.
- 2.3.12 The Company may in general meeting, itself make any Conduct Rules and may in general meeting vary or modify any Rules made by it or by the Directors from time to time. The Conduct Rules may however during the Development Period not be amended without the prior written consent of the Developer being obtained, should such amendment affect the ability of the Developer to develop the Development Area.
- 2.4 Optional provisions of the Act**
- 2.4.1 In terms of section 84(1)(c)(ii) of the Act, the Company elects voluntary to appoint an auditor and to have its annual financial statements audited by such auditor.
- 2.4.2 The Company may voluntary elect to appoint a company Secretary.
- 2.4.3 As the Company will be audited voluntarily, the Company does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditor shall be determined by the Board.
- 2.5 Members of the Company**
- 2.5.1 The Company shall maintain at its registered office a register of Members as provided in section 24(4)(a) of the Act. The register of Members shall be opened to inspection, as provided in section 26 of the Act.
- 2.5.2 The number of Members shall never be less than 7 (seven) not more than 3000 (three thousand).

- 2.5.3 Any Person, including a body corporate or trust, automatically becomes a Member on the date on which a Stand or Unit in the Estate is being transferred and registered into his/her/its name in the Deeds Office: Provided that no Member shall become a Registered Owner of a Stand or Unit unless he/she/it has made application to be a Member of the Company and has agreed, to the satisfaction of the Company, that:
- 2.5.3.1 on registration of transfer of a Stand or Unit to him/her/it, he/she/it shall become a Member and he/she/it shall remain a Member as long as he/she/it remains a Registered Owner of a Stand or Unit in the Townships;
- 2.5.3.2 he/she/it shall automatically cease to be a Member when he/she/it ceases to be a Registered Owner of a Stand or Unit in the Townships; and
- 2.5.3.3 he/she/it shall be bound and undertakes to strictly comply with the terms, conditions, rules and provisions contained in the Memorandum as well as the Conduct Rules made by the Company from time to time.
- 2.5.4 The Membership of a Member, other than that of the Developer, shall be terminated as and when the Member's Stand or Unit is transferred into the name of a new Registered Owner. The Membership however of the Developer shall be terminated as and when the Development Period expires on the earlier of:
- 2.5.4.1 the period until all Stands/Units (including the Stands or Units in Erf 915 and the New Township) in the Estate have been transferred from the Developer to new Registered Owners;
- 2.5.4.2 until such time as the Developer notifies the Company that the Development Period has come to an end; or
- 2.5.4.3 31 May 2032.
- 2.5.5 Where a Registered Owner becomes the Registered Owner of more than one Stand or Unit such owner shall be regarded as one Member per Stand or Unit owned.
- 2.5.6 Where more than one Person becomes the joint Registered Owner of a Stand or Unit, the joint Members must nominate and appoint one from their ranks to represent them as a Member for the receipt of notices from the Company. The joint Registered Owners shall advise the Company in writing of the full first names, surname, residential and postal addresses of such representative. Joint Registered Owners may with written notification to the Company change their representative provided that such representative shall at all times be one of the joint owners of the Stand or Unit. All joint owners are jointly and severally responsible for the proper fulfilment of the responsibilities arising from their Membership of the Company due to their ownership of the Stand or Unit.
- 2.5.7 The Membership of an existing Registered Owner is automatically terminated on date of the registration in the deeds office of a sold Stand and/or Unit in the name of the new owner on which date the new Registered Owner automatically becomes a Member.
- 2.5.8 A Registered Owner cannot resign as a Member.
- 2.5.9 Any individual being a Registered Owner, joint Registered Owner or the representative of a body corporate or trust, which is a Registered Owner or joint Registered Owner, may however subject to the provisions contained in this Memorandum, be elected to any office in the Company.
- 2.5.10 A Member shall not be entitled to any rights and/or privileges associated with his/her/its Membership of the Company including his/her/its right to vote at a general meeting of the Company, if any amount is owed by such Member to the Company.
- 2.5.11 Each Member shall not undertake any development of and/or improvement to his/her/its Stand or Unit without having submitted the required plans, conforming to the requirements of the Architectural and Landscaping Guidelines, for consideration, evaluation and approval by the Aesthetics Committee and having obtained the prior Written consent thereto. Each Member shall in submitting his/her/its plans to the Aesthetics Committee, accept the supervision rights and responsibilities of the Aesthetics Committee over the development of and/or improvements to the Stand or Unit or otherwise (the amount payable to execute the supervision as contemplated herein amounts to R3 500,00, excluding VAT, which amount may be varied by the Directors from time to time).

- 2.5.12 Each Member shall be responsible to the Company for the professional expenses and costs incurred by the Aesthetics Committee for the consideration, evaluation and approval of the plans for the development and/or improvements to his/her/its Stand or Unit, which expenses and costs shall be payable to the Company on presentation of a statement of account.
- 2.5.13
- 2.5.13.1 Subject to Article 2.5.13.2, each Member undertakes to commence (“break ground”) with the development of his/her/its Stand or Unit within 18 (eighteen) months from the date of transfer of the Stand or Unit from the Developer into his/her/its name and complete same within 12 (twelve) months thereafter. If the purchaser resells the Stand or Unit within the aforesaid period, the said period will not be extended and this article 2.5.13.1 will still apply with the 18 (eighteen) month period running from the date of the first transfer from the Developer. Should a Member fail to commence with the Development of his/her/its Stand or Unit within the aforesaid 18 (eighteen) month period or complete same within 12 (twelve) months thereafter, the Company shall be entitled to charge a penalty levy to the Registered Owner amounting to R2 000,00 (Two Thousand Rand) (the quantum of which may be varied by the Directors from time to time) per month until such time as the construction has been completed and an occupational certificate is issued by the relevant authorities and the Aesthetics Committee, which shall be paid to and accrue in favour of the Company as from 1 June 2023 (all payments of the penalty levy to the Developer prior to 1 June 2023, shall be retained by the Developer). The construction and completion periods of respectively 18 (eighteen) months and 12 (twelve) months as contemplated herein, may however be extended by the Board at their sole discretion should a Member disclose extenuating circumstances.
- 2.5.13.2 The penalty levies payable by any Member as contemplated in Article 2.5.13.2 in respect of a Stand or Unit situated in Erf 915 and the New Township, shall however be paid to and accrue in equal shares to the Developer and the Company (the distribution of which shall only be affected after the payment of the penalty levies by the transgressing members). For the avoidance of doubt, the Company shall therefore only fully retain all the penalty levies after all the Stands or Units in respect of Erf 915 and the New Township have been sold and transferred by the Developer to third party purchasers.
- 2.5.14 Estate agents or Registered Owners shall not be permitted to display for sale, to let and/or pointer boards within the gate house area or entrance to the Development without the prior written approval first being obtained from the Developer (during the Development Period) and the Company.
- 2.5.15 A Registered Owner shall be entitled to sell his/her/its Stand or Unit to a buyer of his/her/its choice: Provided that the Stand or Unit shall not be transferred into the name of the purchaser without all amounts owed by the seller to the Company and/or its agents have been paid and the purchaser has accepted in writing the terms and conditions contained in the Memorandum as well as the Conduct Rules of Townships as determined by the Directors. The said Stand or Unit shall only be transferred into the name of the purchaser after the Company has issued a certificate that all outstanding levies and amounts of whatever nature owing to the Company by the Registered Owner has been paid, the Member is not in breach of any of the provisions of the Memorandum including the Conduct Rules read in conjunction with Articles 2.5.3.1 to 2.5.3.3 have been complied with. For the avoidance of doubt, it is recorded that the provisions of clause 2.5.3 and this article do not apply to the Developer, and there will thus be no restriction whatsoever on the ability of the Developer to pass transfer of any Erf or Unit and accordingly the Developer does not need a clearance certificate from the Company before it will be entitled to alienate or transfer any Erf or Unit to a Person or entity.
- 2.5.16 The executor of an estate of a deceased sole Registered Owner of a Stand or Unit shall be the only Person recognised by the Company as having any title to such Stand or Unit and to Membership of the Company. In the case of a Stand or Unit registered in the names of two or more Registered Owners, the survivors or survivor, or the executor of the last survivor after his or her death shall be the only Persons recognised by the Company as having any title to such Stand or Unit and to Membership of the Company.
- 2.5.17 Any person becoming entitled to Membership in consequence of the death or insolvency of a Member shall, upon such evidence being produced as may from time to time be required by the Directors, having the right, either to be registered as a Member in respect of the Stand or Unit or instead of being registered himself or herself, to make such transfer of the Stand or Unit as the deceased or insolvent could have made.
- 2.5.18 A Person who submits proof of his or her appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Member or the estate of a Member whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any body corporate which is a

Member shall be entered in the register of Members nomine officii, and shall thereafter, for all purposes, be deemed to be a Member.

## 2.6 Duties Of Members

Each Member shall:

- 2.6.1 Abide by the provisions of the Memorandum and adhere to the Conduct Rules and by-laws provided by the Directors from time to time.
- 2.6.2 Abide by the Architectural and Landscaping Guidelines.
- 2.6.3 Obtain consent from the Aesthetics Committee to any building plans before submitting them for approval to the Council and before commencing with any building, walling, fencing and signage operation, exterior lighting, painting or repainting of exterior finishes. The decision of the Aesthetics Committee as contemplated herein above, shall be final and binding on the parties.
- 2.6.4 Maintain his/her/its Stand or Unit in a clean and tidy condition to the satisfaction of the Directors. Should the Directors be of the opinion that a Member is not complying with the Memorandum, the Directors shall give such Member reasonable notice, depending on the nature of the breach, failing which, where possible, the Directors shall be entitled to perform the work or services which is required to be done or provided at the expense of the Member and shall be entitled to recover the expenditure in this connection from the Member, together with interest calculated thereon at prime bank rate, for the period from date of expenditure to date of repayment.
- 2.6.5 Not construct a building on the Stand in a manner which causes danger, nuisance or disturbance to the occupiers of the neighbouring Stands or Units and where applicable, the Members shall cause suitable screens and/or barricades to be erected to reduce the emission of noise, dust, waste, effluent or other nuisance from the Stand or Unit.
- 2.6.6 Not burn or permit to be burnt any materials or rubbish resulting from or in connection with construction on the Stand or Unit and shall ensure that such materials or rubbish be removed from the Stand or Unit (where applicable).
- 2.6.7 Repair at his/her/its cost and expense any damage to the infrastructure, side walks and road shoulders or any part of the common or public areas in the Townships caused by the Member or his/her/its representatives during the course of the construction of the Stand or Unit.
- 2.6.8 Not interfere with the convenience of the common or public areas within the Townships during construction of any approved building.
- 2.6.9 Ensure that all responsible means are used to prevent the roads leading to the Stand or Unit from being damaged by any act or omission of the building contractor engaged by the Member in respect of the construction on the Stand or Unit and the subcontractors of the building contractors and the servants or agents of the Member whilst moving equipment and materials to and from the Stand or Unit.
- 2.6.10 Indemnify and shall keep the Company indemnified in respect of all loss, damage, cost or expense, which may be suffered by the Company as a result of any claim, demand, suit or proceedings which may be instituted against the Company as a result of any breach of any of the above obligations by the Member.
- 2.6.11 Prevent the accumulation of trash, garbage or other waste material on the Stand or Unit except in containers located in appropriate areas screened and concealed from the view so that odours do not emanate from such containers: Provided that such containers may not be placed on any common or public area or upon a thoroughfare for a period exceeding 24 (twenty four) hours.
- 2.6.12 Prevent the Stand or Unit from being used for any purposes, which may be illegal or injurious to the other Stands or Units in the Townships or Members.
- 2.6.13 Diligently further and execute the objects and interests of the Company.
- 2.6.14 A Member shall not without the prior Written consent of the Developer (during the Development Period) or the Company (after the Development Period), who in granting or refusing such consent shall act in its absolute sole discretion, apply to the Council or any other relevant authority for the subdivision or rezoning of an Erf / Stand or Unit owned by a Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof. For the avoidance of doubt, it is

recorded that this article shall not apply to the Developer during the Development Period, who is not required to obtain consent from the Company (including the Members) in respect of the aforesaid or any other applications of whatever nature relating to the development of the Properties, which shall however be subject to the master development plan annexed hereto as Annexure "D1" to "D4" read in conjunction with the Council's spatial development framework (including any amendment thereto by a competent authority or other applicable policy).

2.6.15 A Member is required to ensure that the occupant of his/her/its Stand or Unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of These Presents. Without detracting from the foregoing, the Member shall remain bound by These Presents notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his/her/its obligations under These Presents.

2.6.16 To ensure compliance with article 2.6.15 above, each Member who intends to lease his/her/its Stand or Unit, shall:

2.6.16.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with the Memorandum, Conduct Rules and any other directives provided by the Board, and to give an undertaking that he/she/it will abide thereto, and in which the tenant is required to report to the Company and register his/her/its full details for security purposes prior to taking occupation; and

2.6.16.2 be responsible to ensure that the tenant does thus register himself/herself/itself with the Company prior to taking occupation.

### **3 Rights of Members**

#### **3.1 Members' authority to act**

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

#### **3.2 Members' right to Information**

3.2.1 Pursuant to the provisions of section 27.1 of the Act, a Person who is a Member has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:

3.2.1.1 the Memorandum and any amendments to it, and any Conduct Rules made by the Company;

3.2.1.2 the records in respect Directors;

3.2.1.3 the reports to annual meetings, and annual financial statements;

3.2.1.4 the notices and minutes of annual meetings, and communications; and

3.2.1.5 the Members register of the Company.

#### **3.3 Proxies**

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

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

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

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

- 3.3.5 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his/her/its agent duly authorised in writing, or, if the appointer is a body corporate or a trust, under the hand of an officer or agent authorised by the body corporate or trust. A proxy need not be a Member. The holder of a general or special power of attorney, whether he or she is himself or herself a Member or not, given by a Member shall be entitled to attend meetings and to vote, if duly authorised under that power to attend and take part in the meetings.
- 3.3.6 The instrument 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 not less than 48 (forty-eight) hours before the time for holding the meeting at which the Person named in the instrument proposes to vote, and in default of complying herewith the instrument of proxy shall not be treated as valid. No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
- 3.3.7 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

**THE HILLS HOMEOWNERS ASSOCIATION NPC**

I, \_\_\_\_\_ of \_\_\_\_\_ being a Member of The Hills Homeowners Association NPC, appoint  
 \_\_\_\_\_ of \_\_\_\_\_ or failing him  
 \_\_\_\_\_ of \_\_\_\_\_ or failing him  
 \_\_\_\_\_ of \_\_\_\_\_,  
 as my proxy to vote for me and on my behalf at the annual general or general meetings (as the case may be) of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof as follows:

Resolution to  
 Resolution to  
 Resolution to

In favour of	Against	Abstain

(Indicate instruction to proxy by way of a cross in space provided above.)  
 Unless otherwise instructed, my proxy may vote as he/she thinks fit.  
 Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 Signature

(Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his/her/its stead, and such proxy need not also be a Member.)

- 3.3.8 A Member shall be entitled to only appoint 1 (one) proxy.
- 3.4 **Record date for exercise of Member rights**
- 3.4.1 If the Board does not determine a record date for any action or event, the record date is—
  - 3.4.1.1 in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or
  - 3.4.1.2 the date of the action or event, in any other case, unless the Memorandum or Conduct Rules provide otherwise.

- 4 Members Meetings**
- 4.1 Requirement to hold meetings**
- 4.1.1 The Company is required to hold Members meetings in addition to those specifically required by the Act.
- 4.1.2 The Company must convene an annual general meeting of its Members—
- 4.1.2.1 initially, no more than 18 (eighteen) months after the Company’s date of incorporation; and
- 4.1.2.2 thereafter, once in every calendar year within 6 (six) months after the end of its financial year, but no more than 15 (fifteen) months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.
- 4.1.3 An annual general meeting convened in terms of article 4.1.2 must, at a minimum, provide for the following business to be transacted:
- 4.1.3.1 presentation of -
- 4.1.3.1.1 the Directors’ report; and
- 4.1.3.1.2 audited annual financial statements for the immediately preceding financial year, a copy of which must be supplied to each Member together with the notice of the annual general meeting;
- 4.1.3.2 either -
- 4.1.3.2.1 audited annual financial statements; or
- 4.1.3.2.2 annual financial statements, which have independently been compiled and reported on by an independent accounting professional,  
for the immediately preceding financial year;
- 4.1.3.3 election of Directors, to the extent required by the Act or the Memorandum;
- 4.1.3.4 appointment of either an auditor or an independent accounting professional for the ensuing financial year; and
- 4.1.3.5 any matters raised by Members, with advance notice of not less than 14 (fourteen) days to the Company.
- 4.2 Members’ right to requisition a meeting**
- 4.2.1 Pursuant to section 61.3 and subject to article 4.1.2, the Board, or any other Person specified in the Memorandum or Conduct Rules, must call a Members meeting if one or more written and signed demands for such a meeting are delivered to the Company, and—
- 4.2.1.1 each such demand describes the specific purpose for which the meeting is proposed; and
- 4.2.1.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 5% (five percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 4.2.2 The Company, or any Member, may apply to a court for an order setting aside a demand made in terms of article 4.2.1 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.
- 4.2.3 At any time before the start of a Members meeting contemplated in article 4.2.1—
- 4.2.3.1 a Member who submitted a demand for that meeting may withdraw that demand; and
- 4.2.3.2 the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.

#### **4.3 Location of Members meetings**

4.3.1 The Board may determine the location of any Members meeting provided any such meeting, if it will not be held at the registered office of the Company, shall be held in the Republic at an address which the Board deems to be the most convenient for Members.

#### **4.4 Notice of Members meetings**

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

4.4.2 A copy of either the audited annual financial statements or the annual financial statements, which have independently been compiled and reported on by an independent accounting professional, must be sent to each Member with the notice of the annual general meeting.

#### **4.5 Electronic participation in Members meetings**

4.5.1 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act, is not limited or restricted by this Memorandum, provided that the provisions of clause 4.4.1 above have been complied with.

#### **4.6 Quorum for Members meetings**

4.6.1 Pursuant to section 64 of the Act and subject to article 4.6.2 to 4.6.6—

4.6.1.1 a Members' meeting may not begin unless the Developer (or its Authorised Representative) during the Development Period and at least 20 (twenty) Persons with voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting are present; and

4.6.1.2 a matter to be decided at the meeting may not begin to be considered unless the Developer (or its Authorised Representative) during the Development Period and at least 20 (twenty) Persons with voting rights are present at the meeting that are entitled to be exercised on that matter at the time the matter is called on the agenda.

4.6.2 If within half an hour after 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 a day not earlier than 5 (five) business days and not later than 15 (fifteen) business days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the Members present in Person or by proxy shall be a quorum (which will only be enforced after the Development Period).

4.6.3 Where a meeting has been adjourned as aforesaid, the Company shall, upon a date not later than 3 (three) business days after the adjournment, publish in a newspaper circulating in the province where the Office of the Company is situated, a notice stating-

4.6.3.1 the date, time and place to which the meeting has been adjourned;

4.6.3.2 the matter before the meeting when it was adjourned; and

4.6.3.3 the ground for the adjournment.

4.6.4 The chairperson of the Board shall preside as chairperson at every general meeting of the Company. If there is no such chairperson, the vice-chairperson shall preside as chairperson at every general meeting of the Company. If there is no such chairperson and/or vice-chairperson or if at any meeting he/she is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, any one of the remaining Directors or the Board's duly appointed representative, shall preside as the chairperson, failing all of which the Members present shall elect one of their number to be chairperson.

4.6.5 The chairperson may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at

which the adjournment took place. When a meeting is adjourned, the provisions of Articles 4.6.2 and 4.6.3 shall *mutatis mutandis* apply to such adjournment.

4.6.6 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or any Member, and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.

4.6.7 If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

#### 4.7 **Members resolutions**

4.7.1 For an ordinary resolution to be adopted at a Members meeting, it must be supported by more than 50% of the Members who voted on the resolution, as provided in section 65(7) of the Act.

4.7.2 For a special resolution to be adopted at a Members meeting, it must be supported by at least 75% of the Members who voted on the resolution, as provided in section 65(7) of the Act.

4.7.3 A special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11) of the Act and Article 4.7.4.

4.7.4 For the following matters a special resolution must be adopted at a Members meeting (subject however to the terms and conditions contained in the Memorandum):

4.7.4.1 amend the Memorandum;

4.7.4.2 ratify a consolidated revision of the Memorandum, as contemplated in section 18(1)(b) of the Act;

4.7.4.3 ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20(2) of the Act;

4.7.4.4 authorise the basis for compensation to Directors, as required by section 66(9) of the Act;

4.7.4.5 approve the voluntary winding up of the Company, as contemplated in section 80(1) of the Act;

4.7.4.6 approve the winding up of the Company in the circumstances contemplated in section 81(1) of the Act;

4.7.4.7 approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5) of the Act;

4.7.4.8 approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or

4.7.4.9 revoke a resolution contemplated in section 164(9)(c) of the Act.

4.7.5 The matters contained in Articles 4.7.4.1 – 4.7.4.9 may not be adopted by a special resolution without the prior Written consent of the Developer being obtained.

#### 4.8 **Votes of Members**

At every meeting (of whatever nature) including a general meeting:

4.8.1 The Developer shall only be entitled to exercise its preferential rights of 3 (three) times the total number of votes of all the other Members at any general meeting of the Company, in addition to the votes conferred upon the Developer in terms of article 4.8.2 in respect of any decision which:

4.8.1.1 may affect:

4.8.1.1.1 the Developer's right to develop Erf 915 and the New Township;

- 4.8.1.1.2 the execution of the remainder of the Development in respect of the registration of any servitudes, obtaining relevant consents, use of Common Property or where the consent of the Association is required;
- 4.8.1.1.3 the Developer's right to connect into the services reticulation system/infrastructure as set out in amongst others Articles 12.6 and 12.7 of the Memorandum;
- 4.8.1.1.4 any other ancillary rights required by the Developer for the development of Erf 915 and the New Township;
- 4.8.1.1.5 the operation of the School; or
- 4.8.1.2 lead to or result in a breach by the Company of the terms contained in the Settlement Agreement concluded between the Company and the Developer, which has been approved by the Members by way of special resolution at the special general meeting on 12 November 2024.
- 4.8.2 Every Member, including the Developer, in Person or by proxy and entitled to vote, shall have 1 (one) vote for each Stand and Unit registered in its name. It is recorded that the aforesaid shall *mutatis mutandis* apply to unsold Stands or Units which the Developer owns, in other words, the Developer shall have 1 (one) vote per unsold proclaimed Stand and Unit (it thus need not have been registered as a separate Stand or Unit in the name of the Developer) in the Development in respect of Article 1.1.17.
- 4.8.3 Save as expressly provided for in the Memorandum, no Person other than a Member (including the Developer) duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of or arising out of his/her/its Membership and who is not under suspension shall be entitled to vote on any question, either Personally or by proxy, at any general meeting.
- 4.8.4 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 4.8.5 A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded. Any Member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of, or arising out of his/her/its membership and who is not under suspension shall be entitled to demand a poll, and in which event a decision shall be taken by poll.
- 4.8.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a single majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 4.8.7 Unless any Member present in Person or by proxy at a general meeting shall, before closure of the meeting, have objected to any declaration made by the chairperson of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meetings, such declaration by the chairperson shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
- 4.8.8 The parent or guardian of a minor, and the curator bonis of a lunatic Member, and also any Person entitled to transfer the Membership, may vote at any general meeting in respect thereof in the same manner as if he or she were the registered Member: Provided that at least 48 (forty eight) hours before the time of holding the meeting at which he or she proposes to vote he or she shall satisfy the Directors that he or she is such parent, guardian or curator or that he or she is entitled to transfer the Membership, or that the Directors have previously admitted his or her right to vote in respect of the Membership. Co-executors of a deceased Member whose names stand in the register shall, for the purposes of this article, be deemed to be joint holders of that Membership.
- 4.8.9 On a poll, votes may be given either personally or by proxy and the Member of proxy shall have one vote per Stand or Unit (the Developer's voting rights as per article 4.8.1 and 4.8.2 shall *mutatis mutandis* be applicable).

**5 Directors and Officers**

**5.1 Composition of the Board of Directors**

- 5.1.1 The Board shall for the Development Period be divided into 2 (two) classes, namely Developer Directors and Member Directors. Upon expiry of the Development Period, there shall only be Member Directors.
- 5.1.2 The Board shall consist of not more than 12 (twelve) Directors during the Development Period, of whom the Developer shall be entitled to appoint not more than 2 (two) of the directors (Developer Directors) and the Members the remaining directors (Member Directors) to the Board, remaining subject to article 4.8.1.
- 5.1.3 The Members may appoint an operational committee consisting of Members who shall not be an employee, shareholder or director of the Developer and consisting of not more than 6 (six) committee members who shall amongst others attend to issues relating to security, landscaping, construction, social events and the like. The said operating committee will subsequently report back to the Board and who will then take the necessary decision on Board level as contemplated in the Memorandum read in conjunction with the Act. The Member Directors will be operational committee members and thus be appointed to the Board, subject to the provisions contained in article 5.1.2.
- 5.1.4 After the Development Period, all Directors will be elected by Members in accordance with the provisions of section 68(2) of the Act. An elected Director serves for a term of 3 (three) years with 2 (two) of the elected Directors retiring at each annual general meeting. The elected Directors to retire in every year shall be those who have been longest in office since their last election, but as between Persons who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot. A retiring elected Director shall be eligible for re-election.
- 5.1.5 Only Members (or their partners) and/or registered representatives who are office bearers of juristic persons, who are Members, may be elected as Directors. It is required that registered representatives and/or office bearers of juristic persons are duly authorised by the juristic entity and compliant with relevant legislation set out. The Developer may however appoint Directors who are not Members during the Development Period.
- 5.1.6 The Company may from time to time in general meeting increase or reduce the number of elected Directors, and may also determine in what rotation such increased or reduced number is to retire from office.
- 5.1.7 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a Director and/or prescribed officer of the Company, a person need not satisfy any further eligibility requirements or qualifications.
- 5.1.8 Each appointed Director serves for an indefinite term, until substituted by the Person or entity that made the appointment, remaining subject to the provisions contained in article 5.1.
- 5.1.9 The authority of the Board to fill any vacancy on the Board on a temporary basis is not limited or restricted by this Memorandum.
- 5.1.10 The office of Director, whether elected or appointed, or prescribed officer shall be vacated if the Director or prescribed officer -
- 5.1.10.1 no longer satisfy the qualification and eligibility requirements set out in section 69; or
  - 5.1.10.2 ceases to be a Member, subject to the provisions of Articles 5.1.1, 5.1.4 and 5.1.5; or
  - 5.1.10.3 ceases to be the representative of a juristic Person who is a Member, subject to the provisions of Articles 5.1.1, 5.1.4 and 5.1.5; or
  - 5.1.10.4 is a representative of a juristic Person and the juristic Person who appointed him, ceases to be a Member, subject to the provisions of Articles 5.1.1, 5.1.4 and 5.1.5; or
  - 5.1.10.5 ceases to be a Director or becomes prohibited from being a Director by virtue of any provision of the Act; or
  - 5.1.10.6 without the consent of the Company in general meeting holds any other office of profit under the Company except that of executive Director or managing Director; or

- 5.1.10.7 resigns his or her office by notice in writing to the Company and the Registrar; or
  - 5.1.10.8 for more than six months is absent without permission of the Directors from meetings of Directors held during that period; or
  - 5.1.10.9 is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his or her interest and the nature thereof in the manner required by the Act.
- 5.1.11 All the provisions contained in article 5 shall specifically remain subject to the provisions contained in Articles 5.1.1, 5.1.4 and 5.1.5.

## 5.2 Authority of the Board of Directors

- 5.2.1 The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Act or the Memorandum provides otherwise.
- 5.2.2 If, at any time, the Company has only one Director, as contemplated in section 57(3) of the Act, the authority of that Director to act without notice or compliance with any other internal formalities, as set out in that section, is not limited or restricted by this Memorandum.
- 5.2.3 Subject to the express provisions hereof, the Directors shall be responsible for the administration, control, management and services required in the fulfilment of the objects of the Company as defined in article 2 hereof and to manage and control the business and affairs of the Company. The Directors shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent and may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by These Presents required to be exercised or done by the Company in general meeting, subject, however, to such Conduct Rules as may have been made by the Company in general meeting or as may be made by the Directors from time to time.
- 5.2.4 Save as specifically provided in These Presents, the Directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, advocates, architects, engineers and managing agents and any other professional firm or Person or other employees whatsoever for any reason deemed necessary by the Directors and on such terms as the Directors shall decide.
- 5.2.5 Subject to any restriction imposed and direction given at a general meeting of the Company, the powers of the Directors shall include the following:
- 5.2.5.1 to appoint for and on behalf of the Company such agent and employees as they deem fit in connection with the control, management and administration required in terms of the Memorandum, more particularly for the maintenance of the street verges and areas of individual Stands and Units falling within building line reserves;
  - 5.2.5.2 to delegate to one or more of their Members or an outside expert such of their powers and duties as they may deem fit, and at any time to revoke such delegation;
  - 5.2.5.3 to make Conduct Rules and by-laws for the control, use, safety, cleanliness and aesthetic landscaping of the Properties (including the Stands and/or Units) and to determine by Conduct Rules and by-laws from time to time promulgated, *inter alia*, the security, vegetation, continuity, parking, signage, advertising and maintenance;
  - 5.2.5.4 to open and operate a current account and savings account with a banking institution;
  - 5.2.5.5 to purchase, hire or otherwise acquire movable property for use in fulfilling the duties imposed on the Directors in terms of the Memorandum;
  - 5.2.5.6 to liaise with the Council regarding any matter falling under the ambit of the Memorandum, or on behalf of any Member;
  - 5.2.5.7 to utilize the facilities and equipment of the Company for purposes of providing a maintenance service in respect of the individual Stand of any Member relating to such Member's Stand, against a remuneration fee to be determined by the Directors from time to time (this shall *mutatis mutandis* also be applicable to Units);

- 5.2.5.8 to sign, execute and enter into on behalf of the Company all and any contracts as may be required to give effect to the provisions of These Presents to appoint an Estate Manager and delegate the management of the affairs and the business of the Company whether in whole or in part to such Estate Manager;
- 5.2.5.9 to ensure that Members adhere to the provisions of the Memorandum; and
- 5.2.5.10 to do all things reasonable necessary for the enforcement, management, control and administration devolving upon the Directors in terms of the Memorandum, as more fully set out in the Memorandum read in conjunction with the Conduct Rules.
- 5.2.6 The Directors are hereby empowered to establish for administrative expenses a fund sufficient in the opinion of the Directors for the upkeep, control, management and administration required to be performed by the Directors in terms of the Memorandum and for the acquisition of such movables as may be required for purposes of providing the Services to be rendered in terms hereof, or for the discharge of any duty imposed upon the Directors in terms hereof.
- 5.2.7 The Directors shall have the right to co-opt on the board any person or persons chosen by them. A co-opted Director need not necessarily be a Member, however the individual identified may only be co-opted subject to the provisions of clause 5.1.5 hereto, and more specifically, in that the individual who is not a Member, need to be a registered representative and an office bearer of the juristic person, who is a Member, may be elected as Directors. It is required that registered representatives and / or office bearers of juristic persons are duly authorised by the juristic entity and compliant with relevant legislation set out.
- 5.2.8 The Directors shall be entitled to appoint committees consisting of such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 5.2.9 The Directors shall and at their sole and absolute discretion impose fines on Members who fail to diligently comply with the Memorandum read in conjunction with the Architectural and Landscaping Guidelines and Conduct Rules. The quantum of the fines will be determined annually by the Directors and provided to the Members.
- 5.2.10 The borrowing powers of the Directors shall be unlimited. The Directors may exercise all the powers of the Company to borrow money and mortgage or bind its undertaking and properties or any part thereof, and issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party. The said powers shall however be subject to prior approval by special resolution of the Members at a special general meeting.
- 5.3 Board of Directors meetings**
- 5.3.1 A decision that could be voted on at a meeting of the Board, may instead be adopted by written consent of a majority of the Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 5.3.2 A Director authorised by the Board —
- 5.3.2.1 may call a meeting of the Board at any time; and
- 5.3.2.2 must call such a meeting if required to do so by at least—
- 5.3.2.2.1 25% (twenty five percent) of the Directors, if the Board has at least 5 (five) members; or
- 5.3.2.2.2 2 (two) Directors, in any other case.
- 5.3.3 The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Act, is not limited or restricted by this Memorandum.
- 5.3.4 The Board may determine the form and time for giving notice of its meetings, but—

- 5.3.4.1 such a determination must comply with any requirements set out in the Memorandum or the Conduct Rules; and
- 5.3.4.2 no meeting of the Board may be convened without notice to all of the Directors, subject to article 5.3.5.
- 5.3.5 Except to the extent that the Memorandum provides otherwise—
  - 5.3.5.1 meetings may not proceed if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
  - 5.3.5.2 at least 3 (three) Directors must be present at a meeting of which at least 1 (one) Developer Director has to be present, before a vote may be called at a meeting of the Directors;
  - 5.3.5.3 each Director has one vote on a matter before the Board;
  - 5.3.5.4 a majority of the votes cast on a resolution is sufficient to approve that resolution; and
  - 5.3.5.5 in the case of a tied vote the chairperson shall have a second or casting vote.
- 5.3.6 The continuing Directors may act notwithstanding any vacancy on their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the Memorandum as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of convening a general meeting of the Company but for no other purpose.
- 5.3.7 The Directors may elect a chairperson of their meetings and determine the period for which he/she is to hold office, but if at any meeting the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding same, the Directors present may elect one of their number to be the chairperson of the meeting.
- 5.4 **Indemnification of Directors**
- 5.4.1 Except to the extent that the Memorandum provides otherwise, the Company—
  - 5.4.1.1 may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
  - 5.4.1.2 may directly or indirectly indemnify a Director for expenses contemplated in article 5.4.1.1, irrespective of whether it has advanced those expenses, if the proceedings—
    - 5.4.1.2.1 are abandoned or exculpate the Director; or
    - 5.4.1.2.2 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 5.4.2 and 5.4.3.
- 5.4.2 Except to the extent that the Memorandum provides otherwise, the Company may indemnify a Director in respect of any liability arising other than as contemplated in article 5.4.3.
- 5.4.3 The Company may not indemnify a Director in respect of—
  - 5.4.3.1 any liability arising—
    - 5.4.3.1.1 in terms of section 77(3)(a), (b) or (c); or
    - 5.4.3.1.2 from wilful misconduct or wilful breach of trust on the part of the Director; or
  - 5.4.3.2 any fine contemplated in article 5.4.4
- 5.4.4 The Company may not directly or indirectly pay any fine that may be imposed on the Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability.
- 5.4.5 Except to the extent that the Memorandum provides otherwise, the Company may purchase insurance to protect—

- 5.4.5.1 a Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with article 5.4.2; or
- 5.4.5.2 the Company against any contingency including, but not limited to—
  - 5.4.5.2.1 any expenses—
    - 5.4.5.2.1.1 that the Company is permitted to advance in accordance with article 5.4.1; or
    - 5.4.5.2.1.2 for which the Company is permitted to indemnify a Director in accordance with article 5.4.1.1; or
    - 5.4.5.2.2 any liability for which the Company is permitted to indemnify a Director in accordance with article 5.4.2.
- 5.4.6 The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this article or section 78 of the Act.

## 5.5 **Committees of the Board**

- 5.5.1 Except to the extent that the Memorandum provides otherwise, the Board may—
  - 5.5.1.1 appoint any number of committees of Directors; and
  - 5.5.1.2 delegate to any committee any of the authority of the Board.
- 5.5.2 Except to the extent that the Memorandum, or a resolution establishing a committee, provides otherwise, the committee—
  - 5.5.2.1 may include persons who are not Directors, but—
    - 5.5.2.1.1 any such person must not be ineligible or disqualified to be a Director in terms of section 69 of the Act; and
    - 5.5.2.1.2 no such person has a vote on a matter to be decided by the committee;
  - 5.5.2.2 may consult with or receive advice from any person; and
  - 5.5.2.3 has the full authority of the Board in respect of a matter.
- 5.5.3 The Directors may delegate any of their powers to committees consisting of such Member or Members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to the Conduct Rules that may be imposed on it by the Directors.
- 5.5.4 A committee may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the Members present may elect one of their numbers to be chairperson of the meeting.
- 5.5.5 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the Members present, and in the event of an equality of votes the chairperson shall have a second or casting vote.

## 6 **Accounting Records**

- 6.1 The Directors shall cause such accounting records as are prescribed by the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transaction and financial position of the trade or business of the Company.
- 6.2 The accounting records shall be kept at the Office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.
- 6.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Members not being Directors, and no Member (not being a Director) shall have any

right of inspecting any accounting records or documents of the Company except as conferred by the Act or authorised by the Directors or by the Company in General Meeting.

## 7 Annual Financial Statements

7.1 The Directors shall from time to time, in accordance with section 30 of the Act, cause to be prepared and laid before the Company in Annual General Meeting such annual financial statements, group annual financial statements and group reports (if any) as are referred to in the Act.

7.2 A copy of any annual financial statements, group annual financial statements and group reports which are to be laid before the Company in Annual General Meeting, shall not less than 15 (fifteen) business days before the date of the meeting be sent to every Member: Provided that this article shall not require a copy of those documents to be sent to any Person of whose address the Company is not aware.

## 8 Income of the Company

8.1 The income of the Company shall consist of the compulsory monthly contributions (“levies”) paid by Members and shall be used to promote and fulfil the main objects of the Company and meet all expenses in respect of:

8.1.1 the control, management and administration of the Townships;

8.1.2 (in general) the attainment of its main objects as described in the Memorandum and These Presents;

8.1.3 the maintenance of Common Property and the costs of services such as, amongst others, electricity, water and sewerage consumed or used on the Common Property;

8.1.4 the supply of any services rendered by the Company;

8.1.5 the payment of all expenses necessary or reasonably incurred in connection with the management of the Company;

8.1.6 the costs of the provision of security of the Townships;

8.1.7 (in general) the costs of fulfilling any of the obligations of the Company; and

8.1.8 to act as bulk supplier to the Townships (including *inter alia* the excluded areas as will more fully appear from articles 1.1.17.9, 1.1.37.9 and 1.1.41) in respect of the Services rendered to in Articles 10, 11 and 12 (whichever is applicable) below.

8.2 The levies for the first year shall be determined by the Directors and thereafter as detailed in the Memorandum.

8.3 The Directors shall prepare no later than 1 (one) month prior to the end of each financial year a budget which shall detail the anticipated expenses for the ensuing year and the provisions for any budgeted fund in order to ensure that the Company will be able to fulfil its main objects. The budget must reflect the total annual and monthly levies required. Each Registered Owner of a Stand and Unit, excluding the Company, shall be responsible for a monthly levy equal to the total monthly levies divided by the total number of Stands and Units (proportionately), excluding the Common Property and Stands and Units not yet transferred, however subject to *inter alia* the provisions contained in article 8.15.

8.4 The budget and levies as calculated in article 8.3 (read in conjunction with article 8.10) must be submitted to, considered and approved, with or without amendments, by a general meeting of Members. Such general meeting of Members should be held before the commencement of the new financial year.

8.5 The monthly levies shall be due and payable on the first working day of each month. Each Registered Owner shall pay his/her/its monthly levies by means of electronic funds transfer to the bank account of the Company. The Company shall furthermore be entitled to require a Member to sign a debit order authority to allow the Company or its authorised agent to collect levies directly from an operating bank account.

8.6 The Directors shall be entitled to raise interest at the Company’s bankers’ prime overdraft rate plus 3 (three) percent on all overdue levies.

- 8.7 The Directors may at any stage introduce a special levy on all Registered Owners should the Directors realise that the budgeted income of the Company will be insufficient to enable the Company to fulfil its main objects.
- 8.8 Any amount due by a Member by way of levy, interest or penalty shall be a debt due by him/her/it to the Company. The obligations of a Member to pay a levy, interest and penalty shall cease upon him ceasing to be a Member without prejudice to the Company's right to recover arrear levies, interest and penalties. No interest on levies paid by a Member shall under any circumstances be repayable by the Company upon him/her/it ceasing to be a Member. A Member's successor in title to a Stand or Unit shall be liable as from the date upon which he/she/it becomes a Member pursuant to the transfer of the Stand or Unit, to pay the levy and interest thereon attributable to that Stand or Unit. Notwithstanding anything to the contrary contained in this article, any special levy shall remain payable by the person(s) who were the owner(s) of a Stand or Unit at the time when such resolution was passed. Such person(s) shall make arrangements for payment acceptable to the Company before a levy clearance certificate authorising transfer of the Stand or Unit will be issued.
- 8.9 The Company shall be entitled to refuse traversing rights over its access security Stands to any Member or such Member's employees, invites or visitors, while such Member is in breach of any of the terms and conditions of Membership or Conduct Rules, all of which are deemed to be material. In addition thereto, the Company may disconnect and/or discontinue any Services to the Stand or Unit of such Member in breach in respect of the payment of his/her/its levies and furthermore may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client, together with collection commission and any other expenses and charges incurred by the Company in recovering such amounts.
- 8.10 In calculating the levy payable by any Member and subject to the Memorandum, the Directors shall as far as practicable:
- 8.10.1 assign those costs directly attributable to the Townships and which is also directly attributable to a specific Stand or Unit in the Townships to the Member owning such Stand or Unit;
- 8.10.2 assign those costs directly attributable to the Townships, but which is not directly attributable to a Stand or Unit in such Townships generally to the owners of all Stands or Units in that Townships;
- 8.10.3 assign those costs not directly attributable to a particular Township to the owners of all Stands or Units in proclaimed Townships in accordance with their general participation (including the applicable participation quota); and
- 8.10.4 the Directors may in any case where they consider it equitable to do so, assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 8.11 The Directors shall be entitled to establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Company and of the Estate, including the provision of security services for the Estate, garden maintenance services, optic fibre cable networks, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the Council or any other authority, any charges for the supply of electrical current, gas, water, fuel and sewerage disposal, refuse collection and any other Services to the Estate and any Services required by the Company to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Company, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligations of the Company (provided that nothing in the Memorandum shall be construed as obliging the Company to pay service charges due by Members to the relevant authority).
- 8.12 The Company shall not be entitled to undertake on behalf of its Members any permanent works of major capital nature without the sanction of a resolution of the Members adopted during a general meeting of Members. In this article "works of major capital nature" means works that will cost more than R100 000,00 (One Hundred Thousand Rand) (excluding value-added tax).
- 8.13 The Company may come to agreement with the Developer for the repayment by the Company to the Developer of on-going costs or expenses incurred by the Developer for the provision of Services to the Members.
- 8.14 The Board may enter into an agreement or agreements with the Developer for the provision of a capital sum and/or the transfer of land and/or equipment to the Company in lieu of levies.

8.15 The Developer shall only pay 50% (fifty percent) of the levy cost in respect of proclaimed Stands (including Units) which have not been transferred to a Registered Owner.

## 9 **Secretary**

9.1 The Directors may appoint a Secretary for a period, at a remuneration and on such terms and conditions, which they may deem fit. The Members in general meeting may also discharge a Secretary.

9.2 A Director or the auditors of the Company may not be appointed as Secretary of the Company.

## 10 **Rates and Taxes**

10.1 The Company shall be responsible to pay all rates and taxes in respect of the Common Property to the Council.

10.2 The body corporate of any sectional title scheme in the Township shall be responsible to pay all rates and taxes in respect of the property comprising any sectional title scheme to the Council.

10.3 All other Members as owners of Erven, shall be responsible to pay rates and taxes in respect of their property to the Council.

## 11 **Payment and Supply of Services**

11.1 The responsibility for payment of Services and the method of service supplies shall be as regulated in clause 12 below.

11.2 The supply of Services to the Township shall be subject to all such terms and conditions as imposed by the Company.

## 12 **Services**

### 12.1 Potable Water Supply

12.1.1 Water will be supplied and metered by the Council at the boundary of the individual Erven.

12.1.2 The management and maintenance of the complete internal water supply system will be the responsibility of the Council and all supplies of water will be managed and administered by the Council.

12.1.3 The Developer's predecessor in title (Bluecore Investments (Pty) Ltd (in liquidation)) has installed the infrastructure for the water supply to the boundary of each Erf in the Township, including the body corporate of any sectional title scheme. The Developer does not take any responsibility for the installation of the said water reticulation / infrastructure by its predecessor, however will repair the water reticulation infrastructure to such a standard that it may be handed over to the Council or Company (whichever is applicable).

12.1.4 The Members, including the body corporate of any sectional title scheme shall be liable for and shall pay to the Council on demand all charges arising from water supplied to or consumed in or on an Erf or Unit and the building thereon and the Common Property of any sectional title scheme.

12.1.5 The liability of Members for such charges shall be in accordance with separate sub meters serving the Erven of Members, including any sectional title scheme.

### 12.2 Electricity

12.2.1 Eskom will supply electricity in bulk at the boundary of the Township. This will be known as the Point of Supply (POS). The Company will be responsible for paying Eskom the monthly electrical consumption charges as metered at the POS.

12.2.2 The POS will contain an intake substation with the necessary switchgear and a bulk supply meter to the Development. Ownership of this equipment (together with the responsibility to operate, maintain and repair) will vest in Eskom.

12.2.3 The Developer's predecessor in title (Bluecore Investments (Pty) Ltd (in liquidation)) has installed the internal infrastructure from the POS for the electricity supply to a distribution kiosk in the vicinity of each Erf in the Township, including the body corporate of any sectional title scheme and it was the Company's

responsibility at its cost to maintain the electrical reticulation infrastructure. The Developer does not take any responsibility for the installation of the said electrical reticulation / infrastructure by its predecessor and the Company will subsequently remain liable to repair any damage to the existing electrical reticulation infrastructure occasioned by the Company's failure to adequately maintain and safeguard the said infrastructure.

- 12.2.4 The Members, including the body corporate of any sectional title scheme shall purchase their electricity supply from the Company on a pre- or post-paid basis. Any Value Added Tax levied in respect of the supply of electricity shall be paid by the Member in question.
- 12.2.5 The Company will be responsible for the operation and maintenance of the internal reticulation of electricity and shall further be responsible to appoint a responsible person as defined in terms of the Occupational Health and Safety Act, No 85 of 1993 to exercise this function on its behalf.
- 12.2.6 The liability of Members for such charges shall be in accordance with separate sub meters serving the Erven of Members, including any sectional title scheme, which the Company shall be entitled to install at the cost of such Member, as the case may be.
- 12.2.7 Where electricity charges are calculated and payable in terms of this clause, any Value Added Tax levied in respect of the supply of such electricity shall be paid by the Member in question.
- 12.2.8 Lighting on the Common Property shall be supplied through separate electricity supply meters and the cost incurred by the Company in respect thereto shall be recovered from Members as part of the levies imposed by the Company.
- 12.3 General – Services
- 12.3.1 Each Member shall from date of transfer of an Erf or Unit into his/her/its name be responsible for any connection charges to the infrastructure of the Townships, including the costs of any metering device and the maintenance and replacement of any such device.
- 12.3.2 The Company shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the Company.
- 12.3.3 The Developer during the Development Period and thereafter the Company, shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other Services over any Erf or building or any other portion of the Township, whosoever is the owner thereof, and shall have the right to access to such premises for the purposes of installing, replacing and/or repairing such Services.
- 12.3.4 The Members and the body corporate of any sectional title scheme will allow reasonable access to employees or representatives of the Developer or the Company (as the case may be) into the buildings, Erven or Units for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 12.3.5 Without limiting the generality of the provisions of clause 12.3.4, every Member shall allow electricity, telephone and television cables and/or wires, and main and/or other water pipes and the sewerage and drainage, including storm water, of any erven or units to be conveyed across the relevant erven or units and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon, if considered necessary by the Council and/or the Company and/or the Developer (during the Development Period) and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the erven or units at any reasonable time for the purposes of constructing, installing, altering, removing or inspecting any works connected with the above.
- 12.3.6 Without limiting the generality of the provisions of *inter alia* clause 12.3.5, the Developer, during the Development Period and thereafter the Company, shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of Services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The Members accept and shall be bound by and consent to the registration of the servitudes referred to in *inter alia* this clause and clause 12.3.5.
- 12.3.7 The Council will be responsible for the maintenance of the internal sewer reticulation serving the Townships as well as for the maintenance of the sewerage treatment plant.

- 12.3.8 The Company will be responsible for the maintenance of the internal storm water system serving the Townships as well as for the maintenance of the storm water catchment dams. The maintenance costs will be recovered by means of levies imposed by the Company.
- 12.4 A Member will be liable for the payment of a deposit in respect of water supply to the Council. The deposit in respect of electricity supply, payable to the Company, shall be determined from time to time by the Directors.
- 12.5 A Member is liable to effect refuse removal as directed from time to time by the Directors and to make payment to the Company and/or the Council or its nominee to affect such service.
- 12.6 Notwithstanding any other contrary term contained in the Memorandum, the Developer, and during the Development Period, shall be entitled to connect further additional phases into the Services reticulation system / infrastructure, subject however thereto that the Developer shall:
- 12.6.1 pay all bulk services contributions to the Council; and
- 12.6.2 install the bulk services as may from time to time be required by the Council.
- 12.7 As aforesaid, the Developer shall furthermore be entitled to connect further additional phases into the existing electrical network at no cost to the Company, provided that the Developer shall be responsible for all additional costs payable to Eskom for such connection (the provisions hereof shall mutatis mutandis be applicable to all other Services).
- 12.8 As contemplated herein above, the Developer shall not be responsible for any defects regarding any previous work undertaken by the Developer's predecessor in title. The Developer shall however repair all Services and infrastructure to such a standard that it may be transferred to the Council or Company (whichever is applicable).
- 12.9 Subject to the provisions of article 20.14 the Developer shall transfer the Common Property (including the internal roads, subject to the exclusion of portions of Erven 493 and 494 as contemplated herein) with the exception to Erf 487 The Hills Extension 4 (including portions of Erven 493 and 494), the ownership of which the Developer (including its successors in title) shall retain notwithstanding the obligation to transfer Erf 487 The Hills Extension 4 (including portions of Erven 493 and 494) in terms of the Conditions of Establishment proclaimed on 22 February 2008, to the Company after the acceptance of the Memorandum by the Members with or without such amendments as may be acceptable to the Developer. The provisions hereof may not be amended by way of special resolution or otherwise without the prior written approval of the Developer (including its successors in title) being obtained.

### 13 **Entrenched Provisions**

- 13.1 The Developer, during the Development Period, and thereafter the Company has a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the Development of the Townships. Accordingly, none of the following provisions may be deleted or varied in any way in terms of this Memorandum, without the Written consent of the Developer during the Development Period and thereafter the Company:
- 13.1.1 The Developer, during the Development Period and thereafter the Company, may register in their entire and sole discretion and where necessary, Services servitudes in favour of the Council, the Developer, the Company, and/or any adjacent property development over any separate erf in the Townships, the Common Property (as defined herein), any unit, building or common property in any sectional title scheme or any other part of the Townships. Reasonable compensation shall however be payable to the Registered Owner should the existence of such a servitude be necessitated as contemplated herein.
- 13.1.2 No Member shall be entitled to object to the subdivision and/or development of any part of the Development Area, provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the Development Area, nor shall they be entitled to object to any such new development. The Member shall furthermore not be entitled to object to any rezoning application for any internal sectional title stands to the required density, however subject thereto that the said subdivision, rezoning and/or development is in accordance with the master development plan annexed hereto as Annexures "D1" to "D4" read in conjunction with the Council's spatial development framework (including any amendment thereto by a competent authority or other applicable policy).

- 13.1.3 Ownership of an Erf or Unit does not confer any right, including that of access, in respect of property owned by the Developer, including any right of way or access across such property.
- 13.1.4 The Members acknowledge and agree that the Developer, its successors in title and its employees have certain rights, including rights of access across the Common Property, sectional title scheme(s) and the like (whichever is applicable).
- 13.1.5 All estate agents marketing and/or selling property in the Estate must be approved by the Company before such estate agent commences any marketing or sales initiatives, whether at the Estate or from any other remote location.
- 13.2 The Members are aware that the Development and Estate as contemplated herein constitutes a phased development and subsequently irrevocably grants the Developer the exclusive and unfettered right to extend the Development (which shall include the development of the Properties as a whole) and include such additional phases and/or properties into the security parameter at its discretion, the owners of which will subsequently become Members. The Developer is thus irrevocably authorised to effect such amendments to the Memorandum in order to allow the incorporation of such phases and owners of the properties therein, as Members. The provisions hereof shall only be applicable to the Development Area and with specific reference to Article 1.1.17.8.
- 13.3 **Architectural and Landscaping Guidelines**
- 13.3.1 The Architectural and Landscaping Guidelines constitute an integral part of These Presents. It is recorded that the Architectural and Landscaping Guidelines contain the procedures, requirements and guidelines to be adhered to by every Member who wishes to effect construction, improvements or alterations to or undertake any renovation of any Stand or Unit.
- 13.3.2 Each Member shall not undertake any development of and/or improvement to his/her/its Stand or Unit without having submitted the required plans, conforming to the requirements of the Architectural and Landscaping Guidelines, for consideration, evaluation and approval to the Aesthetics Committee and having obtained the prior Written consent thereto from the Aesthetics Committee.
- 13.3.3 No construction or erection of any improvements or alterations to and no renovation of any Stand or Unit that is undertaken by any party other than the Developer or any landscaping on any property may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovations by the Aesthetics Committee and, where required, the Council, in accordance with the following provisions:
- 13.3.3.1 the Member shall submit to the Aesthetics Committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
- 13.3.3.2 the Member shall be liable for the payment of the reasonable cost of professional scrutinizing and examination of such plans as contemplated in Articles 2.5.11 and 2.5.12; and
- 13.3.3.3 after the approval of such plans by the Aesthetics Committee the plans shall be submitted to the Council by the Homeowner (or duly appointed architect) for approval. No plans shall be submitted to the Council unless it bears the endorsement of approval of the Aesthetics Committee, clearly dated, certifying that the plans comply with the Architectural and Landscaping Guidelines.
- 13.4.4 When effecting the construction, improvements, alterations or renovations contemplated in this article, the Member shall at all times comply strictly with the Architectural and Landscaping Guidelines as well as all conditions and standards imposed by the Council insofar as these may be additional to the provisions of the Architectural and Landscaping Guidelines. No Member shall be entitled to deviate in any manner whatsoever from any plan approved by the Aesthetics Committee and the Council unless the prior written approval of the Aesthetics Committee and the Council for such proposed deviation has been obtained.
- 13.4.5 No Member shall be entitled to challenge or contest any of the provisions of the Architectural and Landscaping Guidelines. No application for the amendment of the Architectural and Landscaping Guidelines shall be made to the Council unless prior Written consent of the Company and its Members at a general meeting has been obtained thereto.
- 13.4.6 The Company may amend the Architectural and Landscaping Guidelines from time to time, which shall however remain subject to the approval thereof by the Members at a general meeting.

- 13.4.7 No body corporate shall adopt any conduct rules in terms of Section 35 (2)(b) of the Sectional Titles Act, which are in conflict with any of the Architectural and Landscaping Guidelines (including the Conduct Rules), unless the prior Written consent of the Company has been obtained thereto and its Members at a general meeting.
- 13.4.8 A Member shall furthermore not commence with the construction of any improvement on his/her/its Stand or Unit without having signed the Developer's contractors agreement which regulates the conduct of amongst others, contractors, sub-contractors and owner builders.
- 13.4.9 Notwithstanding any other contrary term contained in the articles, the approval of any building plans which encroaches or may encroach the building lines and/or any servitude shall be subject to the prior written approval of an application for relaxation by:
- 13.4.9.1 the Company; and
- 13.4.9.2 the Council.
- 13.4 Estate Rules / Conduct Rules**
- 13.4.1 The Estate Rules constitute an integral part of These Presents.
- 13.4.2 The Estate Rules annexed hereto as Annexure "A" shall constitute the rules for the Estate.
- 13.4.3 Subject to These Presents and to any restriction imposed or direction given at a general meeting of the Company and subject to any condition imposed by the Council, the Board may from time to time make Estate Rules, and vary or modify these rules, in regard to:
- 13.4.3.1 the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the Development or any building, construction or any other work in the Townships;
- 13.4.3.2 the preservation of the natural environment, vegetation and fauna within the Townships including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any Stands or Units;
- 13.4.3.3 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 13.4.3.4 the conduct of any persons within the Townships and the use of his/her/its property for the prevention of nuisance of any nature to any Member;
- 13.4.3.5 the use of Services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
- 13.4.3.6 the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping in the Townships;
- 13.4.3.7 the control of the number of occupants or residents permitted on any one Stand or Unit;
- 13.4.3.8 the admission of any person in the Townships, and the eviction of any person not entitled to be therein; and
- 13.4.3.9 the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of the Members and/or the residents within the Townships.
- 13.4.4 For the enforcement of any of the Estate Rules made by the Board in terms of this article or of any of the provisions of These Presents generally, the Board may:
- 13.4.4.1 give notice to the Member concerned requiring him/her/it to remedy such breach within such period as the Board may determine; and/or
- 13.4.4.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the Estate Rules or provision of which the Member may be guilty, and debit the cost of so doing to the

Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or

- 13.4.4.3 take such action including the imposition of a fine, or proceedings in court, as they may deem fit.
- 13.4.5 Should the Board institute any legal proceedings against any Member or resident in a Township for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 13.4.6 In the event of any breach of the Estate Rules by the Members or any Member's household or his/her/its guests or lessees, such breach shall be deemed to have been committed by the Member himself/herself/itself, but without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 13.4.7 If any Member disputes the fact that he/she/it has committed a breach of any of the provisions of the Estate Rules made by the Board in terms of this article or any provisions of These Presents, a committee of 3 (three) Board Members appointed by the chairperson 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.
- 13.4.8 Notwithstanding anything to the contrary herein contained, the Board may in the name of the Company enforce the provisions of any Estate Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 13.4.9 The Company may in a general meeting itself make any Estate Rules in regard to any matter and may also vary or modify any Estate Rule made by it or by the Board from time to time.
- 13.4.10 All Estate Rules shall be reasonable and shall apply equally to all Members of Stands or Units put to substantially the same use.
- 13.4.11 The Company shall not make any management or conduct rule applicable to the sectional title scheme, which is in conflict with an Estate Rule applicable to the Company in terms of this article of These Presents.
- 13.4.12 The body corporate of any sectional title scheme shall not make any management or conduct rules applicable to the sectional title scheme which are in conflict with a Conduct Rule applicable to the Company.
- 13.5 Occupation and use of Stands or Units**
- 13.5.1 Occupation and use of Stands or Units shall, at all times, be in compliance with the Memorandum and the Conduct Rules. The Directors may, in their sole discretion, determine that any Person, not being a Member, be denied access to the Estate and be required to leave in the event of such Person breaching the Memorandum or the Conduct Rules made in terms hereof. No Member shall use any Stand or Unit or part or any building or allow any other person to use such Stand or Unit or part of any building, for purposes not permitted by the Memorandum and/or the Conduct Rules.
- 13.5.2 Without limiting the generality of any of the provisions of the Conduct Rules the following provisions will apply to every Member, Homeowner and their invitees-
- 13.5.2.1 the Member or Homeowner shall not carry on, and will not allow to be carried on or about the Stand or Unit, as a primary business any business which sells or distributes liquor or potable alcohol or which carries on any form of gaming or lottery, or any form of escort agency, strip show or similar entertainment. The provisions of this 13.5.2.1 do not prohibit the serving of alcohol to guests or invitees of a Homeowner for *bona fide* recreational purposes;
- 13.5.2.2 the Member or Homeowner will not use the Stand or Unit or permit the same to be used for any illegal or improper purposes or any manner which creates an unlawful nuisance or disturbance to other Persons; and
- 13.5.2.3 no Member or Homeowner will be entitled to object to any application by the Developer or an associated Company to any governmental or other authority relating to or in connection with any development to take place within a radius of 10 (ten) kilometres from the Development, provided that such development is substantially in accordance with the requirements of the Council and/or the

Department of Agriculture, Conservation, Environmental and Land Affairs and/or any other relevant authority.

14 **Articles binding on invitees**

14.1 The provisions of the Memorandum (including in particular but without limiting the generality of the foregoing restrictions and conditions relating to the use of Stands or Units and Common Facilities) shall be binding on all invitees as if they were members.

15 **Estate Manager**

15.1 An Estate Manager shall from time to time be appointed by the Company who shall determine the fees or remuneration to be paid by the Company to such Estate Manager and all the other terms and conditions of his/her appointment, it being contemplated at all times that the affairs of the Company will be entrusted in whole or part to the professional Estate Manager or person with appropriate executive powers so as to conform to the requirements of good corporate governance.

16 **Powers of the Estate Manager**

16.1 Subject to the provisions of These Presents and the terms of his appointment, the Estate Manager shall have full power to manage and control the business and affairs of the Company or such portion thereof as may be determined by the Company in general meeting, and may exercise all such powers of the Company and do all acts on behalf of the Company itself.

17 **Determination of disputes**

17.1 In the event of any dispute arising between a Member and the Directors (as the representative of the Company) as to the construction, meaning or interpretation of any of the provisions of the Memorandum or as to the rights, obligations or liabilities of the Company or any Member in terms of the Memorandum the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 (fourteen) days, then such dispute or difference shall be submitted to and decided by summary arbitration.

17.2 The arbitration shall be held-

17.2.1 at Pretoria, Province of Gauteng;

17.2.2 in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by the Arbitration Act or the strict rules of evidence; and

17.2.3 as soon as reasonable practicable in the circumstances and with a view to it being contemplated within 21 (twenty one) business days after it is demanded.

17.3 The arbitrator shall be a person agreed to between the parties to the dispute and failing agreement, a person nominated for such purpose by the president (or failing him, the secretary) for the time being of the Law Society of the Northern Provinces (or its successors in title).

17.4 The arbitrator shall determine-

17.4.1 the issues submitted to him according to what the arbitrator considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to the strict rules of the law; and

17.4.2 which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.

17.5 The arbitrator shall be deemed to act as an expert and not as an arbitrator.

17.6 The decision of the arbitrator shall be-

17.6.1 final and binding on all parties;

17.6.2 carried into effect; and

17.6.3 capable of being made an order of any court of competent jurisdiction.

18 **Disclaimer responsibility**

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

19 **Mortgage Bond Foreclosure**

- 19.1 The Company's preferential right to claim arrear levies from a Member who is in default regarding the payment of levies (including special levies), shall be restricted to 4 (four) month's levies upon the transfer of a Stand or Unit, only in the event of a financial institution foreclosing on a mortgage loan which is secured by way of a mortgage bond registered over a Stand or Unit. The balance (if any) shall be recovered directly from the Member in question.
- 19.2 After the transfer of the Stand or Unit has been effected to the financial institution (which shall deem to include its nominee or designated purchaser) in terms of a sale which came about as a result of the foreclosure of the mortgage loan secured by a mortgage bond registered over a Stand or Unit, the Company shall be entitled to recover the balance of the arrear levies from the Member in default as contemplated in article 19.1 above.
- 19.3 The Company, taking cognizance of the provisions of Articles 19.1 and 19.2 above, shall:
- 19.3.1 issue a clearance certificate allowing the Stand or Unit to be transferred upon the payment of 4 (four) month's arrear levies;
- 19.3.2 undertake not to enforce the restriction against alienation provisions as contemplated in the Memorandum;
- 19.3.3 provide the said financial institution (which shall deem to include its nominee or designated purchaser) with a clearance certificate addressed to the applicable Registrar of Deeds to effect transfer of the Stand or Unit.
- 19.4 Any surplus paid to or received by the financial institution taking cognizance of the outstanding capital, interest and legal costs secured under the mortgage loan agreement, after payment of the 4 (four) month's arrear levy as contemplated herein, shall be applied to the outstanding balance owed to the Company and any surplus thereafter shall be paid to the Member.

20 **General**

- 20.1 As contemplated in the Memorandum, the Members grant the Developer the right to:
- 20.1.1 complete the development of the Development Area and with specific reference to Erf 915 and the New Township, as will more fully appear from Annexure "B";
- 20.1.2 effect amendments to the Memorandum to accommodate and incorporate the new Members as contemplated in Article 20.1.1; and
- 20.1.3 the provisions contained in Articles 12.6 and 12.7 shall apply to the excluded areas as will more fully appear from amongst others Articles 1.1.17, 1.1.18, 1.1.39 and 1.1.43.
- 20.2 The said Members furthermore authorises the Developer irrevocably to do whatsoever may be necessary to give effect to the provisions of Article 20.1 and hereby ratifying same.

- 20.3 The sales office situated in the gatehouse or otherwise, shall at no cost be utilised by the Developer during the Development Period, provided that the Developer shall only be obliged to pay for all services (e.g. water and electricity). The Developer shall be obliged to maintain such sales office, fair wear and tear excepted. Such sales office may be upgraded or enlarged by the Developer, provided all costs associated thereto will be for the Developer's account.
- 20.4 The Company may enter into agreement with any third party for the provision of facilities or Services to or for the Members, and may levy charges in respect of the provision thereof, or may pass on such costs directly to the Members. Provided that the contracts concluded by the Developer shall not exceed past the period of 3 (three) months after the termination of the Development Period.
- 20.5 The Board or the Estate Manager or their employees, agents or contractors shall be entitled and shall have the right to enter any Stand or Unit for the purpose of repairing, maintaining or installing any facilities, services, equipment or structures relating to the provision of security or any other service to the Estate generally.
- 20.6 Any person using any of the Services, land or facilities of the Company within the Estate does so entirely at his/her/its own risk.
- 20.7 The Company shall be obliged to insure the assets belonging to the Company.
- 20.8 The Company shall be obliged to take out Public Liability Insurance, the amount of which shall be determined by the Directors from time to time.
- 20.9 The Company may at its discretion permit the Members subject to the provisions of these Articles to use the open space and roads, and shall do so unless by special resolution taken at an extraordinary general meeting called for the purposes, it is otherwise resolved for good reason.
- 20.10 The Company may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part or such roads and open space for good reason.
- 20.11 No Member shall operate or conduct a time share scheme as contemplated in the Property Time-Sharing Control Act No 75 of 1983 or Airbnb (or similar temporary rental) in respect of any Stand or Unit owned by him/her/it without first obtaining the Written consent of the Developer (during the Development Period) and thereafter the Company.
- 20.12 The Developer shall during the Development Period have the right to veto any proposed amendment of this Memorandum if there is a reasonable apprehension that such amendment could detrimentally affect the Developer's ability to complete the Development. Notwithstanding any other contrary term contained in the Memorandum, any amendment thereto by way of special resolution or otherwise and after the Development Period which may materially affect the rights of the Developer (including its successors in title or assigns) exercised prior to the Development Period shall be subject to the prior written consent of the Developer or its successors in title, which consent shall not be unreasonably withheld.
- 20.13 The Developer (including its successors in title) retains ownership (and for its own benefit) of Erf 487 The Hills Extension 4 (including portions of Erven 493 and 494) notwithstanding the obligation to transfer Erf 487 The Hills Extension 4 (including portions of Erven 493 and 494) in terms of the Conditions of Establishment proclaimed on 22 February 2008 to the Company, without any compensation and/or costs to be paid to the Company, however conditional thereupon that a servitude of exclusive use is registered in favour of the School and the Company for the sports field which amongst others affects Erven 487, 488, 489 and 491 The Hills Extension 4 (including portions of Erven 493 and 494) (if and where applicable) as it appears from the attached diagram, marked Annexure "C". It will be a specific term of the notarial deed of servitude of exclusive use that the sports field will be made available for the exclusive use by the School and the Company, provided that the Company's use does not affect the activities and/or use of the School. The Developer's attorneys will attend to the registration of the servitude of exclusive use over amongst others Erf 487 The Hills Extension 4 in favour of the School and the Company. The Developer (and its successors in title) shall furthermore be liable for all rates and taxes payable to the Council in respect of the sports field. The provision hereof may not be amended by way of special resolution or otherwise without the prior written approval of the Developer (including its successors in title) being obtained, whether prior or after the Development Period.
- 20.14 The School, currently owned by CPD Hills School (Pty) Ltd (including its successors in title and assigns) may be attended to by pupils residing in and outside the Estate, all of whom may gain unrestricted access to the School via the main access gate (which shall include their parents and/or duly appointed representatives). The said access to the pupils residing outside the Estate will be subject to:

- 20.14.1 the Company's security requirements;
- 20.14.2 such access not permitting the use of any of the Common Facilities of the Company;
- 20.14.3 any transgressing will lead to the immediate termination of access by the offender.
- 20.15 It is moreover recorded that Erf 493 The Hills Extension 4 which is an access road, will have to be re-aligned and the Company irrevocably consents to the re-alignment of the said servitude road as it moreover appears from the attached master development plan.
- 20.16 The tenants of the self-storage units which are to be constructed on a portion of *inter alia* Erven 913 and 491 The Hills Extension 4 shall only be entitled to gain access to the self-storage units via the alternative access road, as it moreover appears from Annexure "D1".
- 20.17 The Members of the Association, including their invitees, guests and the like, shall have reciprocal, undisturbed and unrestricted right of access in and to:
- 20.17.1 The Hills Extension 3 Township;
- 20.17.2 The Hills Extension 4 Township;
- 20.17.3 The Hills Extension 5 Township;
- 20.17.4 The Hills Extension 6 Township;
- 20.17.5 The Hills Extension 7 Township;
- 20.17.6 the New Township and Erf 915; and
- 20.17.7 including any other phases, property and/or townships which forms part of the Development Area.
- 20.18 The provisions of Article 20.17 may not be amended by special resolution or otherwise without the prior written consent of the Council being obtained.
- 20.20 The Development is subject to the following conditions, as the case may be and as contemplated in Section 34 of the City of Tshwane Land Use Management By-Laws, 2016, which conditions may not be amended without the written consent of the Council:
- 20.20.1 the main purpose of the Company shall be to provide access, engineering services and maintain the said engineering services, own, maintain and manage access erven, open spaces and/or recreational areas for the benefit of the owners of the proposed Erven/portions/Units within the Development and/or Township(s);
- 20.20.2 each and every owner of Portions 1 to 52 of Erf 906 The Hills Extension 6 Township (including the Members), shall have free access over Portion 54 of Erf 906 The Hills Extension 6 to afford them access to a public road;
- 20.20.3 each and every owner of Portions 1 to 52 of Erf 906 The Hills Extension 6 (including the Members), shall have free entrance to Portion 53 of Erf 906 The Hills Extension 6;
- 20.20.4 the Council shall not be liable for the malfunction of the surfacing of the access erf/erven, the private open space erf/erven, the storm water drainage system and/or any engineering services in or on the newly created erven;
- 20.20.5 the entire Portion 54 of Erf 906 The Hills Extension 6 shall be subject to a servitude for municipal purposes and right of way in favour of the Council and each and every Erf/portion/Unit in the Township/subdivision or Development;
- 20.20.6 the Council's engineering services departments and its emergency services are guaranteed 24 hour access over Portion 54 of Erf 906 The Hills Extension 6 to maintain the Council's installations and/or to provide services to the owners of the newly created erven;
- 20.20.7 Portion 54 of Erf 906 The Hills Extension 6 shall be maintained by the Company, at its own cost, in good order and repair, to the satisfaction of the Council, failing which such maintenance will be done by the Council at the cost of the Company;
- 20.20.8 the Company undertakes not to submit an application to rezone Portion 54 of Erf 906 The Hills Extension 6;

- 20.20.9 Portion 54 of Erf 906 The Hills Extension 6 shall not be alienated to or transferred into the name of any purchaser other than the Company without the written consent of the Council first having been obtained;
- 20.20.10 the Company shall not be deregistered by the Registrar of Companies without the written consent of the Council first having been obtained;
- 20.20.11 the street name allocated to the internal road/s (over the access erf/erven) and the street numbers allocated to the newly created erven in the Development, shall be properly and clearly displayed and shall be maintained by the Company, to the satisfaction of the Council, failing which such maintenance will be done by the Council at the cost of the Company;
- 20.20.12 none of the access erven in the Development (including Portion 54 of Erf 906 The Hills Extension 6) shall be made subject to a mortgage bond;
- 20.20.13 the Developer shall become and remain a Member until the last transfer of any Erf/portion and Unit within the Development and shall be liable for all rates and taxes, or metered services payable in relation to any of the Erven/portions or Units including payments due to the Council on the remainder of the Development, should they have separate title or not;
- 20.20.14 this Memorandum shall not be amended, without the written consent of the Council first being had and obtained within 60 (sixty) days from the date on which such consent is sought and in the event the Council fails to respond within the aforesaid 60 (sixty) day period, it shall be deemed that the Council has consented to such amendment;
- 20.20.15 the Developer shall for purposes of the remainder of the Development after having sold and transferred the first Erf, Unit or portion remain a Member and if it requires consent from the Members to redevelop the common property of Erf 906 The Hills Extension 6 (being Portions 53 and 54 of Erf 906 The Hills Extension 6) its voting rights as contained in the Memorandum shall in this instance only be restricted to 1 (one) vote within the Company; and
- 20.20.16 any other condition which in the opinion of the Council is deemed expedient and approved by the Members.
- 20.21 The Developer's rights contained in the Memorandum may only be exercised in respect of such matters as referred to in Articles 4.8.1.1 and 4.8.1.2.

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