

**Memorandum of Incorporation**

**of**

**The Gowrie Farm Homeowners' Association**

**Registration No. 2006/020641/08**

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## 1 Adoption of this Memorandum of Incorporation

1.1 The Company resolved by a special resolution of the members passed on ..... to amend its existing

Memorandum and Articles of Incorporation by replacing those documents in their entirety with this Memorandum of Incorporation.

- 1.2 This Memorandum of Incorporation is a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act.

## **2 Incorporation and nature of the company**

- 2.1 The Company is a non-profit Company as defined in the Companies Act.
- 2.2 The Company is also a "pre-existing Company" as defined in paragraph (a)(i) of the definition of "Company" in section 1 of the Companies Act. As such, the Company continues to exist as a non-profit Company as if it had been incorporated and registered in terms of the Companies Act (as provided for in item 2 of Schedule 5 to that Act).
- 2.3 The Company is incorporated in accordance with and governed by:
- 2.3.1 The unalterable provisions of the Companies Act, subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum of Incorporation; and
- 2.3.2 The alterable provisions of the Companies Act, subject to any negation, restriction, limitation, qualification, extension or other alteration contemplated in an alterable provision and noted in this Memorandum of Incorporation; and
- 2.3.3 The provisions of this Memorandum of Incorporation.

## **3 Definitions**

- 3.1 In this Memorandum of Incorporation:
- 3.1.1 A reference to a section by number refers to the corresponding section of the Companies Act; and
- 3.1.2 Words that are defined in the Companies Act bear the same meaning in this Memorandum as in that Act.
- 3.2 In this Memorandum of Incorporation, unless the context indicates otherwise,
- 3.2.1 **"the architect"** shall mean the architect appointed to sit on the building committee by -

- 3.2.1.1                                during the development period, by the developer; and
- 3.2.1.2                                after the development period, by the Company;
- 3.2.2                                "**auditors**" means the auditors of the Company;
- 3.2.3                                "**the Board**" shall mean the Board of Directors of the Company;
- 3.2.4                                "**building code**" means the architectural guidelines and building controls that are applicable to the Estate;
- 3.2.5                                "**building committee**" means the committee appointed in terms of clause 66 to ensure compliance with the building code;
- 3.2.6                                "**chairperson**" means the chairperson of the Board of Directors;
- 3.2.7                                "**the common property**" shall mean those areas outside the units, the farm and the golf course, and shall include those parts of Erf 334 Nottingham Road which are maintained by the Company with the consent of the registered owner of Erf 334 Nottingham Road, together with the Rights of Way Servitudes which are registered in favour of the Company and its members and which are depicted on General Plan No 976/2006. The common property is shown on the plan **attached** hereto;
- 3.2.8                                "**the Company**" means Gowrie Farm Homeowners' Association NPC 2006/020641/08;
- 3.2.9                                "**the Companies Act**" shall mean the Companies Act No 71 of 2008, as amended, or any Act which replaces it;
- 3.2.10                                "**the developer**" means the trustees of the Kwa Jabu Trust, Registration No. IT 364/2005/PMB, or their successor in title as developers of the property;
- 3.2.11                                "**development period**" shall mean that period from the establishment of the Company until 31 July 2025;;
- 3.2.12                                "**director**" shall mean a director of the Company;
- 3.2.13                                "**the Estate**" shall mean the development known as Gowrie Farm, which includes all the residential erven, the farm, the golf course and all amenities built, or to be built, on the property;
- 3.2.14                                "**estate manager**" shall mean the person appointed by the Company, from time to time, to undertake the management of the Estate;

- 3.2.15 **"the farm"** shall mean that portion of the property defined by the leasehold diagram No SG 3106/2006, which is owned by the developer and which has been leased to Spring Grove Farm CC, for the period 16 March 2015 to 31 March 2018, in accordance with the Memorandum of Agreement of Lease entered into between the trustees of Kwa Jabu Trust and Spring Grove Farm CC on 21 April 2015;
- 3.2.16 **"financial year"** means the financial year of the Company which shall run from the first day of July in any year to the last day in June in the subsequent year;
- 3.2.17 **"the golf course"** shall mean the golf course built on the property, which is owned by the developer, including the clubhouse, all amenities and facilities constructed as part of the golf course – the boundaries of which are shown on the plan **attached** hereto. (In the event of the developer, or its successors in title developing a further 9 holes, then the boundaries shall include such portions of the properties upon which the further 9 holes are built and the boundaries shall be determined as between the owner of the golf course and the developer or its successor in title, as the owner of the farm);
- 3.2.18 **"the Levy Stabilisation Fund"** means the fund established in terms of clause 63;
- 3.2.19 **"managing agent"** means the managing agent appointed by the Board to manage the Estate;
- 3.2.20 **"member"** means a member of the Company;
- 3.2.21 **"the Municipality"** means the uMngeni Municipality, which has jurisdiction over the Estate;
- 3.2.22 **"the office"** means the registered office of the Company;
- 3.2.23 **"the property"** means the property previously known as The Gowrie Farm No 17939 situate in uMngeni Municipality, in extent 358,261 hectares upon which the Estate was laid out and which is shown on General Plan No 976/2006;
- 3.2.24 **"residential erf"** means a subdivision of the property which allows for residential usage but excludes the small erven. The residential erven are shown on General Plan No 976/2006;

- 3.2.25 **"the roads"** means the roads which have been constructed on the property and over which a right of way servitude has been registered in favour of the Company and its members. The roads are shown on the General Plan No 976/2006. The roads exclude the farm roads, which are not subject to the right of way servitude in favour of the Company;
- 3.2.26 **"sectional title unit"** means a dwelling unit the tenure of which is in terms of the Sectional Title Act No. 95 of 1986 as amended;
- 3.2.27 **"services"** shall mean the provision of water, sewerage, electricity, storm water drainage and roads and such other utilities and amenities as may be provided by the Company;
- 3.2.28 **"small erven"** shall mean those residential erven which are subdivisions of Erf 333 Nottingham Road;
- 3.2.29 **"sports facilities"** shall mean all sport facilities provided at the Estate on property owned by the Company and as such shall exclude the golf club and the golf course;
- 3.2.30 **"stables"** shall mean the stables and demarcated areas around such stables;
- 3.2.31 **"unit"** shall mean a residential erf and/or a sectional title unit the small erven; and
- 3.2.32 **"vice-chairperson"** means the vice-chairperson of the Board of Directors.
- 3.3 Whenever a number of days is prescribed in this Memorandum of Incorporation, the number of days must be calculated:
  - 3.3.1 By excluding the first day and including the last day; and
  - 3.3.2 So as to include Saturdays, Sundays and public holidays, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next ensuing day which is not a Saturday, Sunday or public holiday.

#### 4 **Main object**

- 4.1 The main object of the Company is to manage, promote, advance and protect the communal interests, safety and welfare of the members of the Company, including but not limited to the maintaining of the roads, the

common property, controlling the aesthetic appearance of the buildings on the property, controlling traffic, implementing security measures for the controlled access to the property.

4.2 The Company:

4.2.1 must apply its assets and income to advance its main object; and

4.2.2 may directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with, or ancillary to, its main object.

## 5 Powers of the company

In terms of section 19(1)(b) of the Companies Act a company has all the legal powers and capacity of an individual (except to the extent that a juristic person is incapable of exercising these powers and having these capacities) and except to the extent that the Company's Memorandum of Incorporation provides otherwise. This Company's legal powers and capacity are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1)(b), provided that this Company must restrict itself to the main object set out in clause 4.

## 6 Alterations to this Memorandum of Incorporation

6.1 This Memorandum of Incorporation may be amended only by a special resolution adopted by the members or in terms of a court order.

6.2 No provision of this Memorandum of Incorporation requires that the amendment of a provision of this Memorandum is subject to any special requirements (i.e. requirements in addition to the requirements for amending a Memorandum as set out in section 16 of the Companies Act). Nor does any provision of this Memorandum of Incorporation prohibit the amendment of a provision of this Memorandum.

6.3 Amendments to this Memorandum of Incorporation may be proposed by:

6.3.1 The Board of Directors; or

6.3.2 Members entitled to exercise at least 25% of the voting rights on the resolution.

6.4 The Board shall nevertheless have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in section



17(1) of the Companies Act. A notice of such alteration must be published by:

- 6.4.1 delivering a copy of the notice of alteration to each member by ordinary mail; or
- 6.4.2 delivering a copy of the notice of alteration to each member by email (provided that a member shall be deemed to have received a copy of the rules if sent to his or her last known email address).

## **7 Membership**

7.1 The following people shall be members of the Company:

7.1.1 The developer (for as long as the developer is the registered owner of a unit); and

7.1.2 Any person who is the registered owner of any unit in the Estate.

7.2 No person, other than a person referred to in this clause 7 shall be entitled to be a member of the Company.

7.3 The Board of Directors may from time to time issue a member's certificate which shall be in such form as prescribed by the directors.

## **8 Termination of membership**

8.1 A member remains a member for as long as he or she is the registered owner of a unit in the Estate, and may not resign or otherwise terminate membership.

8.2 A member does not have any claim to the funds or other property of the Company when he or she ceases to be a member of the Company. Nor shall any member's executors, curators, trustees or liquidators have such a claim.

8.3 The Company may claim from any member or his estate any arrear levies, special levies, Gowrie Farm Golf Club subscriptions, VAT, interest, legal fees or other sums due by him to the Company at the time of his ceasing to be a member.

8.4 Levies, special levies, Gowrie Farm Golf Club subscriptions, VAT, interest, legal fees and any other sums due by a member shall not be repayable by the Company to the member upon his ceasing to be a member.

## **9 Sale and transfer of units**

9.1 A member shall not sell or otherwise agree to alienate a unit in the Estate (or an undivided share in a unit) unless it is a condition of the agreement of sale that:

9.1.1 The buyer is obliged, to the satisfaction of the Company, as a contract for the benefit of the Company, to become a member of the Company upon registration of transfer of the unit to him; and

9.1.2 Registration of transfer of that unit into the name of the buyer will automatically constitute the buyer as a member of the Company.

9.2 No member shall transfer a unit of which he is the registered owner unless the Company has certified in writing that –

9.2.1 All contributions and other amounts owing by the member to the Company or the Gowrie Farm Golf Club have been paid prior to the transfer or that prior provision has been made to the satisfaction of the directors for payment at registration;

9.2.2 The purchaser's contribution to the Levy Stabilisation Fund has been paid or that prior provision has been made to the satisfaction of the directors for payment at registration;

9.2.3 The proposed transferee has agreed in writing, to the satisfaction of the Company, to become a member of the Company; and

9.2.4 The purchaser has notified the Company in writing of his or her address and contact details.

9.3 A condition of title has been registered against each unit in the Estate to give effect to clause 9.2.

## **10 Co-ownership of units**

10.1 Where a unit is owned by more than one registered owner all the owners of that unit shall together be deemed to be one member of the Company.

10.2 The co-owners must:

10.2.1 Elect one of the co-owners as the contact person for the unit; and

10.2.2 Notify the Company of the name and address of the contact person.

10.3 Any notices served by the Company on the contact person shall be deemed to be service upon all the co-owners.

10.4 If the co-owners fail to elect a contact person, or to notify the Company of the contact person's details, then service of notices by the Company may be upon any one of the co-owners and this shall be deemed to be service upon all the co-owners.

## **11 Member's rights and obligations**

11.1 The rights and obligations of a member are not transferable but nothing in this memorandum shall prevent a member from ceding these rights to a mortgagee who has a bond registered over the member's unit.

11.2 The member shall at all times further the objects and interests of the Company to the best of his ability and shall observe all the rules made by the Company and the directors.

## **12 Rights and the benefits of membership**

12.1 A member who is in default of his obligation to pay any levies, special levies, Gowrie Farm Golf Club subscriptions, VAT, interest, legal fees or any other sums due to the Company, or who is in breach of any rule of the Company or of this Memorandum of Incorporation

shall not be entitled to attend, speak or vote at any meeting of the Company, or to hold office as director.

12.1.1

12.2 Where a member has leased out his unit for ten or more consecutive days to a particular tenant, the tenant (and the tenant's guests and family members) shall have the right to use of the Estate, the Company's facilities, the dams and the golf club. Where a member has leased out his unit for less than ten consecutive days, then the tenant concerned (and the tenant's guests and family members) shall not have the right to the Company's facilities.

### **13 Member's meetings**

13.1 The Companies Act provides when member's meetings must be held, but allows a Company's Memorandum of Incorporation to provide for additional member's meetings. As contemplated in section 61(2) of the Companies Act, the Company is required, in addition to the member's meetings required in terms of the Companies Act, to hold its annual general meeting within 6 months after the end of each financial year.

13.2 Other general meetings shall be called at the discretion of the directors (subject to the provisions of the Companies Act and of this Memorandum of Incorporation) and shall be called extraordinary general meetings.

### **14 Notice of member's meetings**

The minimum number of days' notice which this Company is required to give for a member's meeting is as follows:

14.1 An annual general meeting and a meeting called for the passing of a special resolution: 21 clear days' notice in writing; and

14.2 Any other extraordinary general meeting: 14 clear days' notice in writing.

### **15 Member's right to requisition a meeting**

The Board of Directors of the Company must call a member's meeting if a demand is made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter concerned (see section 61 of the Companies Act). [In order to propose an amendment to this Memorandum of Incorporation, members entitled to exercise at least 25% of the voting rights on the resolution must, in terms of paragraph 6.3, propose the amendment].

### **16 Venue of member's meetings**

The authority of the Company's Board of Directors to determine the location of any member's meetings, as set out in section 61(9) of the Companies Act, is limited or restricted as follows: members' meetings of this Company must be held within a ten kilometre radius of the Estate.

## 17 Quorum for member's meetings

- 17.1 A member's meeting may not begin, and a particular matter shall not begin to be considered at a member's meeting, unless a quorum is present. The quorum for a meeting to begin is as follows:
  - 17.1.1 During the development period, the developer must be represented and not less than 8 members must be present to exercise votes; and
  - 17.1.2 After the development period: sufficient people must be present to exercise at least 10% of all the voting rights.
- 17.2 If within thirty minutes after the appointed time for a meeting to begin, the quorum is not present, the meeting is adjourned, without motion, vote, or further notice, for one week, subject to clause 17.4.
- 17.3 If within thirty minutes after the appointed time for consideration of a particular matter the requirements for that matter to begin to be considered have not been satisfied:
  - 17.3.1 If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; and
  - 17.3.2 If there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, for one week.
- 17.4 The person intended to chair a meeting that cannot begin because a quorum is not present may extend the thirty minute limit for a reasonable period on the grounds that:
  - 17.4.1 Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or
  - 17.4.2 One or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders together with those already present would satisfy the quorum requirements.
- 17.5 The Company shall not be required to give further notice of a meeting that has been postponed in terms of clauses 17.2 and 17.3, unless:

- 17.5.1 The location of the meeting is different from the location of the adjourned meeting or from the location as announced at the time of the adjournment; or
- 17.5.2 The starting time of the meeting is different from the starting time of the adjourned meeting or from the starting time as announced at the time of the adjournment.
- 17.6 If, at the time appointed for an adjourned meeting to resume the quorum requirements are again not met, the members present in person or by proxy will be deemed to constitute a quorum.
- 17.7 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one member with voting rights entitled to be exercised at the meeting, or on that matter, is present.

## **18 Agenda at annual general meetings**

The following matters shall be dealt with at every annual general meeting:

- 18.1 The consideration of the chairperson's report (or, should the chairperson so direct, the report of the managing agent);
- 18.2 The election of directors;
- 18.3 The consideration of any resolutions proposed for adoption by such meeting (including special resolutions) and the voting upon any such resolutions;
- 18.4 The consideration of the audited annual financial statements of the Company for the financial year of the Company preceding the date of such meeting;
- 18.5 The consideration of the report of the auditors;
- 18.6 The noting of the levy and budget for the financial year during which such annual general meeting takes place; and
- 18.7 The appointment of auditors.

## 19 **Procedure for proposing resolutions**

No member shall propose a resolution for voting on at an annual general meeting or other general meeting, or raise a matter for discussion or consideration, unless written notice of the proposed resolution or matter has been given to the Company at least 48 hours before the meeting concerned.

## 20 **Proxies**

20.1 A member may be represented at an annual general meeting or extraordinary general meeting by proxy who need not be a member of the Company.

20.2 The instrument appointing a proxy must be in writing, dated and signed by the member or his duly authorised agent, but need not be in any particular form. A proxy appointment remains valid for a period of one year from the date on which it was signed, unless it is revoked in writing or substituted by a later inconsistent appointment and a copy of the revocation instrument is delivered to the Company.

20.3 Where a unit is owned by more than one registered owner, the proxy instrument must be signed by a majority of these owners. Where a unit is owned by a Company, the proxy must be signed by a director of the Company or by its secretary, and where a unit is owned by an association of persons, the proxy must be signed by a duly authorised representative of the association.

20.4 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 documents shall be deposited, faxed or scanned and emailed to the Company's offices at least 24 hours before the time appointed for the commencement of the meeting concerned (or the adjourned meeting) unless the chairperson directs that a lesser period applies.

20.5 A vote given in terms of an instrument of proxy shall be valid even if the principal has died or has revoked the proxy, provided that the Company has not received any intimation in writing of the death or revocation by 24 hours before the time for the meeting to begin.

- 20.6 The right of a member of the Company to appoint two or more persons concurrently as proxies, as set out in section 58(3)(a) of the Companies Act, is excluded.
- 20.7 The right of a member of the Company to appoint more than one proxy to exercise voting rights attached to different securities, as set out in section 58(3)(a), is excluded.
- 20.8 The authority of a member's proxy to delegate the proxy's powers to another person subject to any restriction contained in the instrument appointing the proxy, as set out in section 58(3)(b) of the Companies Act, is excluded.
- 20.9 The authority of a member's proxy to exercise, or abstain from exercising, any voting right of the member without direction from the member (except to the extent that the instrument appointing the proxy provides otherwise) as set out in section 58(7) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

## 21 **Electronic participation in member's meetings**

- 21.1 Any member's meeting may be conducted entirely by electronic communication, or one or more members, or proxies of members may participate by electronic communication in all or part of any member's meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 21.2 Any notice of a member's meeting at which it will be possible for members to participate by way of electronic communication shall inform members of the ability to participate in this way and shall provide the necessary information to enable members or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the member or proxy concerned.

## 22 **Member's voting**

- 22.1 Each voting member of the Company, present at every annual general meeting or extraordinary general meeting in person or by proxy, shall have one vote for each unit registered in his or her name.



- 22.2 In addition to the votes set out in clause 22.1, the developer shall during the development period have an additional 125 votes.
- 22.3 The following restrictions apply to voting:
- 22.3.1 A member who is in arrears with levies or any other sum owed to the Company, as at the record date, may not vote, in person or by proxy, at any general meeting; and
- 22.3.2 If a unit is registered in the name of more than one person, then all such co-owners shall jointly have one vote.
- 22.4 Every resolution proposed for adoption by a general meeting, and every amendment of a resolution proposed for adoption by a general meeting, shall be:
- 22.4.1 Provided to the Company in writing at least 48 hours before the agenda is printed and distributed; and
- 22.4.2 Seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.
- 22.5 At any meeting of the Company a resolution put to the vote shall be decided on a show of hands, unless:
- 22.5.1 The chairperson of the meeting directs otherwise; or
- 22.5.2 A member demands a poll.
- 22.6 If voting is decided on a show of hands, then 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 defeated and an entry in the minutes of the meeting recording this fact, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- 22.7 A demand for a poll may be withdrawn.
- 22.8 If voting is to be decided by a poll, then voting shall be by way of a secret poll taken during the course of the meeting or alternatively in such other manner as the chairperson of the meeting may direct.

22.9 Voting on the election of a chairperson of a general meeting [if necessary] or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy and entitled to vote.

22.10 The chairperson shall not have a second or casting vote at a general meeting.

## **23 Member's resolutions**

23.1 For an ordinary resolution to be adopted at a member's meeting of this Company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution at the meeting.

23.2 For a special resolution to be adopted at a member's meeting of this Company, it must be supported by at least 67% of the voting rights exercised on the resolution at a member's meeting.)

## **24 Round robin resolutions: shareholders**

Section 60 of the Companies Act provides that, except to the extent that a Company's Memorandum of Incorporation provides otherwise, a resolution may be voted on in writing (without a meeting being held) and will be adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders meeting. Any business required to be conducted at the Company's annual general meeting may not be conducted in this manner.

## **25 Member's right to information**

Section 26(1) of the Companies Act gives every person who has a beneficial interest in a Company's securities the right of access to the following information and documents: the Company's Memorandum of Incorporation; any amendments to the Memorandum of Incorporation; the Company's rules; certain records relating to directors; reports to annual meetings; the annual financial statements; notices and minutes of annual meetings and other member's meetings and the member's register. Section 26(3) provides that the Memorandum of Incorporation of a Company may establish additional information rights for persons who have a beneficial interest in a Company's securities. In the case of this Company, every

person who has a beneficial interest in this Company's securities has the following right to access information in addition to those rights set out in section 26(1) of the Companies Act: the right to view the minutes of the meetings of the Board of Directors at the office of the managing agents after arranging an appropriate time to do so with the managing agents.

## **26 Member's authority to act**

- 26.1 Section 57(2) of the Companies Act provides that, except to the extent that a Company's Memorandum of Incorporation provides otherwise, if, at any time, there is only one member of a company, that member has the authority to act without notice or compliance with any other internal formalities. The authority of a sole member of this Company to act without notice or compliance with other internal formalities as contemplated in section 57(2) of the Companies Act, is excluded.
- 26.2 Section 57(4) of the Companies Act provides that if, at any time, every member of a company is also a director of that company, then any matter that must be referred by the Board of Directors to the members may be decided by the members at any time after being referred, without notice or compliance with any other internal formalities. The authority of the members of this Company to decide matters in the circumstances contemplated in section 57(4) without notice or compliance with any other internal formalities, is excluded.

## **27 Record date for exercise of member rights**

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

- 27.1 In the case of a meeting, the latest date by which the Company is required to give members notice of that meeting; and
- 27.2 In any other case, the date of the action or event.

## **28 Composition of the Board of Directors**

28.1 During the development period, the Board of Directors must comprise of not less than 2 and not more than 5 directors appointed or elected as follows:

28.1.1 Two directors appointed by the developer; and

28.1.2 The remaining directors elected by the members.

28.2 After the development period, the Board of Directors shall comprise of not less than 2 and not more than 7 directors, who shall be elected by the members.

28.3 There are no *ex officio* directors of the Company, as contemplated in section 66(4) of the Companies Act.

## **29 Term of office**

The elected directors of this Company serve for a period of two years and shall be eligible for re-election. Half the Board shall be elected each year thus ensuring continuity, where there is an odd number of directors then every alternate year an additional director shall be elected.

## **30 Election of directors**

30.1 Where a director is required to be elected, the election must be conducted as a series of votes, with each vote being on the candidacy of a single individual to fill a single vacancy, with the series of the votes continuing until all vacancies on the Board have been filled.

30.2 Each vote may be exercised once and the vacancy is filled only if a majority of voting rights exercised support the candidate.

## **31 Co-opting of directors onto Board**

The Board of Directors may appoint a qualified person to fill any vacancy on the Board on a temporary basis until the next annual general meeting, as contemplated in section 68(3) of the Companies Act.

**32 Qualification to act as a director**

A director must be an individual, but need not himself be a member of the Company.

**33 Vacation of office as director**

A director shall be deemed to have vacated his office if:

- 33.1 He commits an act of insolvency;
- 33.2 His estate is sequestrated;
- 33.3 He is convicted for any offence involving dishonesty;
- 33.4 He becomes of unsound mind, or is found to be lunatic;
- 33.5 He resigns from office in writing;
- 33.6 He dies; or
- 33.7 He is removed from office in terms of the Companies Act.

**34 Electronic participation in director's meetings**

The authority of the directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), is not limited nor restricted by this Memorandum of Incorporation.

**35 Notice of director's meetings**

- 35.1 The Board of Directors may determine the form in which notice of its meetings is given, as well as the time for giving notice.
- 35.2 The authority of this Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5)(a) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

**36 Director's right to requisition a meeting**

The chairperson of the Board of Directors of the Company must call a director's meeting if a demand is made by two or more directors.

**37 Quorum for director's meetings**

A director's meeting may not begin unless a quorum is present. A majority of directors must be present in order to constitute a quorum.

**38 Voting at director's meetings**

38.1 Each director of a company has one vote on a matter before the Board of Directors.

38.2 A resolution is approved if it is supported by a majority of the votes cast at a director's meeting.

38.3 The chairperson of the Board of Directors has a second or casting vote at director's meetings in event of a deadlock in voting by the directors.

**39 Round robin resolutions: directors**

Section 74 of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, a decision of the Board of Directors of a company may be adopted by written consent of a majority of the directors (without a meeting being held) if each director has received notice of the matter to be decided. The authority of this Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74, is not limited or restricted by this Memorandum of Incorporation.

**40 Appointment of chairperson and vice-chairperson**

During the development period, the chairperson and vice-chairperson shall be appointed by the developer. Thereafter, the directors shall appoint from their number a chairperson and vice-chairperson at the first meeting after each annual general meeting.

**41 Control of meetings**

- 41.1 The chairperson presides at all meetings of the Board of Directors, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the Board of Directors.
- 41.2 If at any meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the start of the meeting, then the vice chairperson shall act as chairperson of that meeting and shall exercise all the powers and duties of the chairperson in relation to that meeting. If the vice chairperson is also not present within 5 minutes after the time appointed for the start of the meeting, then those directors present shall appoint a chairperson for the meeting, who shall also exercise all the powers and duties of the chairperson in relation to that meeting.

**42 Proceedings at meetings of directors**

- 42.1 The directors may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Memorandum of Incorporation.
- 42.2 Meetings of the directors shall be held at least once every quarter (but this will not be necessary if all the directors waive this requirement in writing in respect of a particular quarter).
- 42.3 Minutes must be taken of every director's meeting, although not necessarily verbatim minutes. The minutes must be reduced to writing and shall then be certified correct by the chairperson of the next meeting. All minutes of directors' meetings shall, after certification, be placed in a directors' minute book to be kept in accordance with the requirements of the Companies Act. The directors' minute book shall be open for inspection at all reasonable times by a director, the auditors, the estate manager and any member in good standing.
- 42.4 All competent resolutions recorded in the minutes of any directors' meeting shall be valid and of full force and effect, with effect from the passing of such resolutions, and until varied or rescinded.

- 42.5 Except to the extent set out in this Memorandum of Incorporation, the proceedings at any directors' meeting shall be conducted in such reasonable manner and form, as the chairperson of the meeting shall decide.

**43 Functions and powers of the Board of Directors**

- 43.1 The authority of the Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.
- 43.2 Without limiting the generality of clause 43.1, the directors may in their discretion, from time to time, for the purposes of the Company borrow or raise such sum or sums of money from members of the Company or from such other source as the directors may decide.
- 43.3 If at any time this Company has only one director, the authority of that director to exercise any power or perform any function of the Board of Directors without notice or compliance with any other internal formalities, as set out in that section 57(3), is excluded.

**44 Directors' expenses**

The Board of Directors shall not be entitled to remuneration for their services, but shall be reimbursed for all reasonable and genuine expenses incurred by them in the performance of their duties as directors, chairperson, or vice-chairperson of the Board of Directors.

**45 Professional advisors**

The directors have the right to engage, on behalf of the Company, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employees whatsoever for any reason deemed necessary by the directors and on such terms as the directors shall decide, subject to any of the provisions of this Memorandum of Incorporation.



**46 Managing agent**

- 46.1 The directors shall be entitled to appoint a managing agent to manage the estate on behalf of the Company.
- 46.2 The contract appointing any managing agent must include provisions to the effect that:
- 46.2.1 The Company may cancel the contract without notice if the managing agent is in breach of any material term of the contract (or if he is guilty of conduct which at common law would justify the termination of the contract between employer and employee); and
- 46.2.2 The managing agent shall, in these circumstances, have no claim against the Company or any of the members as a result of cancellation.
- 46.3 A member or a mortgagee of a unit may, if the managing agent is in breach of the provisions of his contract as set out in clause 46.1, request the directors of the Company to consider terminating the managing agent's contract.

**47 Delegation of powers to estate manager**

- 47.1 The powers of the Company, the Board of Directors and the committees may be delegated to the estate manager to such extent, and upon such conditions, as the Directors may determine from time to time. Any delegation may be revoked.
- 47.2 The estate manager and the managing agent must take out fidelity insurance to the satisfaction of the Directors for all moneys held by them on behalf of the Company from time to time.

**48 Indemnification of directors and officers**

- 48.1 The authority of this Company to advance expenses to a director or officer of the Company to defend legal proceedings arising out of his service to the Company, as set out in section 78(4) of the Companies Act, is limited, restricted or extended only to the following extent: If the director or officer is found to be liable for a breach of common law or statutory duty or is found

guilty of a criminal offence, then the director or officer shall reimburse the Company for these expenses within 30 days of the finding (regardless of whether or not the director or officer appeals the finding and provided that, if the finding is overturned on appeal, then the Company shall reimburse the director or officer for expenses incurred in the initial proceedings and in the appeal).

48.2 The Company must indemnify a director or officer, as set out in section 78(5) of the Companies Act, for expenses incurred in defending legal proceedings arising out of his service to the Company if the legal proceedings are abandoned or the director or officer is not to be liable [a company may not indemnify a director or officer for wilful misconduct, wilful breach of trust or for liability arising in terms of sections 77(3)(a), (b) and (c) of the Companies Act].

48.3 The Company must purchase insurance to protect the Company, a director or an officer against any liability or expense for which the Company is permitted to indemnify the director or officer, as set out in section 78(7) of the Companies Act.

#### 49 **Variation of decisions**

The Board of Directors shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

#### 50 **Appointment and authority of committees**

The Company's Board of Directors may appoint committees of directors and delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Companies Act.

50.1 The authority of a committee appointed by this Company's Board of Directors to consult with or receive advice from any person, and to exercise the full authority of the Board on matters referred to it, as set out in section 72(2)(b) and (c) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

**51 Composition of committees**

The authority of the Company's Board of Directors to include in any committee persons who are not directors, as set out in section 72(2)(a), is not limited or restricted by this Memorandum of Incorporation.

**52 Finance committee**

There shall be established a finance committee, which shall consist of 3 persons appointed by the Board of Directors, at least 2 of which shall be directors of the Company.

**53 Budget**

53.1 The finance committee must prepare a budget to meet the expenses of the Company during each financial year. The budget must –

53.1.1 Specify any estimated deficiency which will result from the preceding financial year; and

53.1.2 Include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

53.2 The budget must be prepared and delivered to the members not less than 30 days before the end of each financial year (or as soon as reasonably possible thereafter). The budget must be accompanied by a notice specifying the levy payable by each member as a contribution to the expenses and reserve fund.

53.3 If the finance committee fails for any reason to prepare the budget or to notify members of the levies, then every member shall (until the budget and levy notice has been issued) continue to pay the levy imposed in the previous financial year as an interim measure.

**54 Levies**

The finance committee shall, from time to time, but at least annually establish and maintain a levy fund for the purpose of meeting all the expenses which the Company has incurred, or which the directors reasonably anticipate the company

will incur (which may include a reasonable provision for contingencies) for the ensuing financial year, in the furtherance of the Company's objects.

## **55 Purpose of levies**

55.1 Levies are intended to cover costs incurred by the Company in:

55.1.1 Maintaining, repairing and improving the roads, maintaining and repairing the tennis court, swimming pool and any other amenities belonging to the Company, as well as the perimeter fence, the gate house and the maintenance and improvement of the common property in the Estate;

55.1.2 Paying rates and other charges payable by the Company in respect of the erven vested in the Company and services provided to the Company;

55.1.3 Paying the salaries and wages of employees; and

55.1.4 Paying all expenses necessarily or reasonably incurred in connection with the management of the Company, the Estate, and the Company's affairs including any expenses reasonably or necessarily incurred in the attainment of the objects of the Company or in the pursuit of its business.

55.2 Levies shall not cover the consumption of water and electricity, sewerage or the maintenance of improvements on the units. These expenses shall be for the account of the member.

## **56 Calculating levies**

56.1 In computing the levy, the finance committee shall take into account all expenses relating to the residential erven, sports facilities, open spaces and sectional title units administered by the Company and shall establish a base monthly levy taking into account the number of serviced erven in the Estate from time to time. The finance committee shall then take into account subparagraphs 56.1, 56.2 and 56.3.

56.2 During the development period the developer shall pay no levy on each of the units owned by the developer, which have not been transferred. During the development period the developer shall however contribute any shortfall in respect of operating costs of the Company after taking into account all the levies payable by the members.

- 56.3 The farm and golf club (that being the clubhouse, the golf course and maintenance sheds) shall each attract a levy equivalent to the amount payable by owners of a single residential erven. The levy is however subject to the proviso that the owners of the farm and the golf club are responsible for the maintenance and the upkeep of the farm and the golf club (clubhouse and golf course), respectively.

**57 Payment of levies**

- 57.1 Every levy shall be payable monthly in advance on the first day of each and every month. Levies are exclusive of VAT (ie VAT is to be added).
- 57.2 Members must pay their levies by stop order or debit order. Failing which, the Company shall be entitled to charge an administration fee for each month that payment is made by any other way. The administration fee shall be determined by the Board from time to time and, until varied by the Board, such administration fee shall be R100 (plus VAT) per month.

**58 Interest on levies**

Interest at 2% per month (or at such other rate as the finance committee may determine from time to time) shall accrue on levies not paid on due date.

**59 Increase of levies**

The finance committee shall be entitled to review the levies from time to time in its discretion.

**60 Special levies**

The finance committee may from time to time:

- 60.1 Make special levies upon the members in respect of any expenses of the Company which were not included in the budget or which were underestimated in the budget;
- 60.2 Determine the terms of payment of the special levy; and
- 60.3 Determine that a special levy shall be payable exclusively by a specified class of levy payer (or determine that a special levy be allocated on a differential basis between classes of levy payer).

## 61 **Stable levy**

- 61.1 All owners of stables at the Estate shall pay a separate and additional stable levy for purposes of meeting all expenses associated with the keeping of horses on the estate including but not limited to:
  - 61.1.1 The maintenance of the stable and its environs:
  - 61.1.2 The daily clean-up and disposal of horse dung from the stables as well as any other area on the estate;
  - 61.1.3 The continuous sterilisation of the stable area to eradicate flies and other unwanted pests.
- 61.2 The stable committee, which shall present such proposed levy to the finance committee for approval, shall calculate the stable levy on an annual basis.
- 61.3 The HOA shall collect the stable levy on behalf of the stable committee and may impose an administrative charge for said collection.

## 62 **Capital expenditure**

The finance committee shall not be entitled, without a resolution of members in general meeting, to undertake capital expenditure on any one item which exceeds or is likely to exceed R300 000. This amount shall be increased annually at the rate of 2% above the CPIX, as published from time to time.

## 63 **Levy Stabilisation Fund**

- 63.1 A Levy Stabilisation Fund has been established for the purpose of generating funds to assist with the maintenance and development of the common property.
- 63.2 The Levy Stabilisation Fund shall be managed by the Board of Directors or, should the Board so choose, by the finance committee.
- 63.3 Contributions to the Levy Stabilisation Fund shall be made on the date of registration of transfer from the funds of the purchaser. The conveyancer shall ensure that the contribution is made.
- 63.4 The amount payable to the Levy Stabilisation Fund shall, in the case of a re-sale of a vacant property shall be 1% of the selling price and in the case

of a developed property, then the contribution to the Levy Stabilisation Fund shall be 0.5% of the selling price of the property. The conveyancers attending to such transfer shall be required to pay such amount and the Company shall not grant consent to the transfer until such time as it receives a satisfactory guarantee or undertaking from the conveyancers. No contribution shall be made to the levy Stabilisation Fund on the sale of any property from the developer or its successors in title.

63.5 The board is entitled to waive a levy stabilisation contribution if:

- 63.5.1 A unit is transferred to a company or trust and the board is satisfied that the transfer is part of a genuine restructuring of a member's assets; or
- 63.5.2 Ownership of a unit, or an undivided share in a unit, passes by inheritance to a deceased member's spouse as defined in Section 1 of the Estate Duty Act, 1955 (Act No 45 of 1955) or to a *bona fide* partner resident in the dwelling.

## 64 **Accounts**

The notice of the annual general meeting shall be accompanied by audited financial statements for the past financial year.

## 65 **Application of optional provisions of the Companies Act (audit etc)**

- 65.1 This Company elects, in terms of section 34(2) of the Companies Act, to comply voluntarily with the enhanced accountability requirements of Chapter 3 of the Companies Act to the following extent: The financial statements of the Company shall be audited once in every financial year. For the sake of clarity, it is recorded that the Company need not comply with section 92 of the Companies Act dealing with the rotation of auditors.
- 65.2 This Company does not elect, in terms of section 118(1)(c)(ii) of the Companies Act, to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act or to the Takeover Regulations made in terms of the Companies Act.

**66 Building committee**

- 66.1 The developer shall, during the development period, form a building committee comprising of an architect nominated by the developer, together with a representative of the developer. Upon termination of the development period, the building committee shall comprise of an architect appointed by the Company and a nominee of the Company.
- 66.2 The duties of the building committee shall be to ensure compliance with the building code and to formulate and amend such building code which shall include the following:
- 66.2.1 Approve all building plans in conjunction with the Local Authority having control over the estate;
  - 66.2.2 Control of all landscaping and gardening in respect of the estate erven;
  - 66.2.3 Determining the position of each building to be built on the estate notwithstanding that a building may be built on the property of a particular owner. The position of a members building shall be determined in collaboration with the owner subject to the condition that the building committee's discretion shall prevail in the event of any disagreement;
  - 66.2.4 Impose such height restrictions as it deems necessary;
- 66.3 The building committee shall be entitled to charge a fee for the approval of building plans which shall be payable by the owner submitting building plans for approval. This fee is subject to amendment from time to time. At present, the fee is R3 800 which fee covers the first two submissions. The fee for the third and each subsequent submission is presently R900. In the event of a member wishing to use an architect not approved by the building committee, then an additional submission fee of R1 000 shall be payable, making the first submission fee the sum of R4 800.
- 66.4 The building committee shall on request, supply an owner with the particulars of the building code;
- 66.5 The building committee shall be entitled, from time to time, to impose additional regulations or to amend the building code, in order to ensure that a high quality of building standards and aesthetics is maintained;



- 66.6 The aforesaid building codes shall be subject to whatever building restrictions are imposed by the Development Tribunal.

**67 Compliance with the building code**

Subject to the provisions of the building code no member may, without the written consent of the building committee:

- 67.1 change the colour of the exterior walls of the unit or building concerned, nor the colour of the exterior of the doors and window frames thereof, nor any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;
- 67.2 replace any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds shutters, awnings or ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon construction of the unit, with such items of the same nature and of similar appearance;
- 67.3 to make any additions or extensions to the unit or buildings or to erect any further buildings or structures or fences whether of a temporary or permanent nature upon any land vested in him in the township;
- 67.4 to remove any fixtures, fittings, doors, windows nor to demolish any portion of the exterior of any unit or building;
- 67.5 in the event of the destruction of any unit, and the owner thereof deciding to rebuild such unit, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the Company, which shall within 21 days of such submission to it, submit any comments which it may have in connection therewith to the building committee and the local authority.

**68 Building on common property**

Nothing contained herein shall be construed as preventing the developer from:

- 68.1 Building upon any erven owned by it, any buildings of whatsoever nature which it may be entitled to erect in terms of the building code, and as may be approved by the local authority;

- 68.2 Nothing contained herein shall be construed as preventing the developer building upon any erven owned by it, any buildings of whatsoever nature which it may be entitled to erect in terms of the building code and as ay be approved by the local authority.

**69 Powers of the building committee**

In addition to such other powers as may be conferred upon it by the directors, the building committee shall have the following powers, without prejudice to any other rights of the Company, either in terms of these presents or at law:

- 69.1 Whenever it considers that the appearance of any unit or building or of any land vested in a member or members is such as to be unsightly or injurious to the amenities of the surrounding area or the estate generally, to serve notice on such member or members to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition;
- 69.2 In the event of the owner failing to make the necessary repair within 30 days of the written notice referred to above, the estate manger shall be empowered to fix such repair and the Board shall recover the cost either from such owner by way of the levy or otherwise as it may deem fit. In the case of buildings owned under the Sectional Titles Act, the estate manager shall, without notice, effect the necessary repair and the Board shall recover the cost of so doing from the Sectional Title owner concerned;
- 69.3 To determine the routine maintenance requirements:
- 69.3.1 Of the exterior of each and every building within the estate and to instruct the estate manager to attend to such requirements from time to time;
- 69.3.2 Of all open space and roads in the estate, in accordance with the provisions of the building code and the statement lodged in terms thereof;
- 69.3.3 Of all other ground within the estate not covered by buildings whether held by the Company or by members either individually or in undivided shares; and
- 69.4 The members hereby agree that the estate manager may when so instructed by the building committee, take such action as may be required

by the committee and recover the cost from the Company which shall in turn be entitled to recover the costs from the members concerned.

## 70 House rules

70.1 Subject to any restriction imposed or direction given at a general meeting of the Company, the directors may from time to time make house rules in regard to:

70.1.1 The use by members or their households, their guests, and lessees, of the roads, open space and sporting amenities (excluding the golf course), including the right to prohibit, restrict or control such use of the roads and open space or any portions thereof as may from time to time be necessary or expedient;

70.1.2 The preservation of the natural environment, vegetation and fauna in the township;

70.1.3 The use of parking areas;

70.1.4 The right to prohibit, restrict or control the keeping of any animals or pets;

70.1.5 The use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;

70.1.6 The interaction between the home owners and the owner of the farm, which rules shall, however be subject to the lease agreement between the owners of the farm and the lessee of the farm;

70.1.7 The control of business premises;

70.1.8 The placing of movable objects upon the outside of buildings, including the power to remove any such objects;

70.1.9 The keeping of flammable substances;

70.1.10 The conduct of any persons within the estate for the prevention of nuisance of any nature to any member;

70.1.11 The use of land within any residential erf in the township;

70.2 For the enforcement of any of the house rules made by the directors in terms hereof, the directors may:

- 70.2.1 take or cause to be taken any such steps as they may consider necessary to remedy the breach of the house rule of which the member may be guilty, and; debit the cost of such to the member concerned which amount shall then be deemed to be a debt owing by the member concerned to the Company; and/ or
- 70.2.2 Impose a system of fines or other penalties. The amount of such fines shall be reviewed and confirmed at an annual general meeting of the Company and until varied at a general meeting may not exceed R5 000;
- 70.2.3 Take such other action including proceedings in Court, as they may deem fit.
- 70.3 In the event of any breach of the house rules by the member of any member's household, or his guests, or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the directors may take or cause to be taken such steps against the person actually committing the breach as they deem fit.
- 70.4 In the event of any member disputing the fact that he has committed a breach of any of the house rules aforesaid, a committee of three, appointed by the Board for the purpose, shall adjudicate upon the issue at such time and in such a manner and according to such procedure (provided that natural justice shall be observed) as the chairman may direct. The committee shall comprise of at least one member of the Company and such other parties as the chairman may appoint. The remaining two parties need not necessarily be members of the Company. Any fine imposed upon any member shall be deemed to be a debt due by the member to the Company and shall be recoverable by ordinary civil process.
- 70.5 Should any member wish to appeal against a decision of the committee or the penalty imposed by the committee, such member may lodge an appeal in writing, stating the grounds on which the member wishes to appeal and addressed to the chairman of the Board within fourteen days of the member being notified of the decision by the committee referred to in subparagraph 70.4 above. Upon receiving the appeal, the chairman shall appoint an appeals tribunal of not less than three persons, two of whom shall be members, who shall consider the appeal and whose decision shall be final.

- 70.6 Notwithstanding the foregoing, the directors may, in the name of the Company, enforce the provisions of any house rules by civil application or action in court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they deem fit.
- 70.7 Notwithstanding the above, in the event of any member being in persistent or flagrant breach of any of the articles or any house rules made in terms thereof, or being in breach thereof and failing to remedy such breach, the directors may, after not less than seven days' notice to the member concerned that they intend to do so, discontinue any service provided to the member by the Company for such period as the directors may deem fit.
- 70.8 It shall be the duty of the estate manager, or such other person or body as may be empowered by the directors, to ensure compliance by the members, their guests, lessees and all other persons within the township, with the house rules and to this end to issue such notices, impose such fines or do such things as may be necessary or requisite.

## **71 Compliance with house rules**

Each member undertakes to the Company that he shall comply with any house rules made in terms and conditions of this memorandum of incorporation and any house rules made in terms hereof.

## **72 Small erven**

- 72.1 The residents of the small erven, being subdivisions of Erf 333 Nottingham Road, shall form a residents' committee with a maximum of 3 members. One of the members of the residents' committee shall be appointed by –
- 72.1.1 The developer, during the development period; and
- 72.1.2 The Board after the termination of the development period.
- 72.2 The chairperson of the resident's committee may be co-opted to the Board, as an observer and to relay the views of the residents living on the small properties.
- 72.3 The purpose and function of the resident's committee will be to liaise with the Board on all matters concerning the residents of the small properties and to ensure proper maintenance of the infra-structure and common areas within the small housing area.

- 72.4 The owners of the small erven shall pay a monthly levy to the Company, the amount of which shall be determined by the Board but subject to the condition that it shall not be more than 5% of the amount payable by owners of residential erven.

**73 Erven forming roads and open space**

Neither the whole nor any portion of the property owned by the Company shall be sold, let or alienated or otherwise disposed of, or subdivided except in accordance with a special resolution passed by members of the Company;

**74 Use of public spaces and roads**

- 74.1 The Company may at its pleasure permit the members, subject to the provisions of these presents to use the open space and roads, and shall do so unless by special resolution taken at an extraordinary general meeting called for the purpose it is otherwise resolved.
- 74.2 The directors may from time to time and whenever they deem it necessary, limit, restrict or suspend such use in relation to any part of such roads and open space.

**75 Golf club**

- 75.1 It is compulsory for all members of the Company to also be members of the golf club and as such each member shall pay an annual subscription to the owners of the golf club. In this regard, the members record that the existence of a golf club on the Estate –
- 75.1.1 Represents a significant convenience to members, who are provided with easy access to golf and to aesthetic outlooks over the golf course; and
- 75.1.2 Contributes significantly to the value of units on the Estate, it being recognised that the right and obligation to take membership of the golf club is regarded as a significant contributor towards property values on the Estate.
- 75.2 As members of the golf club, home owners shall enjoy the rights and benefits associated with such membership subject to the constitution, rules and regulations as adopted by the golf club from time to time.

75.3 Membership to the golf club will not be exclusive to property owners in the estate.

75.4 Specific rules that will regulate the interaction between the homeowner and golf course will be drawn up by the developer and will form part of these articles.

## **76 Stables and the keeping of horses**

76.1 The developer and/or the owner of the farm may make provision for the stabling of horses on the farm, subject to the condition that not more than 12 horses may be stabled at any one time. The owner of the farm shall be entitled to charge a market related rate for the grazing of the horses and for the rental of the land which the horses shall be entitled to use. This rental shall be paid by the owners of the horses.

76.2 Stables may be owned by home owners as well as non-home owners.

76.3 Ownership of the stables shall be in terms of the Sectional Titles Act or the Share Block Control Act.

76.4 Ownership of a stable, the stabling of horses and the movement of the animals on the estate will be strictly in accordance with the rules and conditions relating to the stables, which rules shall be compiled by the developer and, if required, shall be amended from time to time by the Board.

## **77 Sport facilities**

77.1 The use of sport facilities on the estate, excluding the golf course, will be in accordance with the rules and regulations as decided by the Board from time to time.

77.2 Other than membership to the golf club and the equestrian facilities provided at the estate, the usage of the sport facilities will be restricted to members' households and their guests, provided that the Board may introduce regulations and conditions from time to time, permitting usage of the sport facilities by non-members.

## **78 Lease of the farm**

78.1 The Board shall ensure that the conditions of lease entered into between the developers and the lessee of the farm shall be adhered to by the

members, in particular but not limited to the traversing rights over the farm and the usage of the farm roads.

- 78.2 Specific rules to protect the property and livestock of the lessee and to regulate the rights of members over the farmland shall be adopted.

**79 Sale of developers rights**

- 79.1 If the developer, in one transaction alienates all its rights and all undeveloped land vested in it in respect of the Estate, it shall be entitled to cede to the transferee all its rights in terms of these presents and the transferee shall be entitled to exercise all such rights.
- 79.2 The developer shall, when it is no longer the owner of any unit in the estate, cease to be a member of the Company.
- 79.3 The developer, as a member of the Company hereby agrees that, should it wish to alienate its right as developer, it shall first offer it to the Homeowners', before accepting any offer from a third party.

**80 Legal remedies**

- 80.1 The rights given to the Company in terms of this Memorandum of Incorporation are in addition to, and without prejudice to, any of the rights which the Company may have to proceed against a member, either to recover any arrear levies or other monies or to claim specific performance, damages or any recourse in law.
- 80.2 A member shall be liable for, and shall pay, all legal costs, including costs on an attorney and client scale, and collection commission, expenses and all other charges incurred by the Company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by a member to the Company or in obtaining compliance with the house rules or any provision of this Memorandum of Incorporation.
- If the member disputes the legal costs incurred by the Company, then the parties agree that the Company may refer the bill of legal costs prepared by the attorney to the Fee Assessment Committee of the Law Society for consideration and determination, and the decision of the Fee Committee shall be final.



**81 Access to the estate**

The directors shall take such measures as are necessary to ensure that the general public, with the exception of the members, their guests, lessees, and members of their families and such other persons as the directors may reasonably permit, are excluded from the estate. No resolution to alter the terms of this article shall be taken unless simultaneously with the taking of such resolution, a resolution is taken to widen and reconstruct the roads to such specification as may comply with the standard requirements of the local authority.

**82 Maintenance of units and open space**

82.1 The directors may, notwithstanding the above, enter into an agreement with any member in relation to the maintenance of any land or unit to permit such maintenance to be performed by the member concerned himself, subject to such conditions as the directors may deem fit.

82.2 The maintenance of services and the open space shall be controlled by the building committee.

For purposes of exercising its functions in terms hereof, the building committee, or any of its members and the estate manager, shall be entitled to access any unit and the surrounds thereof, at all reasonable times.

**83 "For sale" signs**

No "For Sale" signs or "Sold" signs shall be erected on the units without the written consent of the developer during the development period and thereafter the Company.

**84 Disclaimer**

84.1 The Company shall not be liable for any injury or death 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 within the Estate. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Company for injury, death, damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

- 84.2 The Company, its directors, employees and agents shall not be liable to any member or any of the member's lessees, or their respective employees, agents, invitees or customers or any member of the public dealing with the member or any lessee for any injury or death or loss or damage of any description which 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.

**85 Winding up**

- 85.1 No resolution for the winding-up or dissolution of the Company and the transfer of the Company's assets shall be taken unless:
- 85.1.1 The Company has made adequate provision for the rights of members to obtain access to their units; and
- 85.1.2 Their rights to exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the member concerned if the member so requires.
- 85.2 If the Company is wound up, deregistered or dissolved, the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution having objects similar to its main object, to be determined by the members of the Company at or before the time of its dissolution or, failing such determination, by the court.

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