

**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 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 65 to ensure compliance with the building code;
- 3.2.6 "**chairperson**" means the chairperson of the Board;
- 3.2.7 "**the common property**" shall mean those areas outside the units, the farm and the non-residential components, and shall include the Estate facilities and 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. 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 in respect of Phase 1 and commencing 1 September 2023 until 31 August 2032 or once all of the residential erven in Phase 2 have been transferred by the developer, whichever happens earlier, in respect of Phase 2;
- 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 small erven, the farm and the non-residential components (as hereinafter described and defined) and all amenities built, or to be built, on the property in Phase 1 and Phase 2. A composite plan of the Estate is attached and

indicates the residential erven in Phase 1 and those in Phase 2 for purposes of this Memorandum of Incorporation and which also shows the common property, the roads, the small erven and the farm and the non-residential components comprising the golf course, the lodge, the garage site, the spa property and the self-catering units;

- 3.2.14 **“the Estate facilities”** shall mean the hiking and riding/cycling trails, the dams (whether for fishing or any other purpose), the swimming pools, tennis courts and the right to traverse the farm trails;
- 3.2.15 **"estate manager"** shall mean the person appointed by the Company, from time to time, to undertake the management of the Estate;
- 3.2.16 **"the farm"** shall mean the Remainder of Erf 1065 Nottingham Road (previously Erf 334 Nottingham Road), which is owned by the developer and which is leased by the developer to a third party;
- 3.2.17 **"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;
- 3.2.18 **“the garage site”** shall mean Erf 1356 Nottingham Road on which 12 (twelve) garages are or will be situated;
- 3.2.19 **"the golf course"** shall mean the golf course built on the Remainder of Portion 4 of Erf 1065 Nottingham Road (now Erf 1358 Nottingham Road) including the maintenance sheds situated thereon;;
- 3.2.20 **“the Golf Club”** shall mean the Gowrie Farm Golf Club;
- 3.2.21 **“house rules”** means the house rules referred to in terms of clause 70 of this Memorandum of Incorporation and does not include governance rules made by the Company as envisaged in terms of section 15(3) of the Companies Act;
- 3.2.22 **“the Levy Stabilisation Fund”** means the fund established in terms of clause 62;
- 3.2.23 **“the lodge”** means the lodge and clubhouse situated on Erf 332 Nottingham Road;
- 3.2.24 **“managing agent”** means the managing agent appointed by the Board to manage the Estate;
- 3.2.25 **“member”** means a member of the Company;

- 3.2.26 **“the Municipality”** means the uMngeni Municipality, which has jurisdiction over the Estate;
- 3.2.27 **“the non-residential components”** means Erven 1358, 332, 1356, 1355 and 1357 Nottingham Road comprising the golf course, the lodge, the garage site, the spa property and the self-catering units;
- 3.2.28 **“the office”** means the registered office of the Company;
- 3.2.29 **“Phase 1”** means the original phase of the development of the Estate as is more fully shown on General Plan No 976/2006;
- 3.2.30 **“Phase 2”** means the second phase of the development the approval of which allows for the golf course to be extended to 18 (eighteen) golf holes, 29 (twenty nine) residential erven 3 (three) of which are physically located within Phase 1 (namely Portions 5, 6 and 7 of Erf 1065 and Erven 1329 to 1354 Nottingham Road), the 9 (nine) self-catering units and the garage site and the spa property shown on General Plan No 1559/2022;
- 3.2.31 **“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 is laid out;
- 3.2.32 **“residential erf”** means a subdivision of the property which allows for residential usage but excludes the small erven. The residential erven in Phase 1 and Phase 2 are shown on the plan annexed and excludes the lodge/clubhouse bedrooms and the self-catering units within Phase 2;
- 3.2.33 **“the roads”** means the roads in Phase 1 and Phase 2 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 dotted lines shown on the plan annexed represent the centre line of the roads. The roads exclude the farm roads, which are not subject to the right of way servitude in favour of the Company;
- 3.2.34 **“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;
- 3.2.35 **“the self-catering units”** means the 9 (nine) self-catering units situated on Erf 1357 Nottingham Road;

- 3.2.36 **"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;
- 3.2.37 **"small erven"** shall mean those erven (also zoned for residential use) being Erven 248 to 401 Nottingham Road which are subdivisions of Erf 333 Nottingham Road (now further subdivided and comprising Portion 1 of Erf 333 and the Remainder of Erf 333 Nottingham Road) and are shown on the plan annexed, the owners of which shall be non-voting members of the Company;
- 3.2.38 **"the spa property"** means Erf 1355 Nottingham Road on which a spa is or may be situated;
- 3.2.39 **"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;
- 3.2.40 **"unit"** shall mean a residential erf and/or a sectional title unit on a residential erf and the small erven; and
- 3.2.41 **"vice-chairperson"** means the vice-chairperson of the Board.
- 3.2.42 **"voting member"** shall mean only those members who are owners of residential erven.
- 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 in the Estate, controlling traffic, implementing security measures for the controlled access to the Estate and making and enforcing house rules envisaged in terms of clause 70 of this Memorandum of Incorporation.

- 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; 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 7.1 shall be entitled to be a member of the Company.

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

7.4 The Company must maintain a register of members as required in terms of section 50 of the Companies Act, read with regulation 32.

7.5 The liability of each member as a member of the Company shall be limited to R1,00 (one rand) together with such other amount as may be owing by the member to the Company from time to time.

7.6 No member shall by reason of membership of the Company be entitled to share in or receive any portion of the funds or income or property of the Company or transfer of any of its assets save as is permissible in terms of the Companies Act.

## **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, 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 Members shall not be entitled to demand a refund of or credit for any levies, special levies, Levy Stabilisation Fund contributions, Golf Club subscriptions, VAT, interest, legal fees and any other sums paid or payable by a member to the Company 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 or other deed of alienation that:
- 9.1.1 The proposed transferee is obliged, to the satisfaction of the Company, as a contract for the benefit of the Company, to make application for and 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 transferee will 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 Golf Club have been paid prior to the transfer or that prior provision has been made to the satisfaction of the directors for payment on registration of transfer;
- 9.2.2 The transferor'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 on registration of transfer;
- 9.2.3 The proposed transferee has agreed in writing, to the satisfaction of the Company, to become a member of the Company and the Golf Club; 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.
- 9.4 Any certification issued by the Company aforesaid, shall not imply that the unit concerned and any improvements thereon or the use thereof is in compliance with the requirements of any law, by-law, the Memorandum of Incorporation or the house rules.
- 9.5 For the purposes of this Memorandum of Incorporation “alienate” means to alienate any unit or part thereof, and in no way detracting from the generality of the aforesaid, includes any transfer by way of sale, donation, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary. In the case of an artificial person, such as a company, close corporation or trust, the material change in the “beneficial ownership” or the “controlling interest” thereof, shall be deemed to constitute an alienation (“a deemed alienation”) for the purposes of this Memorandum of Incorporation and, in the event of there being any dispute as to whether there has been a material change in “beneficial ownership” or in the “controlling interest”, such matter shall be referred to the auditors whose decision shall be final and binding. Alienations and deemed alienations arising out of:
- 9.5.1 a deceased estate (whether testate or intestate) where ownership or control 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.
- 9.5.2 a divorce where a spouse receives the unit or part thereof (or the beneficial interest or controlling interest) in terms of a settlement or in accordance with an order of court,
- shall not attract any Levy Stabilisation Fund Contribution.

## 10 Co-ownership of units and units owned by artificial / juristic persons

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.

10.5 In the event of any unit being owned by a close corporation, voluntary association of persons, a company or a trust, such close corporation, voluntary association of persons, company or trust shall nominate one natural person to be the member for the purposes of this Memorandum of Incorporation and to be the nominated member of the Golf Club, provided that all members / directors and shareholders / trustees and beneficiaries shall be bound by this Memorandum of Incorporation as if they were member in their own names. In the event of a deemed alienation the membership in the Company and the Golf Club in respect of the natural person already nominated by the close corporation / voluntary association / company / trust shall cease and a new natural person shall be nominated by the close corporation / voluntary association / company / trust and all requirements for first time membership of the Company and the Golf Club shall be applicable.

10.6 In the event of any unit being owned by a close corporation, voluntary association, company or a trust, such close corporation, voluntary association, company or trust shall be obliged to provide the Company with a list of registered members and the details of their members interest if the juristic person is a close corporation, with a list of members in the case of voluntary association or a list of directors and shareholders and the details of their shareholding if the juristic person is a company or a list of trustees and beneficiaries if the juristic person is a trust. The juristic person shall be liable to notify the Company in the event of any transfer or change in members interest / membership / shareholding or interest in a trust and, subject to

clause 9.5 and clause 62, to make such payments as would be applicable upon acquiring a unit and becoming a member within 30 (thirty) days of the occurrence of such transfer or change, failing which interest shall accrue on the outstanding amounts due from the date of transfer or change to the date of payment at a rate of interest equal to that charged by the Company's bankers at its prime overdraft rate plus 3 (three) percentage points, such interest shall be calculated and compounded monthly.

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

- 11.1 The rights and obligations of a member are not transferable but nothing in this Memorandum of Incorporation shall prevent a member from ceding these rights to a mortgagee who has a bond registered over the member's unit provided that such cession shall not absolve the member from due performance of any of the members obligations to the Company including, but not limited to, the members obligation to pay levies, special levies and any other amounts to the Company and the obligation to comply with the house rules.
- 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 house rules and any other rules made by the Company and the directors from time to time.

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

- 12.1 A member who is in default of his obligation to pay any levies, special levies, Golf Club subscriptions, VAT, interest, legal fees or any other sums due to the Company, or who is in breach of any house rule or any other 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.
- 12.2 Only where a member has leased out his unit for more than 30 (thirty) consecutive days to a particular tenant, shall the tenant (and the tenant's guests and family members) be entitled to use of the Estate facilities and to traverse the Golf course. Where a member has leased out his unit for 30

(thirty) or less consecutive days, then the tenant concerned (and the tenant's guests and family members) shall not have the right to use the Estate facilities. or to traverse the golf course save while playing a bona fide round of golf which has been duly pre-registered with the Golf Club pro-shop and they shall only be entitled to walk or jog on the tar roads within the Estate or otherwise traverse the roads in the Estate (excluding any portions of the farm) by motor vehicle in order to derive access to and from a unit or the golf course. Members who are owners of small erven and their tenants, guests and invitees shall not have any right to use of the Estate facilities or to traverse the golf course or the Estate.

### **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 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 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 that are entitled to be exercised in respect of at least one matter to be decided at the meeting, subject to the proviso that a meeting may not begin or a matter be debated unless three voting members are present.

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 members 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 members 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 voting 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**

19.1 Subject to clause 6.3.2, any two members of the Company:

19.1.1. may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights; and

19.1.2. when proposing a resolution may require that the resolution be submitted to members for consideration-

19.1.2.1. at a meeting demanded in terms of section 61(3) of the Companies Act;

19.1.2.2. at the next members meeting; or

19.1.2.3. by vote in terms of clause 24.

## 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, close corporation or trust, the proxy must be signed by a person duly authorised by resolution of the company, close corporation

or trust, 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 or handed to the chairperson before the commencement of the meeting concerned (or the adjourned meeting).
- 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 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 conduct and 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 for the purpose of participating in debate and voting, provided that such access shall be at the expense of the member or proxy concerned.

## 22 **Member's voting**

- 22.1 Subject to clauses 22.2, 22.3 and 22.6 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 residential erf 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 of Phase 1 have an additional 125 votes and during the development period of Phase 2 the developer will not have the benefit of any additional votes save in the case of any resolutions which impact on its rights in respect of the 26 (twenty six) residential erven situated in Phase 2 (Erven 1329 to 1354 Nottingham Road) in which event the developer will have 26 (twenty six) extra votes on such matters which shall reduce as each such residential erf is transferred by the developer such that the extra votes always equal the number of residential erven in Phase 2 still owned by the developer from time to time until the end of the Phase 2 development period. In the event of a dispute between the Company and the developer as to whether a resolution impacts on the rights of the developer then the dispute shall be determined by a referee suitable to both parties and whose decision shall be final and binding on them and who shall be entitled to make such award for costs as the referee considers appropriate. If the Company and the developer cannot agree the identity of the referee then the Chairperson of the Pietermaritzburg Bar Association shall make the appointment taking into consideration the need for the referee to have a working knowledge of the laws relating to property and property development.

- 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 In accordance with section 63(5) of the Companies Act if voting is on a show of hands, any person who is present in person at the meeting whether as a member or as proxy for a member and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise.
- 22.7 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.
- 22.8 A demand for a poll may be withdrawn.
- 22.9 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.

22.10 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.

22.11 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 of members and members acting other than at a meeting**

Notwithstanding the provisions of section 60 of the Companies Act an ordinary resolution in writing signed by the holders of more than 50% of the voting rights which may be exercised on the resolution and a special resolution in writing signed by the holders of at least 67% of the voting rights which may be exercised on the resolution, within 20 business days after the resolution was submitted to them, has the same effect as if it had been approved by voting at a meeting of members. The written resolution may be signed in counterparts Any business required to be conducted at the Company's annual general meeting may not be conducted in this manner. For the purposes of this clause "in writing signed" includes a resolution voted on electronically.

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

In accordance with section 26(1) of the Companies Act every member is afforded 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 made in terms of section 15(3); the records relating to directors as mentioned in section 24(3)(b); reports to annual meetings; the annual financial statements; notices and minutes of members meetings and communications mentioned in section 24(3)(d) and (e) 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 member 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 obtain a copy of the house rules and the right to view the minutes of the meetings of the Board at the office of the managing agents after arranging an appropriate time to do so with the managing agents and provided they are in good standing with the Company in that they are not in arrears in respect of any levies or other amounts due to the Company and are not otherwise in breach of this Memorandum of Incorporation or the house rules or any other rules of the Company.

## **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 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 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**

28.1 During the development period for Phase 1, the Board 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 voting members.

28.2 After the development period for Phase 1, the Board 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**

29.1 Subject to clause 29.2 below the elected directors of this Company serve for a period of two years to ensure continuity and shall be eligible for re-election.

29.2 At least one third of the elected directors in office will retire at each Annual General Meeting but remain in office until the Board has been re-constituted by members at the meeting. The directors to retire shall include any director who wishes to retire and not offer himself/herself for re-election. Any further directors so to retire shall be those persons agreed amongst the directors, or, failing agreement, those directors who have been the longest serving. As between directors who have been the longest serving, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

## 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 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 mentally incapacitated;
- 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 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 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 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 the Company has one vote on a matter before the Board.

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 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 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 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, 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.
- 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**

43.1 The authority of the Board 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 without notice or compliance with any other internal formalities, as set out in that section 57(3), is excluded.

#### **44 Directors' expenses**

The Board 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.

#### **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 and the committees may be delegated to the estate manager to such extent, and upon such conditions, as the Board 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 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 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 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 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, 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 Estate facilities and any amenities or other property of

- the Company, including 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 belonging to or under the control of n the Company and services provided to the Company;
- 55.1.3 Paying the salaries and wages of employees of the Company; 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, the farm or the non-residential components. These expenses shall be for the account of the members and/or owners concerned.

## 56 **Calculating levies**

- 56.1 In computing the levy, the finance committee shall take into account all expenses relating to the units, Estate facilities and the common property administered by the Company and shall establish a base monthly levy taking into account the number of serviced units in the Estate from time to time. The finance committee shall then take into account sub-paragraphs 56.1, 56.2 and 56.4.
- 56.2 Subject to clauses 60 and 82.2 all owners of residential erven shall be allocated an equal levy.
- 56.3 During the development period the developer shall pay no levy on each of the undeveloped units owned by the developer, which have not been transferred. In the case of any units which the developer has developed or does develop during the development period, a levy shall be payable from the time when the construction of a building commences on the unit. 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.
- 56.4 The developer has agreed that the farm and golf course shall each be liable in perpetuity to pay to the Company monthly an amount equivalent to the levy

amount payable by owners of a single residential erf. This payment is however subject to the proviso that the owners of the farm and the golf course are responsible for the maintenance and the upkeep of the farm and the golf course , respectively.

- 56.5 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 or such amount as may be agreed upon between the board and the majority of owners of the small erven.

## 57 **Payment of levies**

- 57.1 The Company may require members to pay their levies by stop order or debit order. Failing which, the Company may 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.

- 57.2 All amounts levied under the provisions of this Memorandum of Incorporation shall be levied on an annual basis (save for special levies, levies payable in accordance with clause 82.2 and Levy Stabilisation Fund Contributions) and recoverable from members in twelve equal monthly instalments payable monthly in advance on the first day of each and every month and on such further terms and conditions as shall be determined by the finance committee from time to time in terms of this Memorandum of Incorporation and the house rules. This shall include the right, in addition to the recovery of interest, to accelerate and recover the monthly instalments payable for the remainder of the financial year from any member who falls into arrears and whose levies remain unpaid after the due date for payment thereof.

- 57.3 Levies are exclusive of VAT (ie VAT is to be added).

## 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 all 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 Capital expenditure**

The board of directors 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 R750 000. This amount shall be increased annually at the rate of 2% above the CPIX, as published from time to time.

**62 Levy Stabilisation Fund**

- 62.1 A Levy Stabilisation Fund has been established for the purpose of generating funds to assist with the maintenance and development of the common property.
- 62.2 The Levy Stabilisation Fund shall be managed by the Board or, should the Board so choose, by the finance committee.
- 62.3 Contributions to the Levy Stabilisation Fund shall be made on the date of registration of transfer from the funds of the transferor. The conveyancer must ensure that the contribution is made.
- 62.4 Upon transfer or alienation of a residential unit from a member or any successor in title or a deemed alienation as defined, the seller/transferor must pay-

- 62.4.1 If the residential unit concerned is vacant, a departure levy equivalent to 1% of the selling price at the time (or declared or fair market value in the case of alienations or deemed alienations other than by way of sale); or
- 62.4.2 If the residential unit concerned is developed, a departure levy equivalent to 0,5% of the selling price at that time (or declared or fair market value in the case of alienations or deemed alienations other than by way of sale),
- as a contribution to the Levy Stabilisation Fund.
- 62.5 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.
- 62.6 In addition to the circumstances referred to in clauses 9.5.1 and 9.5.2 which are exempted from the obligation to pay a levy stabilisation fund contribution no contribution is payable to the Levy Stabilisation Fund upon transfer of a residential unit from:
- 62.6.1 the developer or;
- 62.6.2 the developers successors in title to the developer.
- 62.7 The Board is entitled to waive a levy stabilisation contribution if the Board is satisfied that the alienation or deemed alienation is part of a genuine restructuring of a member's assets.

### 63 **Accounts**

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

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

- 64.1 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.

- 64.2 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.

## 65 **Building committee**

- 65.1 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.
- 65.2 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:
- 65.2.1 Approve all building plans in conjunction with the Local Authority having control over the Estate;
- 65.2.2 Control of all landscaping and gardening in the Estate ;
- 65.2.3 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;
- 65.2.4 Impose such height restrictions as it deems necessary;
- 65.3 The building committee shall be entitled to charge fees for the approval of building plans which shall be payable by the owner submitting building plans for approval. The fees are subject to amendment from time to time. In the event of a member wishing to use an architect not approved by the building committee, then an additional submission fee shall be payable.
- 65.4 The building committee shall on request, supply an owner with the particulars of the building code;

- 65.5 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;
- 65.6 The aforesaid building codes shall be subject to whatever building restrictions are imposed by the Development Tribunal.

## 66 **Compliance with the building code**

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

- 66.1 change the colour of the exterior walls of any building, 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;
- 66.2 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;
- 66.3 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 Estate;
- 66.4 to remove any fixtures, fittings, doors, windows nor to demolish any portion of the exterior of any unit or building;
- 66.5 in the event of the destruction of any building, and the owner thereof deciding to rebuild such building, 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.

## 67 **Building by the developer**

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 may be approved by the local authority.

**68 Powers of the building committee**

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:

- 68.1 Whenever it considers that the appearance of any unit or building 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.
- 68.2 In the event of the member or members failing to make the necessary repair within 30 days of the written notice referred to above, the estate manager shall be empowered to attend to such repair and the Board shall recover the cost from the relevant member or members by debiting the member or members levy account or otherwise as it may deem fit;
- 68.3 To determine the routine maintenance requirements:
- 68.3.1 Of the exterior of each and every building within the Estate and to instruct the responsible members and/or the estate manager to attend to such requirements from time to time;
- 68.3.2 Of all common property and roads in the Estate, in accordance with the provisions of the building code;
- 68.3.3 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
- 68.4 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.

**69 House rules**

- 69.1 Subject to clauses 69.2 and 69.3, the Board shall have the power to make house rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Estate, for the purposes of giving proper effect to the provisions of this Memorandum of Incorporation and for any other related purpose, including, but not limited to, the following:

:

- 69.1.1 The access to and use by members or their households, their guests, and lessees, of the roads, common property and Estate facilities (excluding the golf course and other non-residential components), including the right to prohibit, restrict or control such use of the roads and common property or any portions thereof as may from time to time be necessary or expedient;
- 69.1.2 The preservation of the natural environment, vegetation and fauna in the township;
- 69.1.3 The use of parking areas;
- 69.1.4 The right to prohibit, restrict or control the keeping of any animals or pets;
- 69.1.5 The use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
- 69.1.6 The interaction between members who are owners of units 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;
- 69.1.7 The operation and control of businesses on units within the Estate;
- 69.1.8 The placing of movable objects upon the outside of buildings, including the power to remove any such objects;
- 69.1.9 The keeping of flammable substances;
- 69.1.10 The conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;
- 69.1.11 The use of any unit or other immovable property within the Estate including the letting and sale of any unit in the Estate and the approval criteria of estate agents and letting agents appointed to sell and let any unit in the Estate;
- 69.1.12 The approval criteria to be adhered to by all architects, project managers, quantity surveyors, land surveyors and building contractors undertaking building or building-related work or services on or in respect of the Estate.

- 69.2 The Board must publish any proposed house rule to be made in terms of this clause 69 by way of notice to all members within a reasonable time and any house rule proposed by the board will take effect on the date specified in the notice.
- 69.3 Any house rule that takes effect as contemplated in clause 69.2 above will remain binding on an interim basis until put to a vote at the next general meeting of the Company and will become permanently binding if ratified by ordinary resolution of the members at the general meeting.
- 69.4 For the enforcement of any of the house rules made by the directors in terms hereof, the Board may:
- 69.4.1 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
- 69.4.2 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/ or
- 69.4.3 Take such other action including proceedings in Court, as they may deem fit.
- 69.5 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 Board may take or cause to be taken such steps against the person actually committing the breach as they deem fit.
- 69.6 The board of directors may appoint a Rules Enforcement Committee which may impose fines or other penalties for breaches of the house rules. The Rules Enforcement Committee shall consist of three independent persons appointed by the board of directors, at least one of whom shall be a director. If any person wants to appeal a decision of the Rules Enforcement Committee, he or she may lodge an appeal in writing, addressed to the chairperson of the board of directors. An appeal shall be determined by the chairperson of the board of directors, who will make a finding on the appeal within 21 days of lodgement of that appeal.

- 69.7 Any fine imposed upon a member shall be deemed to be a debt due by the member to the Company, shall be deemed to be part of the levy due by that member to the Company and shall be recoverable by ordinary civil process.
- 69.8 Notwithstanding the foregoing, the Board 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.
- 69.9 Notwithstanding the above, in the event of any member being in persistent or flagrant breach of any of the provisions of this Memorandum of Incorporation or any house rules made in terms thereof, or being in breach thereof and failing to remedy such breach, the Board 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.
- 69.10 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 Estate, 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.

## 70 **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.

## 71 **Small erven**

- 71.1 The residents of the small erven shall form a residents' committee with a maximum of 3 members. One of the members of the residents' committee shall be appointed by –
- 71.1.1 The developer, during the development period; and
- 71.1.2 The Board after the termination of the development period.
- 71.2 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.

71.3 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 erven and to ensure proper maintenance of the infra-structure and common areas within the small erven area..

71.4 The developer reserves the right to seek removal of the small erven from the Estate and its participation in the Company by way of an appropriate amendment to the development approvals in due course.

## 72 **Property owned by the Company**

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;

## 73 **Use of open spaces and roads**

73.1 The Company may at its pleasure permit the members, subject to the provisions of this Memorandum of Incorporation and the registered rights of way to use the open spaces and roads, and shall do so unless by special resolution taken at an extraordinary general meeting called for the purpose it is otherwise resolved.

73.2 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 spaces.

## 74 **Golf Club**

74.1 It is compulsory for all members of the Company excluding owners of the small erven to also be members of the Golf Club and as such each such member shall pay an annual subscription to the Golf Club in accordance with the Golf Club Constitution and/or any Golf Club rules. In this regard, the members record that the existence of a Golf Club on the Estate –

74.1.1 represents a significant convenience to members, who are provided with easy access to golf and to aesthetic outlooks over the golf course; and

74.1.2 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.

74.2 As members of the Golf Club, members 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.

74.3 Members engaged in short term rentals (more fully referred to in clause 82) shall be liable for an additional subscription payable to the Golf Club, calculated as follows:

74.3.1 50% (fifty percent) of the standard homeowner subscription for Category 1 STR's;

74.3.2 25% (twenty five percent) of the standard homeowner subscription for Category 2 STR's.

This additional subscription allows STR guests access to the golf course and the clubhouse during their stay on the Estate, subject to the normal terms of visitor play, including applicable green fees. It also permits members engaged in authorised STR to market their accommodation using the Gowrie Farm brand.

74.4 Membership of the Golf Club will not be limited to members of the Company.

74.5 Specific rules that will regulate the interaction between members of the Company and the Golf Club will be drawn up by the developer and will be binding on the members of the Golf Club.

## 75 **Estate facilities**

75.1 The use of Estate facilities, excluding the golf course and other non-residential components, will be in accordance with the rules and regulations as decided by the Board from time to time.

75.2 Other than membership of the Golf Club provided within the Estate, the usage of the Estate facilities will be restricted to members' households and their guests subject to the provisions of clause 12.2 and provided that the Board may introduce regulations and conditions from time to time, permitting usage of the Estate facilities by non-members.

**76 Lease of the farm**

- 76.1 The Board shall ensure that the conditions of lease entered into between the owner of the farm 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.
- 76.2 Specific rules to protect the property and livestock of the lessee and to regulate the rights of members over the farm shall be adopted.

**77 Sale of developers rights**

- 77.1 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.
- 77.2 The developer shall, when it is no longer the owner of any unit in the Estate, shall cease to be a member of the Company.
- 77.3 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 Company, before accepting any offer from a third party.
- 77.4 It is recorded that on 17 April 2023 the Company and the developer entered into an agreement which, *inter alia*, grants the Company a right of first refusal in respect of certain of the properties owned by the developer in the Estate should the developer decide to sell them.

**78 Legal remedies**

- 78.1 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 other recourse in law.
- 78.2 In no way detracting from the generality of any other provision of this Memorandum of Incorporation or any house rules, in the event of the Company incurring any legal costs whether as a result of any breach of this Memorandum of Incorporation or any house rules by any member (or members) or otherwise in respect of any dispute or other matter concerning any member (or members) the Company shall be entitled to recover all such

legal costs on demand from such member (or, if applicable, members, both jointly and severally) on an attorney and own client scale (alternatively the highest permissible scale of legal fees) in full, including collection commission, disbursements and all other related charges incurred by the Company, whether or not legal action, arbitration or other proceedings are actually instituted or proceeded with, the intention being to ensure that the Company is insofar as is permissible indemnified in full in respect of all legal costs incurred by it. If a member disputes the legal costs incurred by the Company then the parties agree that the company may refer the costs for taxation, alternatively, where taxation is not possible, to the applicable governing body of the legal profession for consideration and assessment, and the decision on taxation, alternatively on assessment by the governing body, shall be final and binding

#### 79 **Access to the Estate**

The Board 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 Board may reasonably permit (including golfers and guests of the lodge and the other non-residential components as defined), are excluded from the Estate. No resolution to alter the terms of this clause 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.

#### 80 **Maintenance of units and open space**

80.1 The maintenance of services, units and the common property shall be controlled by the building committee.

80.2 The building committee, or any of its members and the estate manager, shall be entitled to access to any unit and the surrounds thereof, at all reasonable times in order to monitor and ensure compliance by members with their obligation to maintain their units and all buildings and other structures erected thereon.

**81 "For sale" signs**

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

**82 Letting of units within the Estate**

82.1 Subject to them being consistent with the remaining provisions of this Memorandum of Incorporation the Board is empowered to regulate, impose and enforce rules and regulations regarding all forms of letting and sub-letting of units in the Estate in terms of applicable house rules made in terms of clause 69.

82.2 In doing so the Board:

82.2.1 shall distinguish between tenancies or occupancies which are for 30 (thirty) consecutive days or less and those that are for more than 30 (thirty) consecutive days;

82.2.2 shall permit only the following 2 (two) categories of STR (as is more fully defined below) in the Estate:

82.2.2.1 **Category 1 STR:** being the rental of an entire house/unit as a single transaction and where the member concerned is not in residence during the period of the rental. Such STR's must have a managing agent approved by the Board available at all times;

82.2.2.2 **Category 2 STR:** being "annexe rentals" where only a portion of a unit is rented out as a single transaction (i.e. not an entire unit/house rental) and where the member concerned remains in residence for the duration of the rental. Where the member concerned is not in residence for the full duration, a managing agent approved by the Board must be available at all times.

82.2.3 shall recover the Company's costs incurred in applying and enforcing rules relating to STR from the letting members concerned;

82.2.4 shall establish a rental committee (the "Gowrie Farm Rental Committee" and/or "the GFRC") as is more fully provided for in clause 83 to give effect to the Board's powers in terms of this clause 82 insofar as it pertains to the letting of units within the Estate.

- 82.3 For purposes of this MOI and any applicable house rules, “short-term rental activity” means to rent, lease, sub-lease or otherwise part with occupation of whole or part of any unit for any period of 30 (thirty) consecutive days or less, and the terms “short term rental” or “STR” and “short term lease” shall have a corresponding meaning and refers to any rental, lease, sub-lease or other arrangement, whether oral or in writing, in terms of which any person occupies a unit or part thereof for 30 (thirty) consecutive days or less.
- 82.4 With effect from the date of approval of this amended MOI no unit or any part thereof may be let or sub-let nor may any member part with occupation of a unit or any part thereof for any period which constitutes STR without the prior written approval of the Company, acting through the GFRC, having been granted to the member in respect of the unit concerned and then on such terms and conditions as may be imposed from time to time and subject to the parties entering into and complying with the terms of the Company’s prescribed Rental Agreement, the MOI and all house rules and related STR rules applicable from time to time including the payment of all applicable fees and levies.
- 82.5 Subject to and for so long as, the approval for Category 1 and Category 2 STR remains valid and effective any such approval granted by the Company in terms of clause 82.4 shall be transferrable in the event of an alienation or deemed alienation of a unit.
- 82.6 In order to impose a reasonable limit on the number of persons and/or properties engaged in short term letting activity within the Estate all members who own units shall be entitled to make application for approval in terms of clause 82.4 however approval will be granted on a first come first served basis subject to a maximum of 23 (twenty three) STR approvals at any one time of which a maximum of 15 (fifteen) of those may be Category 1 STR’s (“the Cap”). Once the Cap is reached then members wishing to commence or resume STR activity shall be placed on a waiting list for consideration and approval.
- 82.7 In addition to all other criteria for approval as may be determined by the GFRC from time to time all Category 1 STR’s, save for those referred to in clauses 82.8 and 82.11 below, shall only be entitled to make application for STR activity and to be granted approval if they are able to secure the written consent of the owners of all units sharing a common boundary and those within a 50 (fifty) metre radius of the boundaries of the unit in respect of which approval is sought.

82.8 It is recorded that there are already 9 (nine) existing Category 1 STR's in operation on the following residential erven in Phase 1 in the Estate, namely:  
Erven 208, 213, 217, 222, 240, 258, 279, 311 and 315 Nottingham Road

For as long as their approval for STR remains valid and has not terminated such Category 1 STR's do not require neighbour's consent as envisaged by clause 82.7.

82.9 Save in respect of the erven referred to in clause 82.11 below, all members granted approval for an STR shall be required to commence operating within 90 (ninety) days of approval having been granted, alternatively in respect of undeveloped properties granted approval for STR within 90 (ninety) days of the issue of an occupation certificate for the improvements to be erected thereon, failing which such approval shall lapse. Any such STR having duly commenced short term rental activity and which is inactive for 90 (ninety) days shall also lapse. In both such events the relevant members shall lose their right to continue with short term rental activity and they shall be required to reapply for approval subject to availability within the Cap failing which they shall be placed on the waiting list for approval.

82.10 All members granted approval for an STR may be required to pay such additional subscription, fee or levy to the Golf Club as is more fully referred to in clause 74.3.

82.11 It is recorded that the following erven in Phase 2 have been approved for the operation of Category 1 STR:

Erven 1346, 1347, 1350 and 1351 Nottingham Road

The developer has also imposed a 7 (seven) day minimum rental period limitation on the aforesaid Category 1 STR's in Phase 2 which is not applicable to the STR's in Phase 1. No other Category 1 STR applications may be made or approved in respect of any other erven in Phase 2.

### 83 **Gowrie Farm Rental Committee**

83.1 The Gowrie Farm Rental Committee ("GFRC") shall be established by the Board and shall consist of 5 (five) members made up as follows:

83.1.1 2 (two) persons who shall be members who conduct STR;

83.1.2 2 (two) persons who are non-STR approved members of which 1 (one) shall be a member of the Board; and

83.1.3 the estate manager who shall function as the GFRC's chairperson.

83.2 The GFRC shall exercise all such powers as may be delegated to it by the Board in relation to letting activities within the Estate and in doing so shall be entitled to formulate appropriate rules, regulations and controls governing letting activities within the Estate and to implement and regulate same on behalf of the Board subject to the provisions of clause 83.3 and compliance with the remaining provisions of this MOI.

83.3 All rules, regulations and controls proposed by the GFRC shall be subject to final approval by the Board.

#### 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.