

**Companies and Intellectual Property Commission
Republic of South Africa**

MEMORANDUM OF INCORPORATION

of

RENISHAW ESTATE MANAGEMENT ASSOCIATION (RF) NPC

Registration Number 2016/203112/08

**(which is referred to in the rest of this Memorandum of Incorporation
as the Association)**

The Association is a Non Profit Company with Members, with the following objects:-

1. to promote, advance, protect and manage the collective interests common to the Members generally and to co-operate with the Municipality, the KwaZulu-Natal Provincial Government and all other appropriate authorities for the benefit of the Association and its Members;
2. to represent the interests of Members and to provide a united voice by which such interests may be expressed;
3. to collect levies and other contributions from Members toward funds of the Association for the attainment of the objectives of the Association;
4. to accept and acquire private roads, private open spaces and conservation areas, and to make and enforce regulations governing the use thereof by Members;
5. to enforce compliance by Members of the Environmental Management Plan applicable within the Development;
6. to impose fines and other penalties upon Members disobeying or in contravention of the Memorandum and the Rules made in terms thereof;

7. to maintain private roads, private road verges, public road verges, street furnishing, private open spaces and conservation areas within the Development as indicated on the Plan annexed to the Memorandum;
8. to provide security within the Development and make and enforce regulations in this regard;
9. to enforce adherence to the Architectural Guidelines, Building Design Code, Developers and Contractors Protocol, Development Plan, Landscaping Protocol, Security Procedures and Environmental Management Plan for the Development;
10. in particular and in no way detracting from the generality of the aforesaid to ensure that all buildings and other structures erected within the Development, as well as any external fixtures and fittings thereto, comply with the aforesaid and generally to ensure that the external appearance of all buildings and other structures and all gardens and other areas in the Development comply with standards set out in the aforesaid documentation.
11. to co-operate with any other management associations created within the Development.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the incorporators of the Association, in accordance with Section 13(1) of the Companies Act, as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration	Signature	Date
GUY STANLEY CLARKE	5605085090083		
PHILLIP JOHN BARKER	5301255125087		
RICHARD MICHAEL MAURICE CROCKER	6801066213187		

The Memorandum of Incorporation is as follows:

1. **INTERPRETATION**

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

- 1.1.1. "Act" means the Companies Act, No. 71 of 2008, as amended and any Regulations in force thereunder from time to time;
- 1.1.2. "Architectural Guidelines" means the Architectural Guidelines for the Development as formulated by the Developer, a copy of which is available from the offices of the Association and which during the Development Period, may be amended by the Developer and after the expiry of the Development Period, may be amended by the Association with the prior written consent of the Developer;
- 1.1.3. "Association" means the Renishaw Estate Management Association (RF) NPC;
- 1.1.4. "Board" means the Board of Directors of the Association for the time being;
- 1.1.5. "Body Corporate" means a Body Corporate as defined in Section 1 of the Sectional Titles Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act;
- 1.1.6. "Building Design Code" means the Building Design Code for the Development as formulated by the Developer, a copy of which is available from the offices of the Association and which during the Development Period, may be amended by the Developer and after the expiry of the Development Period, may be amended by the Association with the prior written consent of the Developer;
- 1.1.7. "Community Facilities" means any areas designated as community facilities in the Development;
- 1.1.8. "Conservation Areas" means the areas designated as conservation areas or conservation servitudes in the Development;
- 1.1.9. "Developer" means Renishaw Property Developments Proprietary Limited, Registration Number 2009/019296/07, including its successors and assigns;
- 1.1.10. "Developers and Contractors Protocol" means the Developers and Contractors Protocol for the Development as formulated by the Developer, a copy of which is available from the offices of the Association and which during the Development Period, may be amended by the Developer and after the expiry of the Development Period, may be amended by the Association with the prior written consent of the Developer;

- 1.1.11. "Development" means the development to be undertaken by the Developer in phases on the Land as depicted on the Plan and any additional land which the Developer may during the Development Period determine be incorporated within such area. The Developer shall have the right during the Development Period by notice to the Association to include additional land in the Development or to exclude existing Land from the Development;
- 1.1.12. "Development Period" means the period reckoned from the date of registration of the Association until the date upon which the Developer gives written notice to the Association of the termination of such period;
- 1.1.13. "Directors" means the Directors of the Association for the time being, and "Director" shall mean 1 (one) of the Directors, as the context may indicate;
- 1.1.14. "Environmental Management Plan" means the Environmental Management Plan for Renishaw amended from time to time by the relevant authorities, a copy of which is available from the Offices of the Association;
- 1.1.15. "Land" means any land in the Development, including any subdivision capable of individual ownership, whether such land is improved or not, or a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established on any such land or the right to extend a sectional title scheme by the erection of a unit (as contemplated in section 25 of the Sectional Titles Act) where a sectional title scheme has been established on any such land;
- 1.1.16. "Landscaping Protocol" means the landscaping protocol set out in the document entitled "Renishaw Landscaping Protocol" as formulated by the Developer, a copy of which is available from the offices of the Association and which during the Development Period, may be amended by the Developer and after the expiry of the Development Period by the Association with the prior written consent of the Developer;
- 1.1.17. "Manager" means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Association's affairs in respect of the Development;
- 1.1.18. "Member" means any separate Management and/or Homeowners Association established at the instance of the Developer to fulfill certain purposes in respect of any Phase in the Development or the registered owner of Land situate in the Development (and which owner is not a member of any separate Management and/or Homeowners Association established at the instance of the Developer), and during the Development Period, the Developer shall also be a member of the Association;

- 1.1.19. "Memorandum" means this Memorandum of Incorporation for the time being of the Association;
- 1.1.20. "Municipality" means a municipality as an entity as defined in the Municipal Systems Act, No. 32 of 2000;
- 1.1.21. "Municipal Services" means electricity, water, sewage, refuse removal, telecommunications and such other utilities and services as may be provided by a Municipality, other designated authority or contracted services provider to the Development from time to time;
- 1.1.22. "Office" means the registered office of the Association for the time being;
- 1.1.23. "open space" means the areas designated as open spaces in the Development;
- 1.1.24. "Phase" means any phase depicted on the Plan. The Developer shall have the right by notice to the Association to vary boundaries of the phases or to include or exclude phases or portions thereof from the Development;
- 1.1.25. "Plan" means the Development Plan showing the Development prepared by Plankonsult having Reference – Plan No. 11E04P04R03 dated December 2015, a copy of which is annexed marked Annexure "REMA 1";
- 1.1.26. "Rules" mean the rules made by the Directors in accordance with the provisions of Article **8.5**;
- 1.1.27. "Scheme" means the Scottburgh Town Planning Scheme, the Umdoni Town Planning Scheme or the Ethekwini Municipality Town Planning Scheme and/or any other Town Planning scheme applicable to the Development from time to time;
- 1.1.28. "Sectional Titles Act" means the Sectional Titles Act, No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.1.29. "Security Procedures" means the security procedures of the Association, a copy of which is available from the Offices of the Association, which may be amended from time to time by the Directors;
- 1.1.30. "Services" means security, maintenance of private roads and private road verges and such other utilities or services as may be provided or managed by the Association from time to time;

- 1.1.31. "Share Blocks Control Act" means the Share Blocks Control Act, No. 59 of 1980 as amended and any regulations in force thereunder from time to time;
- 1.1.32. "Special Resolution" means a resolution adopted with the support of at least 75 % (seventy five percent) of the voting rights exercised on the resolution:-
- 1.1.32.1. at a Shareholders' meeting; or
- 1.1.32.2. by Members acting other than at a meeting, as contemplated in Section 60 of the Act;
- 1.1.33. "subdivision" means any portion of freehold property in the Development capable of separate individual ownership, but excluding any immovable property owned by the Developer or the Association;
- 1.1.34. "unit" means an immovable property within the Development, either as freehold or sectional title, and includes a residential, commercial and industrial unit.
- 1.2. Words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act.
- 1.3. Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include bodies corporate, and vice versa in each instance, as the context may require.
- 1.4. The heading above any of the Articles in this Memorandum is intended for reference purposes only and shall not influence the interpretation of the Memorandum.
- 1.5. Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in the manner and form permitted in terms of the Act and/or the Regulations.
- 1.6. Any reference to "days" shall be construed as calendar days unless qualified by the word "business" in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as Gazetted by the Government from time to time.

2. **MEMBERSHIP**

2.1. Membership of Association

- 2.1.1. Membership of the Association shall be obligatory for any Management Association and/or Homeowners Association established at the instance of the Developer to fulfil certain purposes in respect of any Phase in the Development or owner of Land which

does not fall under the jurisdiction of a Management Association or Homeowners Association established at the instance of the Developer to fulfill certain purposes in respect of any Phase;

- 2.1.2. During the Development Period, the Developer shall be a Member of the Association.
- 2.1.3. A Member may not tender resignation of his membership of the Association.
- 2.1.4. No owner of Land which does not fall under the jurisdiction of a Management Association or Homeowners Association established at the instance of the Developer to fulfill certain purposes in respect of any Phase shall transfer such Land to a third party unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of Article **2.2**.
- 2.1.5. In order to procure compliance with the provisions of the Memorandum, it shall be registered as a condition of ownership of land that no Land shall be alienated without the written consent of the Association first being had and obtained, which consent shall be not be withheld:-
 - 2.1.5.1. if the proposed transferee (new owner) is or will be admitted as a Member of the Association and has bound himself, in writing, to abide by and comply with the provisions of this Memorandum; and
 - 2.1.5.2. the owner (transferor) has complied with all his obligations to the Association.
- 2.1.6. For the purposes of Article **2.1.5**, "alienate" means to alienate any Land or part thereof, (other than in respect of any transfer from the Developer and any mortgage bond registered simultaneously therewith) and includes by way of mortgage, sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolute condition. In the case of a juristic person, such as a company, close corporation or trust, the material change in the "beneficial ownership" or in the "controlling interest" thereof, shall be deemed to constitute an alienation for the purposes of this Memorandum 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 matters shall be resolved by way of procedures provided for in Article **21**.
- 2.1.7. In the event of any Land being owned in undivided shares by more than 1 (one) owner such co-owners shall nominate one of them to be the Member for the purpose of this Memorandum provided that

all joint owners shall be bound by this Memorandum as if they were Members. Such nomination shall be made in writing to the Association within 7 (seven) days of such co-owners becoming Members of the Association.

2.2. Admission of Members

2.2.1 The Members of the Association shall be the Developer during the Development Period, and those persons and/or bodies corporate who, from time to time, become a Member in accordance with the provisions of this Memorandum.

2.2.2 The right to determine admission to membership of a proposed acquirer of Land is hereby conferred upon the Board. The Board shall not unreasonably decline to admit to membership an applicant in the event of the applicant having undertaken to comply with and abide by this Memorandum and all the Association's requirements, Rules and regulations and the party from whom the applicant is taking transfer of Land, has complied with this Memorandum and all the Association's requirements, Rules and regulations (and in no way detracting from the generality of the aforesaid), has made payment of any amounts due by such transferor to the Association. The Board shall be entitled to call for the provision of a suretyship by a natural person where the Member is to be a company, close corporation, trust or other corporate entity.

2.2.3 Members shall be of a single class, being voting Members each of whom shall have a vote, the value of which shall be calculated in accordance with the provisions of Article **3.3.7**.

2.3 Rights and Duties of Members

2.3.1 Subject to the rights of membership as prescribed by the Act, membership of the Association shall confer upon each Member, unless otherwise stipulated, the following rights:

2.3.1.1 the right to inspect and/or receive copies of the annual financial statements of the Association;

2.3.1.2 the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Company as listed in Section 26 of the Act, which it is recorded includes the following, namely:

2.3.1.2.1 the Memorandum and any amendments to it and any Rules made by the Company;

2.3.1.2.2 the records in respect of the Company's Directors;

- 2.3.1.2.3 the reports to Members' meetings and annual financial statements;
- 2.3.1.2.4 the notices and Minutes of Members' meetings and any communications to the Members; and
- 2.3.1.2.5 the register of Members;
- 2.3.1.3 the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum;
- 2.3.1.4 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with the provisions of this Memorandum;
- 2.3.1.5 should Members holding between them, in aggregate, not less than 10% (ten percent) of the voting rights in the Association, collectively so decide, the right to convene a general meeting.
- 2.3.2. No Member shall, by reason of membership of the Association, be entitled or permitted to share in or receive any distributions from or profit of the Association.
- 2.4. Cessation of Membership
 - 2.4.2. Membership of the Association shall cease:
 - 2.4.1.1. upon a Member ceasing to be an Owner;
 - 2.4.1.2. upon the issue of a final order of sequestration or liquidation of the Member concerned;
 - 2.4.1.3. upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs;
 - 2.4.1.4. in the case of the Developer, on delivery of written notice to the Association as contemplated in Article **1.1.10**.
 - 2.4.3. In the event of a Member ceasing to be a Member in terms of Articles **2.4.1.2** or **2.1.4.3** the legal representative of such Member shall, for all purposes, be recognized and bound as the Member under this Memorandum.

2.5. Liability of each Member

The liability of each Member as a Member of the Association, shall be limited to R1.00 (One Rand) together with such other amount as may be owing by a Member to the Association, from time to time, from whatever cause arising.

2.6. Register of Members

The Association shall maintain at its Office a register of Members as provided in Section 24 of the Act. The register of Members shall be open to inspection as provided in Section 26 of the Act.

3. **GENERAL MEETINGS**

3.1. Annual General Meeting

The Association shall hold a general meeting in every year as its annual general meeting on such date and at such time and place as may be determined by the Board, and shall specify the meeting as such in the notice calling it, provided, however, that the annual general meeting shall be held not later than 6 (six) months after the end of each financial year of the Association, and provided that not more than 15 (fifteen) months shall elapse after the holding of the last preceding annual general meeting.

3.2. Notice of General Meeting

The annual general meeting and any meeting called for the passing of a Special Resolution shall be called by not less than 21 (twenty one) clear days notice in writing and any other general meeting shall be called by not less than 14 (fourteen) clear days notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may prescribed by the Association in general meeting, to such persons as are, under this Memorandum, entitled to receive such notices from the Association: provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.

3.3. Proceedings at General Meetings

3.3.1. Business

The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the audited annual financial statements and the estimates of income and expenditure and levies for the ensuing year, a decision on the number of Directors subject to the provisions of Article 5.1; and election of Directors when such decision is required in accordance with the provisions of this Memorandum, and the appointment of an auditor, and any other business

laid before it. All business laid before any other general meeting shall be considered special business.

3.3.2. Quorum

A quorum for:

3.3.2.1. a general meeting shall be Members holding between them, in aggregate, not less than 5% (five percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote (subject to a minimum of 3 (three) Members which shall be represented by an individual authorized thereto by such Members, being present), provided that during the Development Period, 1 (one) of such Members shall be the Developer (which shall be represented by an individual authorized thereto by the Developer);

3.3.2.2. a general meeting called for the passing of the Special Resolution shall be Members holding between them, in aggregate, not less than 25% (twenty five percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote, provided that during the Development Period, 1 (one) of such Members shall be a nominee of the Developer.

3.3.3. If within 30 (thirty) minutes after the time for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case, the meeting shall stand adjourned to a date not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting and if at such adjourned meeting a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Members present in person shall be a quorum, provided that during the Development Period, 1 (one) of such Members shall be a nominee of the Developer.

3.3.4. Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 3 (three) days after the adjournment, send written notice to each Member of the Association, stating:

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

3.3.4.2. the matter before the meeting when it was adjourned; and

3.3.4.3. the grounds for the adjournment.

3.3.5. Chairman

The Chairman, if any, of the Board shall preside as Chairman at every general meeting of the Association. If there is no such Chairman, or if at any meeting he is not present within fifteen minutes after the time

appointed for holding the meeting or is unwilling to act as Chairman, the Members shall elect one of their Members to be Chairman. Notwithstanding the foregoing, during the Development Period, the Chairman shall be a nominee of the Developer.

3.3.6. The Chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles **3.3.3** and **3.3.4** shall *mutatis mutandis* apply to such adjournment.

3.3.7. Voting

Subject to the provisions of Article **3.4**, at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by the Chairman or by any Member, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or negatived, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the results of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be appointed by the Chairman to determine the result of the poll. In case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of Article **3.4**.

3.3.8. Proxy

The instrument appointing a proxy shall be under the hand of the appointer and shall be in such form as the Directors shall approve.

3.3.9. The instrument appointing a proxy shall be deposited at the Office of the Association not less than 24 (twenty four) hours before the time for the holding of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy otherwise provides.

3.3.10. A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the revocation of the proxy, provided no intimation in

writing of the revocation shall have been received at the office or by the Chairman of the meeting before the vote is given.

3.3.11. In the event of a Member being a juristic person, such as a close corporation, company, trust or other body corporate, such Member shall lodge at the Office of the Association, a resolution authorising a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such resolution shall be lodged at the Office of the Association at least 24 (twenty four) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

3.4. Votes of Members

Each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote, provided that for the Development Period, no vote shall be carried unless the nominee of the Developer present, in person or by proxy, votes in favour of such resolution and any ordinary resolution shall be carried if the nominee of the Developer present in person or by proxy, votes in favour of such resolution.

3.5. Resolutions of Members

3.5.1. For an ordinary resolution to be approved of by Members, it must be supported by more than 50% (fifty percent) of the voting rights exercised on the resolution, subject however to the provisions of Article 3.4.

3.5.2. For a special resolution to be approved of by Members, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution.

4. **MEMBERS ACTING OTHER THAN AT A MEETING**

4.1. In accordance with the provisions of section 60 of the Act, a resolution that could be voted on at a Members' meeting (other than in respect of the election of Directors) may instead be –

4.1.1. submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and

4.1.2. voted on in writing by such Members within a period of 20 (twenty) business days after the resolution was submitted to them.

4.2. A resolution contemplated in Article 4.1 –

4.2.1. will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Members' meeting; and

- 4.2.2. if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 4.3. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this Article 4, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution.

5. **DIRECTORS (TERMS OF OFFICE)**

- 5.1 The number of Directors and the election thereof shall be determined from time to time by the Members in a general meeting subject to the following provisions:
- 5.1.1 during the Development Period, there shall be a maximum of 5 (five) Directors and a minimum of 3 (three) Directors, 3 (three) of whom shall be nominees of the Developer;
- 5.1.2 on the expiry of the Development Period, there shall be a maximum of 5 (five) Directors and a minimum of 3 (three) Directors;
- 5.1.3 a retiring Director shall be eligible for re-election;
- 5.1.4 a nominee of the Developer shall be a Director for so long as the Development Period continues or the Developer does not revoke his appointment.
- 5.2 Except as is set out in Article 5.3 and Article 10, and except for Directors nominated by the Developer in terms of Article 5.1.1, each Director shall continue to hold office from the date of his commencement of office until the next annual general meeting following the said appointment, at which meeting each Director shall be deemed to have retired from office as such but will eligible for re-election to the Board of Directors at such meeting.
- 5.3 If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this Memorandum. If the Director so retiring or resigning was the nominee of the Developer, then during the Development Period, his successors shall be appointed by the Developer. The validity of any resolutions taken or acts performed by Directors to bring the number up to the prescribed level in terms of the foregoing only during a period when the number falls short of that provided in Article 5.1, shall not be prejudiced by such shortfall.
- 5.4 Any Director, with the exception of a Director appointed by the Developer, may be removed by a majority Board decision, for any reason whatsoever.
- 5.5 The appointment by the Board of any Director to fill any vacancy for whatever reason, shall be made within 45 (forty five) days of the date upon which such vacancy occurs.

- 5.6 The Directors shall have the power to co-opt persons onto the Board for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted onto the board shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 5.7 The Chairman shall be elected by a majority Board decision at the first Board meeting after the annual general meeting, provided that for and during the Development Period, the Chairman shall always be a nominee Director of the Developer. The Chairman shall chair all meetings of the Board and of the Members.

6. **ALTERNATE DIRECTORS**

- 6.1. Any Director appointed by the Developer may for any reason, and at or for any time, appoint an alternate.
- 6.2. Any other Director may obtain leave of absence by a resolution of the majority of the Directors, and the Board may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him. The appointment of such alternate shall not, however, be valid unless confirmed by a resolution of the majority of Directors present at the meeting.

7. **REMUNERATION OF DIRECTORS**

- 7.1. A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Association, provided that nothing in this Memorandum shall prohibit him reimbursement of any travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Association and which is authorised or approved by the Board.
- 7.2. If any Director commits a breach of Article 7.1 he shall forthwith cease to be a Director and shall not be eligible for re-election.

8. **POWERS AND DUTIES OF DIRECTORS**

- 8.1. The business of the Association shall be managed by the Directors who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not required by the Act, or by this Memorandum, to be exercised by the Association in a general meeting.
- 8.2. Without in any way affecting the generality of Article 8.1 the Directors shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum.
- 8.3. The Directors may, pursuant to their rights, obligations and duties in terms of this Memorandum and as provided for and contemplated under this Memorandum, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of this Memorandum.

8.4. After the termination of the Development Period, the Association in general meeting, shall have the right to limit and restrict the powers of the Directors, provided that no resolution of the Association shall invalidate any prior act of the Directors which would otherwise have been valid.

8.5. Rules

The Directors shall have the power to make 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 Development, for the purposes of giving proper effect to the provisions of this Memorandum and for any other purpose which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this Memorandum or the Rules.

8.5.1. In no way detracting from the generality of the Director's powers outlined in Article **8.1**, the Directors may from time to time make Rules, applicable within the Development, with regard to:

- 8.5.1.1. the preservation of the natural environment;
- 8.5.1.2. vegetation and flora and fauna in the Development;
- 8.5.1.3. the placing of movable objects upon or outside the buildings included in the Development, including the power to remove any such objects;
- 8.5.1.4. the storing of flammable and other harmful substances;
- 8.5.1.5. the conduct of any persons within the Development and the prevention of nuisance of any nature to any owner of immovable property in the Development;
- 8.5.1.6. the use and maintenance of private roads, private road verges, pathways, private open spaces, Community Facilities and Conservation Areas;
- 8.5.1.7. the imposition of fines and other penalties to be paid by Members of the Association;
- 8.5.1.8. the management, administration and control of private roads, pathways, private open spaces, Community Facilities and Conservation Areas;
- 8.5.1.9. the erection of all buildings and other structures, including service connections to buildings;
- 8.5.1.10. the establishment, installation and maintenance of private gardens;

- 8.5.1.11. the use of buildings and other structures, and the upkeep, aesthetics and maintenance of such buildings, in the Development;
- 8.5.1.12. the maintenance of the stormwater system by members on their land;
- 8.5.1.13. the right to keep animals, reptiles or birds;
- 8.5.1.14. the control of premises, including commercial, residential and other usage types in the Development (if any) and the use of Land within the Development;
- 8.5.1.15. the appointment and conduct of estate agents in respect of the sale of property within the Development, provided that:-
 - 8.5.1.15.1. such rule does not conflict in any way with the rights of the Developer or the rights of any person to whom the Developer has ceded its rights; and
 - 8.5.1.15.2. the Developer shall at times (even after expiry of the Development Period) have the right to nominate an estate agent to sell properties within the Development;
- 8.5.1.16. the provision of security within the Development;

and generally in regard to any other matter which the Directors from time to time consider appropriate.

8.5.2. Enforcement of Rules

- 8.5.2.1. The Directors may take or cause to be taken such steps as they may consider necessary to remedy the breach of any Rules of which the Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member to the Association. In addition the Directors may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.
- 8.5.2.2. In the event of any breach of the aforesaid conduct Rules or this Memorandum by any tenant, or occupier of any Land owned by the Member, or any person who goes upon the Development by virtue of a Member's rights thereto, such breach shall be deemed to have been committed by the Member and the Directors shall

be entitled to take such action as they deem fit against the Member responsible.

8.5.2.3. Notwithstanding the foregoing, the Directors may in the name of the Association enforce the provisions of any Rules by any application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or counsels they may deem fit.

- 8.6. Any Rules made by the Directors shall reasonably be in the interest of the Association and the Development and shall apply equally to all Members.
- 8.7. The Rules made by the Directors from time to time in terms of the powers granted to them shall be binding on all Members.
- 8.8. In no way detracting from the generality of any other provision of this Memorandum, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

9. **MINUTES**

- 9.1. The Directors shall in terms of the Act cause Minutes to be kept;
- 9.1.1. of all appointments of officers;
- 9.1.2. of names of Directors present at every meeting of the Association; and
- 9.1.3. of all proceedings at all meetings of the Association and / or the Directors.
- 9.2. Such Minutes once they are approved as a true record of proceedings, shall be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the following meeting.

10. **DISQUALIFICATION OR RESIGNATION OF DIRECTORS**

- 10.1. The office of Director shall be vacated if the Director:-
- 10.1.1. ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or this Memorandum; or
- 10.1.2. resigns his office by notice in writing to the Association and the Registrar; or
- 10.1.3. becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or

- 10.1.4. is found to be a lunatic or of unsound mind; or
 - 10.1.5. is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence;
 - 10.1.6. is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.
- 10.2. The office of the Director, in the case of a Director being a nominee of the Developer, shall be vacated on the Developer either revoking his appointment or terminating the Development Period.

11. **PROCEEDINGS AT MEETINGS OF DIRECTORS**

- 11.1. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (four) times during a financial year.
- 11.2. A Director may, on 7 (seven) days written notice to all other Directors, at any time summon a meeting of the Directors.
- 11.3. The quorum necessary for the transaction of the business of the Directors shall be at least 50% (fifty percent) of the total number of Directors, provided that for the Development Period 1 (one) of such Directors must be a nominee of the Developer.
- 11.4. If at a meeting the Chairman is not present within 10 (ten) minutes after the time appointed for holding the same, the Directors present may choose 1 (one) of their number to be Chairman for that meeting, subject to the provisions of Article 5.7.
- 11.5. Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate. Each Director shall be entitled to exercise 1 (one) vote, provided that during the Development Period, no resolution of Directors shall be carried unless the nominees of the Developer votes in favour of same. Subject to the aforesaid, in the event of an equality of votes the Chairman shall have a second or casting vote. Where a person is an alternate Director to more than one Director, or where an alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors he is representing.
- 11.6. All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any person acting as Director, notwithstanding that it be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Directors or a committee of Directors had been duly appointed and had qualified to be a Director.
- 11.7. A Resolution signed by all of the Directors shall be a valid Resolution notwithstanding that such Resolution may not have been passed at a meeting of Directors.

11.8. A meeting of the Board of Directors may be conducted by electronic communication or one or more Directors may participate in a meeting by electronic communication, as contemplated, and subject to the provisions of Section 73(3) of the Act.

11.9. Committees

11.9.1. The Directors may delegate any of their powers to committees consisting of such persons as they think fit, the chairman of which committees may be appointed by the Directors. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Directors.

11.9.2. Should the Directors not appoint the chairman of a committee, the members of that committee shall elect a chairman of its meetings. If at any meeting the chairman is not present within 10 (ten) minutes after the time appointed for holding the same, the committee members present may elect 1 (one) of their number to be chairman for that meeting.

11.9.3. A committee may meet and adjourn as it thinks fit. Questions at any meeting shall be determined by a majority of votes of the committee members present and in the event of an equality of votes the chairman of the committee shall have a second or casting vote.

11.10. Limitation of Liability of Directors

11.10.1. Subject to the provisions of the Act, no Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same occurs as a result of his own dishonesty, gross negligence or default, breach of duty or breach of trust.

11.10.2. The Association may:-

11.10.2.1. advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

11.10.2.2. indemnify a Director in respect of liability as set out in section 78(5); and/or

11.10.2.3. purchase insurance to protect the Association or a Director as set out in section 78(7),

and the power of the Association in this regard is not limited, restricted or extended by this Memorandum.

- 11.10.3. The provisions of Article **11.10.1** shall apply *mutatis mutandis* in respect of any former Director or Member of any committee of the Board.

12. **DELEGATION OF POWERS OF DIRECTORS**

The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

13. **FINANCE**

- 13.1. The Directors shall establish and maintain a levy fund sufficient in their opinion to enable the Association to meet its obligations for the repair, upkeep, maintenance, control, management and administration of the Association, and the Development in general, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Development and for the discharge of any other obligations of the Association (provided that nothing in this Memorandum shall be construed as obliging the Association to pay service charges due by Members to the relevant authority).
- 13.2. All levies due by Members to the Association shall be payable annually in advance, without deduction, demand or set-off, provided that the Association shall be entitled to collect the annual levy from Members, and Members shall pay the annual levy, in 12 (twelve) equal monthly instalments on the first day of each month of the ensuing year.
- 13.3. Notwithstanding anything to the contrary contained in this Memorandum or elsewhere, during the Development Period, the Developer shall not be obliged to make any contributions as levies to the Association irrespective of the number of pieces of Land owned by the Developer, provided that should the Developer alone in its sole and absolute discretion, make any payment during the Development Period in settlement of the expenses of the Association then such payments shall be interest free loans to the Association, the repayment of which loans will be made by setting off such loan amounts against the Developer's levy liabilities as are incurred after the Development Period.
- 13.4. Subject to the provisions of Article **13.3**, the Board shall determine the proportions in which Members shall contribute towards the levy fund in

accordance with the following principles, having regard to all circumstances prevailing at the time and to equity:-

- 13.4.1. those costs arising directly out of any Phase itself shall be assigned to the Management Association or Homeowners Association established in respect of such Phase or to the Member whose Land does not fall under the jurisdiction of any separate Management Association or Homeowners Association established at the instance of the Developer to fulfill certain purposes in respect of a particular Phase;
- 13.4.2. a distinction may be drawn between the levies imposed by the Association, and the services rendered by the Association to a particular Member or a particular group of Members taking into account the nature and extent of the services rendered to that particular Member or group of Members, and the number of potential dwelling units or development opportunities within that particular Phase;
- 13.4.3. where Crookes Brothers Limited, Registration Number 1913/000290/06, is the registered owner of Land within the Development, then notwithstanding anything to the contrary contained in these Articles, no levies shall be payable to the Association.
- 13.5. All levy payments received from Members and the Developer shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 13.6. The monies in the levy fund referred to in Article **13.1** shall be utilised to defray the expenses of the Association referred to in Article **13.1**.
- 13.7. Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to the prime rate of interest charged by First National Bank Limited from time to time plus 3 (three) percentage points thereon. Such interest shall be calculated and compounded monthly in arrears.
- 13.8. Subject to the provisions of Article **13.3**, the Directors shall have the power to impose additional special levies on Owners in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in Article **13.4**.
- 13.9. A Member shall not be entitled to demand repayment or a refund of any amount standing to the credit of his levy account.
- 13.10. All contributions levied under the provisions of this Memorandum shall be due and payable by Members on the passing of a resolution to that effect by the Directors and may be recovered by the Association by action in any Court (including any Magistrate's Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due.

- 13.11. The Association shall in addition to the levy fund established in Article **13.1** establish a levy stabilisation fund for the purposes of meeting any extraordinary expenditure, or expenses of a capital nature, to be incurred by the Association in carrying out its main objects and the provisions of this Memorandum.
- 13.12. Members (excluding the Developer) shall be obliged to pay over to the Association an amount equal to 25% (twenty five percent) or such lesser amount determined by the Directors from time to time in their entire discretion, of any amount received into such Member's levy stabilisation fund arising from the sale or disposal of Land falling under such Member's jurisdiction and as provided for in the Memorandum of Incorporation of the particular Member concerned to enable the Association to meet any extra-ordinary expenditure or expenses of a capital nature. Should a Member not be a member of a Management Association or Homeowners Association established at the instance of the Developer to fulfill certain purposes in respect of any Phase in the Development, then the sale or disposal by such Member of its Land shall be governed by the same terms and conditions as are applicable to sales and disposals of Land, including the sale or disposal of shares in companies owning Land in the Development, as more fully set out in the Memorandum of Incorporation of the Renishaw Hills Homeowners Association, more particularly Articles 14.13 and 14.14 thereof, subject to the necessary adaptations, with the relevant contribution in relation to the profit on such sale or disposal to be made to the Association, provided that the amount of the profit to be paid to the Association on sale or disposal shall be as determined by the Directors from time to time in their entire discretion.
- 13.13. Should a Member be more than 60 (sixty) days in arrears with payment of any levies due in terms of this Article **13** or any other amount of any nature whatsoever due to the Association by such Member (including but not limited to any fine that may be imposed by the Association on any such Member) and remain in arrears notwithstanding demand for payment by the Association, then in that event such Member shall not be entitled either in person or by proxy to speak or vote at a meeting of Members of the Association. A letter addressed to the Chairman of a meeting of Members of the Association by the Board, dated not more than 2 (two) days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid letter having been signed on behalf of the Board).
- 13.14. In the event of there being a dispute as to the amount of any levy due by the Member, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.
- 13.15. The Association shall not be entitled to borrow money, save in accordance with a Special Resolution of Members. This provision shall not apply to any amounts due to the Developer by the Association in respect of amounts the Developer may have expended on the Association's behalf as provided for in Article **13.3**.
- 13.16. Should the Association engage attorneys or any other lawfully regulated debt collection agency to recover outstanding levies and other amounts due by a

Member to the Association, then such Member shall pay all costs associated with and incurred by the Association with the attorney or debt collection agency, as the case may be, in connection with the recovery of the outstanding amounts.

- 13.17. All amounts received by the Association from Members on account of levies or any other amounts which are due to the Association shall be appropriated firstly to outstanding interest due to the Association, then to legal costs, if any, and lastly towards the reduction of the capital debt due to the Association.

14. **ACCOUNTING RECORDS**

- 14.1. The Directors shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and explain the transactions and financial position of the trade or business of the Association.
- 14.2. The accounting records shall be kept at the registered Office of the Association or at such other place or places as the Directors think fit, and shall always be open to inspection by the Owners.

15. **ANNUAL FINANCIAL STATEMENTS**

- 15.1. The Directors shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are prescribed by the Act.
- 15.2. A copy of the audited financial statements shall be laid before the Association in annual general meeting. A summary of the aforesaid audited financial statements, shall, not less than 21 (twenty one) days before the date of such meeting, be sent to every Owner of the Association: Provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

16. **AUDITOR**

An Auditor shall be appointed in accordance with the Act.

17. **NOTICES**

- 17.1. All notices shall be given by the Association to each Member in writing in any manner authorised by the Act and the Regulations, and particularly Table CR3 annexed to the Regulations.
- 17.2. Any notice sent by any means permitted in Table CR3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 17.3. Each Member of the Association:-
- 17.3.1. shall notify in writing to the Association an address within the Republic of South Africa for the purposes of receiving written notices

from the Association by post and if he has not named such an address, it shall be considered sufficient for the Association to serve notice at the Member's address; and

17.3.2. may notify in writing to the Association an email address and/or facsimile number; which address shall be his address for the purposes of receiving notices by way of electronic communication.

17.4. The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.

18. **WINDING-UP OF ASSOCIATION**

In the event of the Association being wound up, its assets (if any) shall devolve upon such other corporation as the Members in such winding-up order determine, provided that such corporation has aims and objectives similar to those of the Association.

19. **REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE DEVELOPMENT**

19.1. In order to procure and ensure compliance with the nature and amenity of the Development:-

19.1.1. Members shall at all times when dealing with buildings, extensions or alterations to any building within a Phase where such Member is the management association, ensure that the Building Design Code is complied with; and

19.1.2. Members shall at all times ensure that landscaping within a Phase where such Member is the management association, is undertaken in accordance with the Landscaping Protocol.

19.2. Provision of Services

The Association may, from time to time, contract with suppliers of services to provide services to the Development.

19.3. Maintenance of Public Road Verges and Services

19.3.1. The Association shall be responsible for the maintenance and upkeep of all public road verges and appropriate focal points, private roads, open spaces, Conservation Areas and Community Facilities within the Development.

19.3.2. Further in the event of the municipality, or any other service provider, not having the means or being unwilling to maintain any public open space or Municipal Services or, in the event of the municipality or any other service provider not maintaining the public open space or Municipal Services to a standard acceptable to the Association, then in

that event, the Association may in consultation with the municipality, maintain such public open space or Municipal Services.

19.4. Security

The Association may provide such security within the Development as it deems appropriate, from time to time. The Members shall at all times when dealing with security within a Phase, comply with the Security Procedures determined by the Directors from time to time.

20. **ENFORCEMENT OF OBLIGATIONS OF OWNERS**

Should any Member fail to perform any obligation incumbent upon him, within the period of any notice given for compliance, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Association, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Member concerned, which shall be payable on demand.

21. **DETERMINATION OF DISPUTES**

21.1. In the event of any dispute or difference arising between the Members inter se or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligation or liabilities of the Association or any Member in terms of this Memorandum, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 60 (sixty) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.

21.2. The arbitrator shall be if the question in issue is:

21.2.1. primarily an accounting matter, an independent chartered accountant of not less than 15 (fifteen) years standing as such appointed by the President for the time being of the South African Institute of Chartered Accountants in Natal;

21.2.2. primarily a legal matter, a practicing senior Advocate of not less than 10 (ten) years standing as such, or a practicing attorney of not less than 15 (fifteen) years standing as such, in either event as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society);

21.2.3. any other matter, an independent person agreed upon between the parties and, failing agreement, as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) regard being had to the needs of the dispute and the qualifications required therefore.

21.3. If the agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under

Articles **21.2.1**, **21.2.2** or **21.2.3**, then a practicing Advocate of not less than 10 (ten) years standing or alternatively practicing attorney of not less than 15 (fifteen) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.

21.4. The arbitration referred to in Article **21.1** shall be held:

21.4.1. in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:

21.4.1.1. the usual formalities or procedure, which may otherwise be prescribed in terms of the law referred to in Article **21.4.3**, or

21.4.1.2. the strict rules of evidence;

21.4.2. immediately and with a view to it being completed within 30 (thirty) days of the appointment of the arbitrator having particular regard to any urgency regarding the matter in issue, provided that should any party to such dispute delay or omit to fulfill any act required of it to enable the arbitration to be duly completed within the period aforesaid, any other party hereto shall be entitled at its election and upon the expiration of 6 (six) days' notice to the defaulting party to that effect, without any such defaulting party having remedied its default or omission to the satisfaction of the arbitrator, either to require the arbitrator summarily without hearing the parties to determine the rules of procedure for the finalising of the arbitration proceedings within such further period not exceeding 14 (fourteen) days beyond the original 30 (thirty) day period as the arbitration may determine, or alternatively and in the discretion of the party serving such 6 (six) day notice aforesaid, to require the arbitrator to proceed with the arbitration without the further participation of the defaulting party, in which event the defaulting party shall be barred from the participating in the further conduct of the arbitration other than at the hearing thereof, and the decision of the arbitrator then to proceed with the arbitration, either with the presence or in the absence of the defaulting party, will be competent, or further alternatively and in the discretion of the party serving the 6 (six) day notice aforesaid, such party shall be entitled to have recourse to the competent Court having jurisdiction, in which event the arbitrator shall then be entitled to make an award of the wasted costs occasioned by the proceedings, and whereupon such arbitration proceedings shall then terminate and the wasted costs borne by the party against whom the award is made, and the decision of the arbitrator as to such costs shall be final and the binding upon the relevant parties;

- 21.4.3. otherwise, but subject to the relevant provisions hereof and subject to any other alternative directions which the arbitrator may and shall be competent to prescribe, under the provisions of the arbitration laws of the place in which the arbitration takes place as amended from time to time.
- 21.5. The arbitrator shall:
- 21.5.1. be entitled to make any award as to costs of the proceedings;
- 21.5.2. decide the matter submitted to him according to what he considers just and equitable in the circumstances, and shall have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially, and the strict rules of law need not be observed or taken into account by him in arriving at his decision.
- 21.6. The parties irrevocably agree that the decision of those arbitration proceedings:
- 21.6.1. shall be binding on all of them and shall be forthwith carried into effect;
- 21.6.2. may at the instance of any party hereto be made an Order of Court of competent jurisdiction, provided that such proceedings for such Order of Court shall not delay in any way at all the due execution and carrying into effect of the arbitrator's award.
- 21.7. Notwithstanding anything to the contrary contained in this Article **21**, the provisions hereof shall not preclude any party hereto from taking any action against any other party or parties to the dispute in any competent Court having jurisdiction where such action is reasonably required either to restrain temporarily pending the outcome of any arbitration proceedings as hereinbefore provided for, any party hereto from commencing or continuing any action or course of action or likewise to enforce temporarily pending such arbitration proceedings any omission by any party, which action, course of action or omission is or is likely to materially prejudice any party hereto, and regard being had to all the circumstances, is of such urgent nature that it would not be appropriate merely to have recourse to arbitration proceedings, the parties agreeing that the test to be generally applied being that which would otherwise entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.
22. **DEVELOPER'S RIGHTS REGARDING THE DEVELOPMENT**
- 22.1. The Developer shall, during the Development Period, be entitled to develop any Land within the Development of which it is the owner in conformity with the Scheme, without the approval of the Association.
- 22.2. It is recorded that an owner of Land may have certain contractual obligations to the Developer in terms of the contract of sale, entered into between the owner and Developer in respect of the purchase of Land. Should there be any conflict between the rights and obligations of the Association, in terms of this

Memorandum, and the right of the Developer in terms of the aforesaid contact of sale, the provisions of the contract of sale (and the Developer's rights in terms thereof) shall prevail.

23. **DISCLAIMER OF RESPONSIBILITY**

23.1. The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered upon the Development regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within the Development. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

23.2. The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member or any lessee for any injury 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 Development, regardless of the cause thereof.

23.3. Members shall indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this Article **23**.

24. **AMENDMENT TO MEMORANDUM**

24.1. Subject to Article **25**, this Memorandum may only be amended or varied by way of a Special Resolution adopted at a Member's meeting or in terms of a court order.

24.2. Amendments to the Memorandum may be proposed by the Board or by Members entitled to exercise at least 10% (ten percent) of the voting rights.

24.3. The Board shall nevertheless have the power to alter this Memorandum to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in Section 17 of the Act. A notice of any such alteration must be sent to each Member at least 10 (ten) business days prior to the filing of the notice of alteration with the Commission.

25. **RESTRICTIONS ON AMENDMENT TO MEMORANDUM**

These Articles shall not be altered without the prior written consent of the Developer during the Development Period.

26. **PROPERTY TO BE INCORPORATED INTO THE DEVELOPMENT OR EXCLUDED FROM THE DEVELOPMENT**

26.1. The Developer may during the Development Period by written notice to the Association, notify the Association of any immovable property of which it is the registered Owner which is to be incorporated into the Development, and such additional immovable property shall be deemed to be included in the Development from the date of receipt of such notice by the Association.

26.2. The Developer may during the Development Period by written notice to the Association, notify the Association of any immovable property owned by the Developer, which is to be removed from the Development and such Land shall be excluded from the Development from the date of receipt of such notice by the Association.

27. **CONFLICT**

In the event of any conflict or incompatibility between the Memorandum or Rules of the Association and those of any Member in respect of any Phase, the Memorandum or Rules of the Association shall prevail.