

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008
MEMORANDUM OF INCORPORATION OF A NON PROFIT COMPANY WITH
VOTING MEMBERS
THE BOARDWALK ESTATE
HOMEOWNERS ASSOCIATION NPC (RF)

Registration No.

1. Interpretation

In this Memorandum of incorporation the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

- 1.1.1 **"Act"** means the Companies Act No. 71 of 2008, as amended, read with the regulations promulgated in terms thereof from time to time;
- 1.1.2 **"association"** means The Boardwalk Estate Homeowners Association NPC being a non-profit company with voting members, incorporated in terms of the Act;
- 1.1.3 **"association area"** means Portions 1 to 31 of Erf 10046 and 9 subdivided portions of a consolidation of erven 8740 to 8743, all Plettenberg Bay Township;
- 1.1.4 **"auditors"** means the auditors of the association from time to time;
- 1.1.5 **"board"** means the board of directors of the association from time to time;
- 1.1.6 **"chairman"** means the chairperson of the board from time to time;
- 1.1.7 **"common property improvements"** means any buildings, structures, lights, landscaping, irrigation, driveways, parking areas, pathways, security installations and equipment located within the common property;
- 1.1.8 **"common property services"** means any roads, sewerage, potable water, electrical infrastructure and street lighting located within the common property;
- 1.1.9 **"common property"** means any portions in the estate of which the association is or is to become the registered owner;

- 1.1.10 **"CSOS Act"** means the Community Scheme Ombud Service Act 9 of 2011;
- 1.1.11 **"developer"** means Woodeast Properties Proprietary Limited registration number 1991/002945/07, its successors in title or assigns in its capacity as developer;
- 1.1.12 **"developer director"** means any director appointed by the developer during the initial period;
- 1.1.13 **"director"** means any member of the board as contemplated in section 66 of the Act including an alternate or co-opted director;
- 1.1.14 **"electronic communication"** shall have the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002, as amended;
- 1.1.15 **"estate"** means a cluster housing development known as "Boardwalk Estate" to be established by the developer in respect of the association area;
- 1.1.16 **"IFRS"** means the International Financial Reporting Standards as adopted from time to time by the Board of International Account Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of the Act;
- 1.1.17 **"the initial period"** means the period from the establishment of the association until all portions have been developed, or alternatively until the developer notifies the association in writing that the initial period has ceased, whichever is the earlier;
- 1.1.18 **"in writing"** means legible writing in English and includes printing, type writing or any other mechanical process as well as any electronic communication in a manner and form permitted in terms of the Act;
- 1.1.19 **"levy"** means the levy payable by a member in terms of 5.15;
- 1.1.20 **"local authority"** means the Bitou Municipality, District Knysna;
- 1.1.21 **"managing agent"** means any person or body appointed by the association as an independent contractor to undertake any of the functions of the association;
- 1.1.22 **"member"** means any owner sd described in 5.1;

- 1.1.23 "**memorandum**" means this memorandum of incorporation in respect of the association, as amended from time to time;
- 1.1.24 "**owner**" means any person, company, closed corporation or trust reflected in the records of the Registrar of Deeds as the registered owner of a property;
- 1.1.25 "**perimeter security installation**" means any walls, fences and related security equipment enclosing and securing the estate;
- 1.1.26 "**property**" means immovable property, in the association area/in the estate, registered in the name of an owner whether or not such property has been developed;
- 1.1.27 "**property improvements**" means any buildings, structures, boundary walls/fences, garden walls/fences, landscaping, irrigation, driveways, parking areas, external paving, tiling, hard surfacing, lights, electricity generation equipment, air conditioners, aerials, satellite dishes and cameras situated on any property;
- 1.1.28 "**plan**" means any plans, specifications and any other technical requirements or details related to the refurbishment or replacement of any property improvements;
- 1.1.29 "**register**" means the register of members kept in terms of the Act;
- 1.1.30 "**representative**" means any person nominated in terms of clause 5 to represent a member;
- 1.1.31 "**rules**" means any rules made by the board from time to time in terms of this memorandum;
- 1.2 Unless the context otherwise requires any words importing the singular number shall also include the plural number and vice versa and words importing any one gender shall include the other two genders.
- 1.3 Any words or expressions as defined in the Act at the date on which this memorandum becomes binding on the association shall, if not inconsistent with the subject or context, bear the same meaning in this memorandum.
2. **Juristic personality**
- 2.1 The association is incorporated as a non-profit company with members which may be juristic persons, including profit companies, all of which shall be voting members.

- 2.2 The association has juristic personality from the date and time that such incorporation is registered as is stated in its registration certificate and as contemplated in section 19(1) of the Act.
- 2.3 The association is incorporated in accordance with and governed by:
 - 2.3.1 the unalterable provisions of the Act subject to such higher standards, greater restrictions, longer periods of time and more onerous requirements of this memorandum in relation to such unalterable provisions;
 - 2.3.2 the alterable provisions of the Act subject to the limitations, extensions, variations and substitutions of this memorandum; and
 - 2.3.3 the other provisions of this memorandum.

3. **Objects**

- 3.1 The object of the association shall be the promotion and advancement of the communal interests of members and in so doing:
 - 3.1.1 to oversee, regulate and control any refurbishment or alterations to any property improvements and to promote the general high standard all property improvements, including any refurbishment or alterations thereof;
 - 3.1.2 to own, control, construct, improve, maintain, manage and insure where necessary the common property improvements, the common property services and the perimeter security installation;
 - 3.1.3 to institute, control and pay for measures to provide security within and to the estate;
 - 3.1.4 to acquire and grant any servitudes as may be necessary;
 - 3.1.5 to take action including the imposition of any fines or the institution of any arbitration proceedings, proceedings in terms of the CSOS Act or proceedings in a court of law as may be deemed necessary by the board in relation to any non-compliance by any member of the provisions of this memorandum or the rules;
 - 3.1.6 to enter into any contracts necessary to ensure the proper implementation by the association of obligations as may have been imposed upon the association by the local authority or any other statutory body or authority pursuant to the development of the estate and to take

cession and assignment from the developer of any such obligations as may have been imposed upon the developer prior to the establishment of the association;

3.1.7 to generally promote the enjoyment by members of their properties.

3.2 The association shall promote and advance the collective and communal interests, safety and welfare of members including the collection of levies and payment of expenses incurred in the furtherance of the objects in clause 3.1.

4. **Non Profit Company Provisions**

4.1 The association is a non-profit company and accordingly the association:

4.1.1 shall apply all of its assets and income, however derived, to advance its stated objects set out in clause 3 and it may:

4.1.1.1 acquire and hold securities issued by a profit company;

4.1.1.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

4.2 The association shall not, directly or indirectly, pay any portion of its income or transfer any of its assets regardless as to how such income or asset was derived to any person except:

4.2.1 as reasonable remuneration for goods delivered or services rendered to the association;

4.2.2 as reasonable payment of or reimbursement for expenses incurred to advance a stated object of the association;

4.2.3 as payment for an amount due and payable by the association in terms of the *bona fide* agreement entered into between the association and that party;

4.2.4 in respect of any legal obligation binding upon the association.

4.3 No office bearer of the association shall, solely by virtue of being an office bearer, have any rights in the common property or any other assets of the association.

- 4.4 Despite any provision in any law or agreement to the contrary, upon the winding up or the dissolution of the association:
- 4.4.1 no past or present member and no past or present director shall be entitled to any part of the net value of the association after its obligations and liabilities have been satisfied;
- 4.4.2 the entire net value of the association shall be distributed to:
- 4.4.2.1 one or more registered non-profit companies, non-profit trusts and/or voluntary associations having objects similar to the association's main object carrying on activities within the Republic of South Africa, as determined by the board; and/or
- 4.4.2.2 one or more registered external non-profit companies, non-profit trusts and/or voluntary associations having objects similar to the association's main object, as determined by the board.
- 4.4.3 Should no such determination be made in terms of clause 4.4.2 immediately prior to the winding up or dissolution of the association, a court of law shall make such determination.

5. Membership

- 5.1 Membership of the association shall be limited to the developer in its capacity as such and to any other person, company, closed corporation or trust which is reflected in the records of the Deeds Registry as the registered owner of a property.
- 5.2 Where a property is owned by more than one person, the co-owners shall appoint one such co-owner as a member. All co-owners shall together be deemed to be one member and have the rights and obligations of one member, provided however that all such co-owners shall be jointly and severally liable for the due performance by that member of any of his obligations to the association.
- 5.3 Where a property is owned by a company, closed corporation or trust, the directors, members or trustees as the case may be, from time to time, shall appoint one of their number as the member, provided however that all such directors, members or trustees, as the case may be, shall together be

deemed to be one member and have the rights and obligations of one member.

- 5.4 Any co-owners referred to in clause 5.2 and any company, closed corporation or trust referred to in clause 5.3 shall advise the association in writing of the name of the person appointed as the member and of any changes to such appointed member.
- 5.5 Where an owner is a company, close corporation or trust, it shall be obliged to give prior written notice to the association of any proposed change in its directors, shareholders, members of a closed corporation or trustees, as the case may, and every new shareholder, director, member of a close corporation or trustee shall sign and deliver to the association, prior to his taking office in such capacity, an acknowledgment of his acceptance of the provisions of this memorandum.
- 5.6 An owner shall be entitled to become a member of the association, and when such member ceases to be an owner, that member shall *ipso facto* cease to be a member of the association. An owner may not resign as a member of the association.
- 5.7 No member shall transfer his property unless that member has agreed in writing with the proposed transferee of such property, as a *stipulatio alteri* in favour of the association, that such transferee shall become a member on taking transfer of the property and be bound by all the provisions of this memorandum and that such written agreement is lodged with the association prior to the proposed transferee taking transfer of such property.
- 5.8 No member may let or part with occupation of his property, whether that property is developed or not and whether temporarily or otherwise, unless that member has agreed in writing with the proposed occupier of the property, as a *stipulatio alteri* in favour of the association, that such occupier be shall be bound by all the provisions of this memorandum and that such written agreement is lodged with the association prior to the proposed occupier taking occupation of the property.
- 5.9 No member may rezone his property whether by way of rezoning, consent use or otherwise without the prior written consent of the association, which consent shall be in the sole discretion of the association, irrespective of whether any lawful authority grants permission for such rezoning or consent use.

- 5.10 Subject to 5.11 below, no member may subdivide his property. No member may consolidate more than two properties without the prior written consent of the association, which consent shall be in the sole discretion of the association, irrespective of whether any lawful authority grants permission for such consolidation.
- 5.11 The developer is developing the estate in phases. During the initial period, the developer may in its sole discretion subdivide or consolidate property owned by the developer and which forms part of the estate. Insofar as the consent of the members are required each member hereby irrevocably grants consent to the approval of such subdivision or consolidation.
- 5.12 If a member after having received notice in writing from the association fails to make timeous payment of any levies or any other amounts due to the association or is in contravention of the provisions of this memorandum or of the rules, that member may be suspended from the benefits of membership as follows:
- 5.12.1 the board shall send a notice to the member informing that member of the suspension and giving reasons for such suspension;
- 5.12.2 the suspension shall remain in force until such time as the board gives notice to the contrary to that member in writing or the suspension is uplifted following the outcome of the process referred to in clause 7.9;
- 5.12.3 after being so suspended, that member shall not be entitled to the privileges of membership of the association which include but are not limited to the right to use any recreational facilities being part of the common property improvements, the right to attend and vote at any meetings of the association and the use of any security access systems or other services as may be made available by the association to members provided the association may not refuse the member access to the common property to gain access to that member's property.
- 5.13 The rights and obligations of a member shall not be transferable and every member shall:
- 5.13.1 to the best of his ability further the objects and interests of the association;
- 5.13.2 observe the provisions of this memorandum and the rules;

- 5.13.3 sign all documents and do all things necessary to enable the registration by the association or the local authority of any servitudes over his property as may be required related to the provision of the perimeter security installation, other security facilities, underground pipes and/or cables.
- 5.14 Nothing contained in this memorandum shall prevent a member from ceding his rights in terms of this memorandum as security to the mortgagee of his property.
- 5.15 The association shall compile and maintain a register of members.

6. **Levies**

- 6.1 The directors may from time to time impose annual levies upon members for the purpose of meeting all the expenses which the association has incurred or which the directors reasonably anticipate the association will incur in the attainment of its objects and the pursuit of its business.
- 6.2 The board shall, not less than 30 days prior to the end of each financial year or so soon thereafter as is reasonably possible, prepare and serve upon every member, at the address chosen by that member, an estimate in reasonable detail of the amount which shall be required by the association to meet its expenses during the following financial year, and shall specify separately any estimated deficiency as may result from the preceding year. The board may include in such estimates an amount to be held in reserve to meet anticipated expenditure not of an annual nature and as may be required by any applicable legislation.
- 6.3 The annual levy in clause 6.1 shall be payable by members in equal monthly instalments due in advance on the first day of each and every month. The levy shall be paid by debit order or such other electronic payment method as may be determined by the association from time to time.
- 6.4 In the event of the board for any reason whatsoever failing to prepare and serve the estimate referred to in clause 6.1 timeously, every member shall, until service of such estimate, continue to pay the levy previously imposed and shall, after such estimate is served, pay such levy as may be specified in the notice referred to in clause 6.1.
- 6.5 The board may, from time to time, impose special levies upon the members in respect of all such expenses, referred to in clauses 6 and 6.1, which are

not included in any estimate made in terms of clause 6.1, and may, in imposing such levies, determine the terms of payment thereof.

- 6.6 The board shall be empowered in addition to such other rights as the association may have in law as against its members to determine the rate of interest from time to time chargeable upon arrear levies provided that such rate of interest shall not be in excess of 500 basis points above the prime overdraft rate as charged by the association's bankers from time to time.
- 6.7 Any amount due by a member by way of levy and any interest thereon shall be a debt due by that member to the association. Notwithstanding that a member may cease to be such, the association shall have the right to recover arrear levies and interest from that member. No levies or interest paid by a member shall under any circumstances be repayable by the association upon that member ceasing to be a member. Further, a member on ceasing to be such, shall have no claims whatsoever on any other monies held by the association whether obtained by way of a sale of association assets or otherwise.
- 6.8 A transferee of a property shall on becoming a member be liable to pay the levy then attributable to that property.
- 6.9 Each member shall pay a levy pro rata to the total number of properties in the estate from time to time. provided that the board shall as far as reasonably practical:
 - 6.9.1 assign those costs relating directly to a property to the owner thereof;
 - 6.9.2 assign a proportion of those costs attributable generally to a particular number of properties to the owners thereof; and
 - 6.9.3 assign those costs relating to the estate generally to all owners equally.
- 6.10 Should the association consent to the consolidation of properties, in terms of 5.10 above, such consolidated property will be liable for the same value of levies, as if it were still separate properties.
- 6.11 To the extent that the developer is an owner of a property, the developer shall be liable for the levy in respect of that property on the same basis as other members.

- 6.12 The board's decision in terms of clause 6.8 shall be final and binding on the members.
- 6.13 A member shall be liable for and shall pay all legal costs incurred by the association in the enforcement against that member of the provisions of this memorandum and/or the rules.
- 6.14 A member shall not be entitled to withhold payment for any reason whatsoever of any amount payable by that member to the association.

7. Rules

- 7.1 Subject to any restriction imposed or direction given by members at a general meeting of the association the board may, from time to time, for the attainment of the objects of the association generally and specifically make rules in regard to:
- 7.1.1 the nature, height and siting of any proposed alterations or renovations to any property improvements and which are visible from the extension thereof;
 - 7.1.2 the process to be followed and the fees payable to the association for the scrutiny of any plans prior to the construction of any property improvements in 7.1.1;
 - 7.1.3 the process to be followed and the fees and deposits payable to the association during the construction of any such property improvements;
 - 7.1.4 the landscaping and maintenance thereof by a member of that portion of the common property directly adjacent to his property including the installation, operation and maintenance of any irrigation within such part of the common property;
 - 7.1.5 the control and conduct of members, member's residents, employees, and guests and any service providers employed by such member, within the common property;
 - 7.1.6 the control and conduct of members, member's residents, employees, and guests and any service providers employed by such member, within the estate to prevent any nuisance of any nature to any owners or occupiers of properties;

- 7.1.7 the implementation of measures to prevent or limit damage within the common property including the right to restrict the size and/or weight of any vehicles and/ or equipment permitted to enter the estate;
- 7.1.8 the control of the number of persons permitted to occupy any property;
- 7.1.9 the keeping of any animals within the estate;
- 7.1.10 the placing or fixing of any external ornamentation, embellishments or signs on any property which are visible from the common property including the power to remove any such ornamentation, embellishments or signs:
- 7.1.11 the nature and location of any signs within the common property including the power to prohibit and to remove any such signs; and
- 7.1.12 the determination, implementation, management and control of measures for the provision of security to the estate including the right to restrict and to determine access to and egress from the estate.
- 7.2 For the enforcement of the provisions of this memorandum or the rules the board may:
 - 7.2.1 give notice to the member concerned setting out the nature and extent of the breach and requiring such member to remedy such breach and to do so within such reasonable period as the board may determine;
 - 7.2.2 take or cause to be taken such steps as it may consider necessary to remedy such breach of which such member may be guilty, and debit the cost of so doing to such member, which amount shall be deemed to be a debt owing by such member to the association;
 - 7.2.3 impose a fine and/or other penalties on such member;
 - 7.2.4 refer the matter to the Ombud for determination in terms of the CSOS Act;
 - 7.2.5 refer the matter for resolution in terms of clause 7.9; and/or
 - 7.2.6 take legal advice, institute legal proceedings by arbitration in terms of clause 32, by civil application and/or in a court of law or in terms of the provision of any legislation or regulation prevailing then against any person for the enforcement of the rights of the association as set out in terms of this memorandum or the rules and for such purpose appoint such attorneys and counsel as deemed fit.

- 7.3 the association shall be entitled to recover all legal costs incurred in terms of clause 7.2.5 from the person concerned, calculated as between attorney and own client including collection commission and tracing agent's fees.
- 7.4 The board may institute any proceedings necessary to defend any action or other proceedings as may be instituted by any person, including by any member, against the association.
- 7.5 In the event of a member disputing the terms of notice in clause 7.2 of a breach such dispute shall be determined as set out in clause 7.9.
- 7.6 Any fine imposed upon a member shall be deemed to be a debt due by such member to the association.
- 7.7 The association may in general meeting itself make any rules which the board may make and may in general meeting vary or modify any rules made by it or by the board from time to time, including the quantum of any fines which the association may impose.
- 7.8 Should the board pass any resolution to include, amend or change any rule or the quantum of any fines to be imposed pursuant to any rule, the board shall, by electronic communication, furnish members with full details of such board resolution and such amendment or change shall only become effective on the date of such communication.
- 7.9 In the event of a member disputing that he has committed any breach or disputing the extent of the breach as referred to in clause 7.2.1, a committee comprising of two directors and a suitably qualified and experienced independent person, all appointed by the chairperson for this purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (subject always to the principles of natural justice) as the chairperson may direct.
- 7.10 In the event of a member, after the process in 7.9, being found to have committed the breach, the board shall be entitled to recover from such member the costs associated with such adjudication process.

8. Appointment of directors

- 8.1 There shall be a board consisting of at least three but not more than five directors.

- 8.2 A director, except for the developer directors who may or may not be members, shall be a member.
- 8.3 The first directors on formation of the association and until the first annual general meeting of the association shall be developer directors.
- 8.4 From the first annual general meeting of the association and for the duration of the development period there shall be 5 directors, 3 of which shall be developer directors and the remaining directors shall be appointed by the members by a majority vote of all members present at the annual general meeting.
- 8.5 All developer directors shall be obliged to resign at the end of the development period and thereafter there shall be no developer directors.
- 8.6 The developer shall from time to time advise the association, in writing, which persons are appointed as developer directors and such persons shall remain in office until such time as the association receives written notice from the developer of any changes to such persons acting as developer directors.
- 8.7 Nominations for the election of directors, other than developer directors, shall be submitted to the association by any member in good standing not less than 48 hours prior to any annual general meeting and shall be co-signed by another member in good standing.
- 8.8 The directors shall within 14 days after each annual general meeting appoint a chairperson and vice-chairperson who shall hold their respective offices until the next annual general meeting provided that the office of chairperson or vice-chairperson shall ipso facto be vacated should he cease to be a director for any reason. No one director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices, the board shall immediately appoint one of their number as a replacement in such office, however, during the initial period the chairperson shall be elected from one of the developer directors.
- 8.9 Subject to the overriding provision in 8.1, the board shall have the right to co-opt onto the board a maximum of 2 persons, who need not necessarily be members of the association, as directors. A co-opted director shall hold office until the next annual general meeting after his co-option when he shall retire but shall be eligible for further co-option.

9. **Removal and rotation of directors**

A director, other than a developer director, shall hold office from the date of such appointment until the annual general meeting next following such appointment at which meeting he or she shall be deemed to have retired from office, however he or she may make himself or herself eligible for re-election before such meeting.

- 9.1 A director shall be deemed to have vacated his office upon:
 - 9.1.1 becoming disqualified to act as a director or being removed from office in terms of the provisions of section 69 and section 71 of the Act;
 - 9.1.2 being disentitled to exercise his vote in terms of clause 19.3;
 - 9.1.3 being removed from office in terms of clause 11.6.
- 9.2 Should a vacancy occur in the board prior to the next annual general meeting, that vacancy shall be filled by a person appointed by the remaining directors, or by the developer should such a vacancy relate to a developer director.
- 9.3 In the event that the number of directors should fall below 3, the remaining directors shall, pending the appointment of further directors, have the power to exercise all the powers of the board for a period not exceeding 30 days.
- 9.4 A director shall perform the functions of office in good faith, honesty and in a transparent manner and at all times act in the best interest of the association and in such a way that the credibility and integrity of the association are not compromised.
- 9.5 A director shall within 60 days of his election declare in writing to the board any financial interest he or his immediate family or business associates may have in respect of any business arrangement with the association.
- 9.6 A director shall declare in writing to the board any gifts and/or financial benefits which he or his immediate family might be offered from any party wishing to do business with the association.
- 9.7 A director may not, without the permission of the board, disclose any privileged or confidential information of the board or of the association to any party not authorised or entitled, in law, to the receipt of such information.

10 Directors' expenses

A director shall be entitled to recover all reasonable and bona fide expenses incurred by him or her in or about the performance of his or her duties as director. Save as aforesaid, a director shall not be entitled to any remuneration for the performance of his or her duties.

11 Powers of directors

- 11.1 The board, subject to the provisions of this memorandum, shall have the power to exercise all of the powers and perform any of the functions of the association.
- 11.2 The board shall at all times have the right to engage on behalf of the association the services of a managing agent, employees and service providers for any reasons deemed necessary by it and on such reasonable terms as it shall decide.
- 11.3 A director may not, except as authorised by the board, give or purport to give any instruction to any managing agent, employee or service provider referred to in clause 11.2.
- 11.4 The association may not provide a director with a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a director of the association or an inter-related company, or a person related any such director, however a loan or financial assistance is permissible in the circumstances referred to in Schedule 1 section 5(4)(a) to (d) of the Act.
- 11.5 The board may, at any time, investigate and make a finding in respect of any alleged breach by a director of any provision of this memorandum and/or of the rules and may for such purpose establish a special committee to investigate and make recommendations in such regard.
- 11.6 Should the board after, instituting the proceedings referred to in clause 11.5, determine that a director is guilty of such breach, the board may:
 - 11.6.1 issue formal written warning to such director;
 - 11.6.2 reprimand such director;
 - 11.6.3 request the resignation of such director;
 - 11.6.4 take whatever steps against such director as it deems necessary in order to remove such director from the board.

- 11.7 The board shall be entitled to appoint committees, including a design review panel to assess and consider any proposed alterations in 7.1.1 read with 3.1.1 and consisting of members and other persons including the managing agent, and to delegate to such committees and other persons such of its functions, powers and duties as it deems fit and to revoke such appointments and delegations of such functions, powers and duties.

12 Proceedings of directors and directors meetings

- 12.1 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of this memorandum.
- 12.2 Except as otherwise may be set out in this memorandum, the chairperson shall preside at all meetings of the board and at all general meetings provided that should the chairperson not be present within 10 (ten) minutes of the scheduled time for the start of such meeting or in the event of the chairperson being unable or unwilling to act, the vice chairperson shall act in the chairperson's stead and failing the vice chairperson, a chairperson appointed by the relevant meeting.
- 12.3 A quorum for the holding of any board meeting of shall be a majority of directors present personally, provided however that during the initial period the presence of at least one developer director shall be necessary in order to form such a quorum.
- 12.4 Any resolution of the directors shall be carried on a simple majority of all votes cast provided that during the initial period if a developer director votes against a resolution it shall be defeated and if a developer director votes in favour of the resolution it shall be carried irrespective of the other votes for and against the resolution. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 12.5 When a resolution of the board is called for the secretary of the association shall record in writing the proposed resolution, the manner in which the vote on the proposed resolution was cast and whether or not the resolution was approved.
- 12.6 A resolution signed by all the directors shall be valid in all respects as if it had been duly passed at a meeting of the board.
- 12.7 Resolutions adopted by the board shall be effective as of the date of that resolution unless otherwise so resolved.

- 12.8 The board shall appoint a suitably qualified person to act as secretary to the board and to the association.
- 12.9 Should all directors of the association resign at once or cease to hold office as directors the secretary of the association shall call a special general meeting within 10 days of such resignation for the purposes of electing new directors.
- 12.10 The procedures of any committees as may be constituted by the board and their obligation to minute their meetings are unless otherwise specifically set out in the resolution forming and authorising that committee, the same as those of the directors as set out in this memorandum and shall be subject to the authority of the board.
- 12.11 Subject to any limitation imposed by this memorandum or the members acting in general meeting, the management of the business and the control of the Association shall be vested in the Directors. No director or member of any committee may act outside of his delegated powers of authority entrusted to him by the board.

13 General meetings of the association

- 13.1 The association shall, within 6 months after the end of each financial year, hold a general meeting as its annual general meeting in addition to any other general meetings during that year, and shall specify such meeting either as an annual general meeting or as an extraordinary general meeting, as the case may be, in such notices calling for such general meetings.
- 13.2 Such annual general meeting shall be held at such time and place as the board shall decide from time to time.
- 13.3 All general meetings other than annual general meetings shall be referred to as special general meetings.
- 13.4 The board may, whenever they deem fit, convene an special general meeting. A special general meeting shall also be convened on a demand made in terms of section 61(3) of the Act provided that each such demand specifies the purpose for which such meeting is proposed and that such meeting is demanded in writing by not less than 10% of all members.

14 Notices of meetings

- 14.1 A general meeting of the association shall be called in writing on a notice period of at least 15 business days' (excluding the day on which such notice is given)

and such notice shall specify the place, the day, the record date, the time of the meeting, and the general nature of the business to be conducted at such meeting.

- 14.2 A general meeting of the association called on shorter notice than specified in clause 14.1, shall be deemed to have been duly called if every person entitled to vote in respect of any item on the agenda of such meeting is present at the meeting and votes to waive the required minimum notice period.
- 14.3 A material defect in the manner and form giving notice of the business of a general meeting of the association may be voted on at such meeting if every person entitled to vote waives such material defect.
- 14.4 A non-material defect in the manner and form of giving notice of the business of a general meeting of the association or an accidental or inadvertent failure in the delivery of such notice does not invalidate such action taken at the meeting.
- 14.5 Any proposed resolution to be put to a general meeting of the association shall be expressed with sufficient clarity and specificity and shall be accompanied by sufficient information or explanatory material to enable a member who is entitled to vote on such resolution to determine whether to participate in such meeting and to seek to influence the outcome of the vote on the resolution. Such proposed resolution shall further be given in the manner prescribed in section 62 of the Act, in terms of this memorandum or in such other manner, if any, as may be prescribed by the board, to all persons who are entitled to receive such notices.

15 **Quorum**

- 15.1 No general meeting shall be held and no business shall be transacted at any general meeting unless a quorum is present when the meeting commences and when the meeting proceeds to business.
- 15.2 During the initial period the quorum necessary for commencing and conducting business at any general meeting shall be one or more nominees present to represent the votes of the developer and 25% of the votes in number of members of the association entitled to vote for the time being provided that such members are present, in person or by proxy, at the commencement of and for the duration of such general meeting.
- 15.3 After the initial period the quorum necessary for commencing and conducting business at any general meeting shall be 25% of the votes in number of members of the association entitled to vote for the time being provided that such members

are present, in person or by proxy, at the commencement of and for the duration of such general meeting.

- ~~15.4~~ If a quorum is not present after half an hour from the time appointed for holding any general meeting such meeting shall properly adjourned to the same day in the next week at the same place and time, or at such other place as the chairman of the meeting shall appoint. If a quorum is not present after half an hour from the time appointed for holding such an adjourned meeting, the members present shall be a quorum.

16 Agenda at annual general meetings

- 16.1 In addition to any other matters required by the Act or this memorandum the following matters shall be dealt with at every annual general meeting of the association:

- 16.1.1 the presentation and consideration of the chairman's report;
- 16.1.2 the election of directors;
- 16.1.3 the consideration of the accounts of the association for the preceding financial year;
- 16.1.4 the consideration of the audited annual financial statements of the association for the preceding financial year as well as the report of the auditors;
- 16.1.5 the fixing of the auditors fee;
- 16.1.6 the consideration of a budget of income and expenditure of the association for the forthcoming financial year;
- 16.1.7 the consideration and voting upon any resolution circulated with the notice of such meeting and proposed for adoption by such meeting; and
- 16.1.8 confirmation of the domicilium of the association.

- 16.2 No business shall be dealt with at any general meeting unless written notice has been given to the board not less than 2 business days before such meeting by the person proposing to raise such business of his intention so to do; provided however, that the chairman may on ordinary resolution of the meeting relax this condition.

17 Procedure at general meetings

- 17.1 Before any person may attend or participate in any general meeting of the association such person shall present reasonably satisfactory identification as to

their person and the chairman of the meeting must be reasonably satisfied that such person is a member in good standing and has the right to attend and participate in such meeting.

- 17.2 At the discretion of the board any general meeting of the association may be conducted entirely by electronic communication or members, or proxies for members, may participate in such meeting, or part thereof, by electronic communication as long as the electronic communication employed ordinarily enables all persons participating in such meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in such meeting. Provided further that the notice of such meeting informs members of the availability of such form of participation and provides any necessary information to enable such member, or proxies for members, to access the available medium or means of electronic communication used at such meeting. Access to such electronic communication is at the expense of such member or proxies for members, except to the extent determined by the board.
- 17.3 The chairperson may, with the consent of any general meeting at which a quorum is present, and shall, if so directed by such meeting, adjourn such meeting from time to time and place to place. No business shall be transacted at any such adjourned meeting other than business which could have been transacted at such meeting from which the adjournment took place. Whenever such meeting is adjourned for 10 days or more, notice of such adjourned meeting shall be given in the same manner as of such original meeting. Save as aforesaid, members shall not be entitled to any notice of adjournment or of the business to be transacted at such adjourned meeting.

18 Proxies

- 18.1 A member may be represented at any general meeting of the association by a duly authorised proxy.
- 18.2 The power of attorney or any other authority under which any person is appointed as proxy to represent any member must be signed by the member concerned and shall be tabled at the general meeting at which the proxy, as named in the proxy instrument, proposes to vote.
- 18.3 A vote cast by a proxy at a general meeting shall be valid notwithstanding the prior death of the member concerned or the revocation of such proxy by that member, provided that notice, in writing, of the death of the member concerned

or the revocation of such proxy had not been received by the board at any time before such vote is cast.

18.4 No power of attorney or any other authority appointing a proxy shall be valid after the expiration of 6 months from the date of its execution.

18.5 The format of a proxy shall be in accordance with annexure "A" to this memorandum or otherwise as determined by the board.

19 Voting

19.1 At every general meeting of the association during the initial period:

19.1.1 the developer shall have 50 votes in addition to the votes conferred upon the developer in its capacity as a member;

19.1.2 subject to 19.1.4 below, every member, including the developer shall have 1 vote for each property registered in that member's name;

19.1.3 if a property is registered in the name of more than one person, then all such co-owners shall jointly have 1 vote.

19.2 At every general meeting of the association after the initial period:

19.2.1 Subject to 19.2.3 below, every member, including the developer, shall have 1 vote for each property registered in that member's name;

19.2.2 if a property is registered in the name of more than one person, then all such co-owners shall jointly have 1 vote.

19.3 Save as expressly set out in this memorandum no person other than a member who shall have paid every levy and other sum, if any, due and payable to the association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present at any general meeting;

19.4 At any general meeting of the association a resolution put to the vote of such meeting shall be decided on a show of hands unless a poll is demanded by the chairman or members in terms of section 63(7) of the Act. A declaration by the chairman that a resolution has, on a show of hands, been carried or defeated and an entry to that effect recorded in the book containing the minutes of the proceedings of the association shall be conclusive evidence of the result of such voting without proof of the number or proportion of the votes recorded in favour of or against such resolution.

- 19.5 If a poll is demanded in terms of clause 19.4, it shall be taken in such manner as the chairman directs. Based on the votes for and against as counted by scrutineers at the meeting, the chairman shall declare whether the resolution has been carried or defeated and such declaration shall be deemed to be the resolution of the meeting.
- 19.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of such meeting at which the voting took place shall be entitled to a second or casting vote.
- 19.7 Any demand for a poll may be withdrawn by the chairman or the members who demanded it, as the case may be.
- 19.8 Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 19.9 For an ordinary resolution to be approved by shareholders it must be supported by more than 50% of the voting rights exercised on the resolution
- 19.10 For a special resolution to be approved by shareholders it must be supported by more than 75% of the voting rights exercised on the resolution.
- 19.11 Unless any member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted.
- 19.12 A resolution that could be voted on at a general meeting may instead be submitted to members in writing for consideration and be voted on in writing by members within 20 business days after the resolution was submitted to them.
- 19.13 A resolution contemplated in clause 19.12:
- 19.13.1 will have been adopted if it is supported by members 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;

- 19.13.2 if adopted, will have the same effect as if it had been approved by voting at a meeting;
- 19.13.3 Within 10 business days after adopting a resolution, or conducting an election of directors,, the association 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 as the case may be;
- 19.13.4 For greater certainty, any business of the association that was required by the Act or this memorandum to be conducted at an annual general meeting of the association may not be conducted in the manner as set out in clauses 19.4 or 19.12.

20 **Accounts**

- 20.1 The association elects in terms of section 34(2) of the Act to comply voluntarily with the extended accountability provisions set out in in sections 84(4)(b), 84(6) and 85 of Part A, as well as Part C, of Chapter 3 of the Act.
- 20.2 The accounts and books of the association shall be open to inspection by any member at all reasonable times during business hours.
- 20.3 Once in each financial year the accounts of the association shall be examined and the correctness thereof ascertained by auditors.
- 20.4 The duties of the auditors shall be regulated in accordance with the Act.

21. **Annual Financial Statements**

- 21.1 The association shall keep all such accurate and complete accounting records, in English, as are necessary to enable the association to satisfy its obligations in terms of:
 - 21.1.1 the Act;
 - 21.1.2 any other law with respect to the preparation of financial statements to which the association may be subject;
 - 21.1.3 this memorandum.
- 21.2 The association shall each year prepare annual financial statements within 4 (four) months of after the end of its financial year.
- 21.3 The financial year end of the association shall run from the date of the establishment of the association until the last day of March of the next year

and thereafter from the 1st day of April each year until the last day of March in the subsequent year.

- 21.4 The association shall appoint an auditor upon or as soon as reasonably possible after its incorporation and thereafter each year at the first meeting of the board following its financial year end. If the association appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 21.5 For purposes of the affairs of the association, with regard to and relating to the auditor of the association, the provisions of section 90(2)(a) and (b), 90(3), 90(6)(a)(i) to (iii), 90(6)(c), 91(1), 91(2) and 93(1) of the Act are incorporated, *mutatis mutandis*, into this memorandum.
- 21.6 The annual financial statements of the association shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall:
 - 21.6.1.1 satisfy, as to form and content, the financial reporting standards of IFRS as applicable to small business;
 - 21.6.1.2 be subject to and in accordance with IFRS as applicable to small business;
 - 21.6.1.3 present fairly the state of affairs and business of the association and explain the transactions and financial position of the business of the association;
 - 21.6.1.4 show the association's assets and liabilities, as well as its income and expenses;
 - 21.6.1.5 indicate the date on which such annual financial statements were produced and the accounting period to which they apply; and
 - 21.6.1.6 indicate on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared such annual financial statements.

22 Service of notices

- 22.1 Any notice intended or required to be given by the association to any member shall be given in writing to such member either by hand, or by

electronic communication to such member's *domicilium citandi et executandi*.

22.2 A member shall be bound by every notice given to him in terms of clause 22.1

22.3

22.4 Any notice given by any electronic communication shall be deemed to have been delivered on the day of transmittal.

22.5 A member shall be deemed to have selected his property as his *domicilium citandi et executandi* for the purposes of this memorandum, unless he has notified the association to the contrary as provided for in clause 22.7.

22.6 The association shall, in general meeting, select physical and email address as its *domicilium citandi et executandi* for the purposes of this memorandum, unless it has notified the members to the contrary as provided for in clause 22.7.

22.7 The association or any member may, at any time by written notice to the other, change its *domicilium citandi et executandi*, provided any new domicile shall be in the Republic of South Africa and includes a physical address at which process can be served.

23. **Indemnity**

Every director or co-opted director shall be indemnified by the association against all costs, losses and expenses, including travelling expenses, which such directors or co-opted directors may incur or become liable for by reason of any act or deed done by such director or co-opted director in the proper discharge of his respective duties.

24. **Property improvements**

Whenever the board considers that the external appearance of any property improvements or the use of a property is such as to be unsightly or injurious to the amenity of the surrounding properties or to the estate generally, the board may serve notice on such member or members to take such steps as may be specified in the notice to eliminate such use or unsightly or injurious condition. In the event of the relevant member or members failing, within a reasonable

time to be specified in such notice, to comply therewith, the board may enter upon the property and take such steps as may be necessary, and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the association. The board shall in giving notice as aforesaid act reasonably.

25. Care of the common property and observing of land use and related matters

25.1 In the event of any member or any member's residents, visitors, employees or service providers causing any damage to the common property, any improvements thereon, the common property services or the perimeter security installation, such damage shall be repaired by the association and the member concerned shall be liable for the costs thereof on demand by the association.

25.2 Members shall at all times observe all laws and by-laws, regulations, the provisions of the town planning scheme and any other laws in force pertaining to his property and the use thereof. In the event of any member failing so to do, such failure shall be deemed to be a breach of this memorandum and the board shall be entitled to take such action as they may be empowered and as they may deem fit in terms hereof to remedy such breach or to prevent the continuation thereof. In the event that any laws and by-laws, regulations, provisions of the town planning scheme and any other laws in force are more onerous than the requirements of this memorandum then such more onerous conditions shall apply.

26. Extension of the Estate

The area of the estate will be increased when the second phase is developed and by 9 additional portions and a road portion to be developed by the developer on a consolidated property comprising erven 8740 to 8743 Plettenberg Bay, provided the owners of any properties so included shall become members of the association on the terms set out herein, pay levies and be bound to all the provisions of this memorandum and the rules.

27 **Transfer of properties**

27.1 No property, interest therein or portion thereof may be transferred without the prior written consent of the association, which consent shall not be unreasonably withheld unless:

27.1.1 such member is indebted to the association in any way in respect of levies or other amounts which the association may in terms of this memorandum be entitled to claim from that member;

27.1.2 the proposed transferee has not agreed in writing to the satisfaction of the association to become a member of the association on taking transfer of the property;

27.1.3 the member remains in breach of any of the provisions of this memorandum or the rules after receipt of notice from the board requiring that member to remedy such breach.

27.2 Where a member is a company, close corporation or trust, no transfer of the shares, members' interest or beneficiary's interest, as the case may be, may take place without the prior written consent of the association. This consent will not be given unless and until the company, close corporation or trust, as the case may be, has furnished to the association in writing, the full details of the proposed new shareholders, members, beneficiaries respectively as well as the date on which the shareholding, membership, beneficiary will change. Further, the written consent of the association will not be given unless and until all monies owing by the particular member company, close corporation or trust, up to and including the effective date of that transaction, have been paid or secured to the satisfaction of the association and the new shareholder, member or holder of the beneficial interest, as the case may be, has confirmed, in writing, that he has received, read a copy of this memorandum and the rules, and agrees to be bound by the said memorandum and the rules

27.3 The association shall be entitled, in issuing any certificate necessary for transfer of a property, to charge a reasonable fee as may be determined by the board from time to time provided such fee shall be subject to review by the association in general meeting.

- 27.10. The association may enter into agreements with members for the provision of amenities and services to members and to levy a reasonable charge in respect of the provision thereof.

27.11

28 **Security and Service Related Matters**

- 28.1 Members shall comply with all security measures and protocols as may be introduced by the association from time to time and with any associated rules.

- 28.2 In the event of the association providing or procuring a security service and/or other services for members, all members shall be obliged:

- 28.2.1 to permit the installation of any equipment on their properties or in the buildings situated on their properties for the purpose of such services as the association may determine are required and necessary from time to time; and

- 28.2.2 to abide by such provisions as may be laid down by the association from time to time.

29. **Access to perimeter security installation**

- 29.1 Where the boundary of a property also constitutes a boundary related to the perimeter security installation such member shall be obliged to permit the developer and/or the association to construct or install such perimeter security installation on such member's property. Such member shall not be entitled to interfere in any manner whatsoever with any such perimeter security installation and shall permit the association and its service providers from time to time to access such member's property in order to inspect such perimeter security installation and to effect any such repairs or alterations as may be necessary from time to time.

30. **Common property services, common property improvements and perimeter security installation**

The developer shall install the common property services, the common property improvements and the perimeter security installation to standards that

it considers appropriate and on completion thereof the members and/or the Association shall have no recourse against the developer with regard to such common property services, the common property improvements and the perimeter security installation, whether in respect of the on-going maintenance, upgrading, replacement or otherwise.

31. Conditions imposed by the local authority

- 31.1 The main object or business of the association shall not be amended without the written consent of the local authority first having been obtained.
- 31.2 The association shall at all times comply with all legal requirements for its continual legal existence and incorporation as a legal entity. Notwithstanding the provisions of this clause 31.2, the association shall not be wound up without the written consent of the local authority first having been obtained.
- 31.3 The common property shall be transferred to the association and shall not be sold or transferred by the association to any other person or entity and shall not be mortgaged.
- 31.4 Each and every owner of a property shall have free access over the common property to afford them access to a public road.
- 31.5 Each and every owner of a property shall have free entrance to and usage of the common property roadways and in order to access their property.
- 31.6 Municipal and emergency services of the local authority are guaranteed 24 hour access to the common property to maintain, where applicable, the local authority's installations and provide services to residents in the estate.
- 31.7 The association shall have full responsibility for the functioning and proper maintenance of the common property and the engineering services situated within the common property and the attenuation system or systems on the common property, if applicable, all to the satisfaction of the local authority, failing which, such maintenance shall be done by the local authority at the cost of the association.

- 31.8 The association shall properly and clearly display the street name and street numbers allocated properties and shall maintain such to the satisfaction of the local authority.
- 31.9 The association undertakes not to submit an application to rezone the common property, save with the consent of the local authority.
- 31.10 The provisions of clauses 31 and 5 shall not, save with the prior written consent of the local authority first being had and obtained, be amended or deleted.

32. **Mediation and Arbitration**

- 32.1 Any breach by a member of any provision of this memorandum or the rules or any dispute between a member and the association, including a dispute relating to the interpretation of any provisions of this memorandum and/or the rules shall, notwithstanding the provisions of clause 7.9 and the CSOS Act, first be referred to meditation as follows;.
 - 32.1.1 the aggrieved party shall notify the other of the dispute (“the mediation notice”);
 - 32.1.2 the mediation notice must include a brief description of the dispute and include the names of not less than two natural persons, who the aggrieved party suggests for appointment as mediator and who shall be practicing advocates at the Johannesburg Bar or practising attorneys;
 - 32.1.3 the parties shall agree on a mediator within 10 days of the mediation notice, failing which, the dispute will be settled by arbitration or in terms of the CSOS Act as provided for in clause 33.4;
 - 32.1.4 the agreed mediator shall endeavour to assist the parties to settle the dispute by agreement.
- 32.2 The mediation shall take place within 10 days of the appointment of the mediator, failing which the mediation will be deemed to have been terminated;

- 32.2.1 unless otherwise agreed to by the parties in writing, the mediation will be held in Sandton and shall be conducted in such a manner as the mediator determines;
- 32.2.2 the parties undertake to cooperate in good faith with the mediator in the conduct of the mediation proceedings and to comply with the decisions of the mediator in respect of the process and conduct of those proceedings.
- 32.3 The mediation in 33.1 shall terminate in the event that:
 - 32.3.1 the mediator receives written notice from either party to the effect that the party withdraws from the mediation. Either party shall be entitled to withdraw from the mediation but shall first verbally advise the mediator and afford the mediator a reasonable opportunity to mediate on that party's continued participation in the process; or
 - 32.3.2 should the mediator advise the parties that, in his or her opinion, there is little prospect of a settlement; or
 - 32.3.3 in the event of the parties concluding a settlement agreement; or
 - 32.3.4 the mediation not being successfully concluded within 15 days of the appointment of the mediator.
- 32.4 In the event of mediation terminating in clause 33.2, the referral of the dispute to mediation shall in no way prejudice the rights of the parties. The mediation shall be confidential and no party, including the mediator, shall be entitled to disclose any information to any other party, save with the prior written consent of the other. The mediation will be conducted on a without prejudice basis. The parties shall be liable equally for the costs of the mediator.
- 32.5 Should the mediation terminate in clause 33.2 in circumstances where the relevant dispute relates to the interpretation of any provision of this memorandum or the interpretation of the rules or where the dispute cannot be determined pursuant to the CSOS Act, the dispute will, notwithstanding the provisions of clause 7.9, be decided by arbitration as follows:

- 32.5.1 arbitration shall be governed by the rules of AFSA (Arbitration Foundation of Southern Africa), or its successors in title;
- 32.5.2 the arbitration proceedings shall be deemed to have commenced on termination of the mediation process in clause 33.2;
- 32.5.3 if either party intends to be legally represented in the arbitration that party shall immediately notify the other party in writing of that intention;
- 32.5.4 the arbitration shall be held in a summary manner;
- 32.5.5 The arbitrator will be a practising advocate of not less than 10 years standing, or a retired judge, or practising attorney of not less than 15 years standing, to be appointed by agreement between the parties and failing agreement to be appointed by the chairperson of the Johannesburg Bar Council.
- 32.6 The arbitrator's decision, including a decision as to the awarding of costs, shall be final and binding on the parties.

33. Amendment of this memorandum and de-registration of the association and ring fenced provisions

This memorandum may, subject to clauses 13 and 17 be amended by the members in a general meeting provided such resolution is passed by a majority of not less than 75% of all voting rights exercised on the resolution. The association may only be wound up in accordance with the provisions of the Act read with this memorandum.

34. Adoption of memorandum

This memorandum was adopted in accordance with section 13(1) of the Act as evidenced by the following signatures of each of them or on their behalf.

Name of director	Identity number of director	Signature	Date