

COR15.2

**Certificate issued by the Companies and Intellectual Property
Commission on Wednesday, December 04, 2013 01:18
Certificate of Confirmation**



**Companies and Intellectual
Property Commission**
a member of the cii group

Registration number	2011 / 149153 / 08
Enterprise Name	PARKSIDE UMHLANGA RIDGE MANAGEMENT ASSOCIATION (RF) NPC
Enterprise Shortened Name	None provided.
Enterprise Translated Name	None provided.
Registration Date	20/12/2011
Business Start Date	20/12/2011
Enterprise Type	Non Profit Company
Enterprise Status	In Business
Financial year end	February
Main Business/Main Object	
Postal address	P O BOX 22319 GLENASHLEY 4022
Address of registered office	305 UMHLANGA ROCKS DRIVE LA LUCIA 4051



The Companies and Intellectual Property Commission
of South Africa

P O BOX 478, PRETORIA, 0001, Republic of South Africa Docex 258, PRETORIA.

Call Centre Tel 085 100 2472, Website www.cipc.co.za



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Certificate issued by the Companies and Intellectual Property Commission on Wednesday, December 04, 2013 01:18
Certificate of Confirmation



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Property Commission
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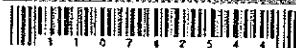
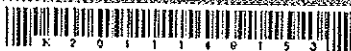
Registration number 2011/149153/08
Enterprise Name PARKSIDE UMHLANGA RIDGE MANAGEMENT ASSOCIATION (RF) NPC
Auditor Name STUART EDWARDS AND COMPANY
Postal Address P O BOX 70453
OVERPORT
DURBAN
4067

Active Directors / Officers

Surname and first names	ID number or date of birth	Director type	Appoint-ment date	Addresses
SONI, RASIK AMRATLAL	6510255236087	Director	27/08/2013	Postal: CLUSTERBOX 23024, THE GARDENS, THE GARDENS, DURBAN NORTH, 4019 Residential: 27 IDULI CLOSE, IZINGA RIDGE, DURBAN NORTH, 4021
MEYER, SUSAN LYNETTE	6005020028083	Director	20/12/2011	Postal: P O BOX 22319, GLENASHLEY, 4022 Residential: 1 CHELSEA DRIVE, DURBAN NORTH, 4051
JOLLANDS, DAVID TIMOTHY	5210315055186	Director	20/12/2011	Postal: P O BOX 22319, GLENASHLEY, 4022 Residential: 20 A ITHAFA CLOSE, IZINGA RIDGE, 4021
MNGUNI, ANDILE	8010135436088	Director	20/12/2011	Postal: P O BOX 22319, GLENASHLEY, 4022 Residential: 16 LABOMBO HOF, 65 BOTANIC GARDENS, 4001



The Companies and Intellectual Property Commission
of South Africa
P.O. BOX 429, PRETORIA, 0001, Republic of South Africa Docex 255, PRETORIA
Call Centre Tel 096 100 2472, Website www.cipc.co.za



Document lodged with CIPC
 2013 -09- 25
 E-mail Fax Drop Off Box

MACROC

Companies and Intellectual Property Commission
 Republic of South Africa

Form CoR 15.2

About this Notice

- This notice is issued in terms of Section 16 of the Companies Act, 2008, and Regulation 15 (2) and (3) of the Companies Regulations, 2011.
- A notice of amendment must be filed within 10 business days after the amendment has been effected.
- If the amendment has changed the name of the Company, the provisions of the Act and Regulations applicable to company names apply.
- If the amendment has submitted a new memorandum of incorporation in place of the previous one, a copy of the new memorandum must be appended to this Notice.
- The fee for filing this notice is R 250. See Item 3 of Table CR2B. A transitional amendment of a pre-existing company, filed in terms of Schedule 5, Item 4 (2) is exempt from the fee.

Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

Postal Address
 PO Box 429
 Pretoria
 0001
 Republic of South Africa
 Tel: 086 100 2472
 www.cipc.co.za

Notice of Amendment of Memorandum of Incorporation

Date: 27 August 2013

Concerning:
 (Name and Registration Number of Company)

Name: PARKSIDE UMHLANGA RIDGE MANAGEMENT ASSOCIATION NPC
 Registration number: 2011/149153/08

The Memorandum of Incorporation of the above named company has been amended in accordance with section 16 of the Companies Act, 2008. In terms of section 16 (9), this amendment is to take effect on -

- The date that this Notice is filed in the Companies Registry.
- The date of the amended registration certificate to be issued by the Commission.
- _____
 (Later Date as shown on Notice of Incorporation)

In support of this Notice, the company has attached a copy of the court order, board resolution or special resolution authorising the amendment and -

- A copy of the amendment to the Memorandum; or
- A copy of the Memorandum of Incorporation, as amended.

As a result of this amendment, the Memorandum of Incorporation:

- Has no provision of the type contemplated in section 15 (2) (b) or (c).
- Has provision of the type contemplated in section 15 (2) (b) or (c) as listed in Annexure A.


(Personal Liability Companies only)

As a result of this amendment, the company:

- N/A Will remain a personal liability company;
- N/A Will no longer be a personal liability company, and has complied with the requirements of section 16 (10) by giving advance notice of this filing on _____

Name and Title of person signing on behalf of the Company:

DAVID TIMOTHY JOLLANDS: CHAIRMAN

Authorised Signature: 

Document lodged with CIPC
 Companies and Intellectual Property Commission
 2013 -09- 25

E-mail Fax Drop

Republic of South Africa

MACROC

Notice of Amendment of Memorandum of Incorporation
 Notice of Ring Fencing Provisions

Date: 20 September 2013

Concerning:
 (Name and Registration Number of Company)

Name: PARKSIDE UMHLANGA RIDGE MANAGEMENT ASSOCIATION (RF) NPC
 Registration number: 2011/149153/08

As a result of amendments made to the Memorandum of Incorporation of the above-named company, the Memorandum of Incorporation:

No longer has the provisions of the type contemplated in section 15 (2)(b) or (c), as previously reported.

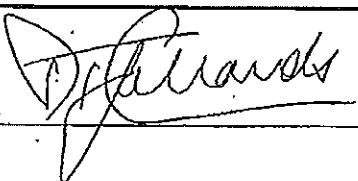
(Show the Article number of each Ring Fencing provision that has been deleted)

Has the following provisions of the type contemplated in section 15 (2)(b) or (c):

(For each new Ring Fencing provision, show the Article, its purpose, and the Article of the Memorandum that it protects.)

Article	Purpose	Article Protected
28	See annexure "A"	

Name and Title of person signing on behalf of the Company:
DAVID TIMOTHY JOLLANDS: CHAIRMAN

Authorised Signature: 

PARKSIDE UMHLANGA RIDGE MANAGEMENT ASSOCIATION NPC
Registration No. 2011/149153/08

NOTICE

Notice is hereby given that at the Annual General Meeting of the Association to be held at The Management Association's Offices, Suite SF04, 2nd Floor, The Square, 250 Umhlanga Rocks Drive, La Lucia Ridge on the 27th day of August 2013 at 16h30, the proposed undermentioned Resolution will be considered, and if deemed fit, passed, with or without modification, as a Special Resolution.

INTRODUCTION

1. It has been brought to the attention of the Board of Directors that, Article 28 of the Company's Memorandum of Incorporation, in terms of which the Memorandum of Incorporation cannot be amended, during the development period, save by way of a special resolution of members and with the prior written consent of the Developer, falls within the category of provisions contemplated in Section 15(c) of the Company's Act 71 of 2008) (hereinafter referred to as "the Act"), and, as a consequence, the term "(RF)" is to follow the Company's name (as contemplated in Section 11(3)(b) of the Act).

2. The term "Progressive Lifestyle Units" as contemplated in Article 14.4.3 of the Memorandum of Incorporation and defined in Article 1.1.27 of the Memorandum of Incorporation, be amended to "Inclusionary Housing Units", to bring it in line with the terminology currently utilised by the eThekweni Municipality and the Developer.

3. In order to ensure that, financial institutions are not reluctant to mortgage properties within the Town Centre (Residential), the Board proposes that, in the event of a mortgagee repurchasing a property it has mortgaged in the Town Centre (Residential), at a sale in execution, it shall not be required to make a contribution to the Association's Levy Stabilisation Fund, as contemplated in Article 14.12 of the Association's Memorandum of Incorporation, unless such mortgagee elects to develop the property itself, or have it developed while it remains the owner thereof.

4. Although in terms of the Association's Memorandum of Incorporation, owners of sectional title units are not per se, members of the Association (and are represented by the Body Corporate of such sectional title scheme at a meeting of members, the Body Corporate itself being the member of the Association in terms of the Memorandum of Incorporation), the title deeds to Portion 268 of Erf 2426 Umhlanga Rocks, on which One on Herrwood Sectional Title Scheme is laid out, contains the following condition, namely :

"Neither the subdivision nor any further subdivision, nor any unit thereon, as defined in the Sectional Titles Act 95 of 1986, shall be transferred to any person until he has bound himself to become and remain a member of "Parkside Umhlanga Ridge Management Association" for the duration of his ownership and a clearance certificate has been issued by such Association to the effect that its Articles of Association have been complied with".

The aforesaid title deed condition, which was imposed by the Minister of Co-Operative Governance of Traditional Affairs, Province of KwaZulu-Natal under the provisions of the Town Planning Ordinance No. 27 of 1949, when approving the aforesaid Portion 268 as a separate subdivision, is therefore in conflict with the provisions of the Association's Memorandum of incorporation (as it contemplates an owner of a sectional

title unit becoming a member of the Association). In order to resolve this conflict, the Board propose that any member of the Board, nominated by the Board, be authorised to sign any documentation required in order to effect transfer of any unit in One Herrwood Sectional Title Scheme, as required in terms of the aforesaid title deed condition, provided that the Association's requirements have been complied with (and notwithstanding the fact that such transferee of such sectional title unit shall not become a member of the Association per se).

TERMS OF PROPOSED RESOLUTIONS

Resolution 1

1. That the Company's name be followed by the terms "(RF)".

Resolution 2

2. That the term "Progressive Lifestyle Units" in the Association's Memorandum of Incorporation be amended to "Inclusionary Housing Units";

Resolution 3

3. That Article 14.12 of the Association's Memorandum of Incorporation, be amended by the addition of the following sentence at the end of Article 14.12, namely:

"Should the mortgagee of any immovable property purchase such immovable property at a judicial sale in execution, then in that event, such mortgagee shall not be required to make payment of the aforesaid contribution to the Association's Levy Stabilisation Fund unless such mortgagee elects to develop the immovable property itself or elects to have the immovable property developed while it remains the owner of same."

Resolution 4

4. That any director nominated by the Board is authorised to sign any consent to transfer or the like that may be required by the Deeds Registry in order to effect transfer of a sectional title unit in One on Herrwood Sectional Title Scheme, provided that the Association's requirements have been complied with (and notwithstanding the fact that the transferee of such sectional title unit shall not become a member of the Association per se).

PROXIES

A member entitled to attend and vote at a meeting is entitled, in terms of the Memorandum of Incorporation, to appoint a proxy to attend, speak and vote thereat. A copy of the Proxy form in this regard is attached hereto. The Proxy must be deposited at the offices of the Association not less than 48 hours before the time of holding the meeting.

In default of compliance herewith, the instrument shall be treated as invalid for the purposes of attending and voting at the Meeting.

MEMORANDUM OF INCORPORATION

of

PARKSIDE UMHLANGA RIDGE MANAGEMENT ASSOCIATION

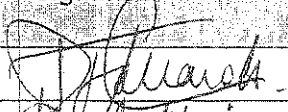
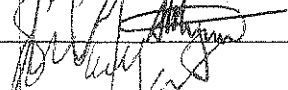
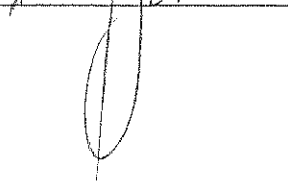
which is referred to in the rest of this Memorandum of Incorporation as "the Company".

The Company is a Non Profit company with members, with the following objects:

To provide, protect and advance the interests of owners of immovable property in Town Centre (as defined in the herein), to protect, promote and maintain the essential services, amenities and activities in relation to the said property, to regulate the environment in Town Centre and to control and co-ordinate development in Town Centre and to control and co-ordinate development in Town Centre with special regard to upholding of aesthetic standards which enhance the attractiveness of Town Centre as a whole.

Adoption of Memorandum of Incorporation

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

Name of incorporator	Identity Registration #	or	Signature	Date
David Timothy Jollands	5210315055186			27.10.2011
Andile Mnguni	8010135436088			27.10.2011
Susan Lynette Meyer	6005020028083			27/10/2011

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 71 of 2008 as amended from time to time;

1.1.2 “MOI” means the Memorandum of Incorporation for the time being of the Association;

1.1.3 “Association” means the Parkside Umhlanga Ridge Management Association NPC;

1.1.4 “Beneficial Interest” means, in the event of the Member being:

1.1.4.1 a close corporation, the entire member’s interest in the close corporation;

1.1.4.2 a company, all the issued shares in that company or

1.1.4.3 a trust, the entire beneficial interest in that trust (as the case may be).

1.1.5 “Board” means the Board of Directors of the Association for the time being;

1.1.6 “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;

1.1.7 “Bulk” means:

1.1.7.1 in respect of land owned by any Member, except the Developer, the maximum floor area of building that a Member is permitted to erect on his land in terms of the Scheme or in terms of his contractual obligations to the Developer, whichever is the lesser; and

1.1.7.2 in respect of land owned by the Developer means the Minimum Bulk, attaching to the said land, as amended from time to time by the eThekweni Municipality, in terms of the Scheme;

- 1.1.8 "Common Spaces" means the common areas within Town Centre (Residential), which areas shall include, inter alia, open spaces, parks, certain areas of indigenous bush, certain road verges, private roads and public thoroughfares within Town Centre (Residential);
- 1.1.9 "Design Review Committee" means the committee as provided for in Article 20 hereof;
- 1.1.10 "Developer" means Tongaat Hulett Developments (Proprietary) Limited (Registration No. 1981/012378/07), including its successors and assigns;
- 1.1.11 "Development Manual" means the Residential Precinct Development Manual V1.0 prepared by GAAP Architects and Urban Designers, dated 10 March 2006, as added and amended to from time to time by the Developer;
- 1.1.12 "Development Period" means the period from the date of registration of this Memorandum of Incorporation until such time as the Developer gives written notice to the Association of the termination of the Development Period;
- 1.1.13 "Directors" means the directors of the Association for the time being;
- 1.1.14 "eThekweni Municipality" means the eThekweni Municipality, its successors in title or assigns;
- 1.1.15 "Environmental Management Plan" means both the:
- 1.1.15.1 Construction Environmental Management Plan drafted by the Developer and Chand, dated 26 June 2007; and
- 1.1.15.2 Operational Environmental Management Plan drafted by the Developer and Chand, dated 26 June 2007;
- 1.1.16 "finance committee" shall mean the committee appointed in accordance with

Article 11.8 hereof;

- 1.1.17 "gross leasable area" means the gross leasable floor area of any building(s) which the Owner is entitled to erect on his land in terms of the Scheme;
- 1.1.18 "immovable property" means any immovable property in Town Centre (Residential) including land and sectional title units and rights therein;
- 1.1.19 "individual ownership" means ownership by a natural or juristic person or persons;
- 1.1.20 "Juristic Person" means a company, close corporation, trust or other legal or juristic person (excluding the body corporate of a sectional title scheme)
- 1.1.21 "land" means any freehold property in Town Centre (Residential), including any subdivision capable of individual ownership, whether such land is improved or not, but shall exclude a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established on any such land;
- 1.1.22 "Manager" means the person, corporation or association appointed by the Association, from time to time, to undertake the management of Town Centre (Residential);
- 1.1.23 "Member" means:-
- 1.1.23.1 an Owner; and
- 1.1.23.2 the Developer, during the Development Period (although, it is recorded that, the Developer shall continue to be a Member after the expiry of the Development Period, if the Developer is then an Owner);
- 1.1.24 "office" means the registered office of the Association for the time being;

- 1.1.25 "Owner" means any person who is the registered owner of land or an undivided share in land, provided that, for the purposes of this Memorandum of Incorporation the Body Corporate of any sectional title scheme on land shall be deemed to be the owner of such land (it being specifically recorded, for purposes of clarity, that the owner of a sectional title unit shall not be deemed to be an "Owner" for purposes of this MOI);
- 1.1.26 "Plan" means the plan attached hereto marked annexure "A", drafted by Wall Marriott Paul & Borgen, professional land surveyors (drawing no. 5545T/Parkside) dated March 2011;
- 1.1.27 "Progressive Lifestyle Units" means immovable property within the Town Centre (Residential) which will be reserved by the Developer, in conjunction with the eThekweni Municipality, for occupation and/or ownership by persons of a restricted level of income (and includes units referred to as "Inclusionary Housing Units");
- 1.1.28 "Property Time Share Control Act" means the Property Time Share Control Act No. 75 of 1983 as amended and any regulations in force thereunder from time to time;
- 1.1.29 "Rules" mean the rules made by the Board in accordance with the provisions of Article 8.5 hereof;
- 1.1.30 "Scheme" means the Umhlanga Town Planning Scheme No. 1 in the course of preparation or any successor thereto;
- 1.1.31 "Sectional Titles Act" means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.1.32 "services" means water, sewerage, refuse removal, electricity, telecommunications, security, maintenance of common property and such other utilities or services as may be provided by the Association or any other supplier

of services to Town Centre (Residential), from time to time;

- 1.1.33 "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;
- 1.1.34 "Total Bulk" means:
- 1.1.34.1 for the purposes of Article 3.4.1, the sum total of all Bulk owned by all Members, excluding any Bulk owned by the eThekweni Municipality or the Association itself; and
- 1.1.34.2 for the purposes of Article 14.4.2, the sum total of all Bulk owned by all members excluding any Bulk owned by the eThekweni Municipality or the Association itself, and during the Development Period, shall also exclude any Bulk owned by the Developer;
- 1.1.34.3 "Town Centre (Residential)" means the area outlined in red on the Plan, (which is Annexure "A" hereto) and the aerial photo (which is Annexure "B") hereto, comprising the immovable property more fully described as a proposed Portion of the Remainder of Erf 829 of Lot 31 No. 1560, Registration Division FU, Province of Kwazulu-Natal, and any other property that may be included in Town Centre (Residential) as contemplated in Article 26 hereof, including any subdivision of the aforesaid properties but excluding any property which is owned by the eThekweni Municipality (or which otherwise constitutes a public road) or is excluded by the Developer in terms of Article 29 hereof.
- 1.1.35 Words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act.
- 1.1.36 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.

1.1.38 The heading above any of this Memorandum of Incorporation is intended for reference purposes only and shall not influence the interpretation of the Articles.

1.1.39 In interpreting this Memorandum of Incorporation, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule.

2 MEMBERSHIP

2.1 Membership of Association

2.1.1 Membership of the Association shall be obligatory for an Owner.

2.1.2 No immovable property shall be transferred unless:

2.1.2.1 where land is being transferred, 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 2.2.1; and*

2.1.2.2 where immovable property other than land is being transferred, it is a condition of such transfer that the transferee agrees to abide by this Memorandum of Incorporation and the Rules made in terms thereof in a manner acceptable to the Association.

2.1.3 In order to procure compliance with the provisions of this Memorandum of Incorporation, it shall be registered as a Condition of Ownership of immovable property that no immovable property shall be alienated without the prior written consent of the Association first being had and obtained:

2.1.3.1 where such immovable property is land, such consent shall be given if the

proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor); and

- 2.1.3.2 where such immovable property is not land, such consent shall be given if the proposed transferee agrees to abide by this Memorandum of Incorporation and the rules made in terms thereof in a manner acceptable to the Association and the transferor has complied with all its obligations in to the Association (including but in no way limited to, the payment of any monies due to the Association by such transferor).

Notwithstanding anything contained herein or elsewhere, the Developer shall not be required to obtain the consent of the Association when transferring any immovable property owned by the Developer nor shall consent be required from the Association to mortgage any immovable property simultaneously with the transfer thereof from the Developer.

For the purposes of this clause "alienate" means to alienate any immovable property or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgagee, 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 resolutive condition.

- 2.1.4 In the event of land being owned in undivided shares by more than one Owner, such co-owners shall nominate one of them to be the Member for the purposes of this Memorandum of Incorporation provided that all joint owners shall be bound by this Memorandum of Incorporation as if they were Members. Such nomination shall be made in writing to the Association within 7 (Seven) days of such parties becoming Owners.

2.1.5 A Member may not tender resignation of his membership 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 who, from time to time, become a member in accordance with the provisions of this Memorandum of Incorporation.

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 of Incorporation 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 of Incorporation 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.

2.2.3 members shall all 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 3.4.1 hereof;

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 a 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, which it is recorded includes the following, namely:
- 2.3.1.2.1 the Company's Memorandum of Incorporation 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 annual meetings and annual financial statements;
- 2.3.1.2.4 the notices and Minutes of annual 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 of Incorporation;
- 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 and subject to the provisions of this Memorandum of Incorporation;
- 2.3.1.5 should Members holding between them, in aggregate, not less than 5% (Five Percent) of the voting rights in the Association, collectively so decide, the right to procure the convening of a general meeting in terms of Section 61 of the Act.
- 2.3.2 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

2.4 Cessation of Membership

2.4.1 Membership of the Association shall cease:

2.4.1.1 upon an Owner of land 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;

2.4.2 In the event of a Member ceasing to be a Member in terms of Article 2.4.1.2 or 2.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this Memorandum of Incorporation.

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 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 business days notice in writing and any other general meeting shall be called by not less than 15 (Fifteen) clear business 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 be prescribed by the Association in general meeting, to such persons as are, under this Memorandum of Incorporation, 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, a decision on the number of directors; and election of directors when such decision is required in accordance with the provisions of this Memorandum of Incorporation, and the appointment of an auditor, and any other business of which due notice has been given. All business laid before any other general meeting shall be considered special business.

3.3.2 Quorum

3.3.2.1.1 A quorum for 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 personally present), provided that for the Development Period, 1 (One) of such Members must be the Developer;

3.3.3 If within half-an-hour after the time appointed for the meeting, a quorum is not present, 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 half-an-hour after the time appointed for the meeting, the Members present in person shall be a quorum.

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 and publish a notice in two recognised newspapers circulating in the Umhlanga area, 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.

Chairman

- 3.3.5 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 and deputy chairman shall be nominees 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.

Voting

- 3.3.7 Subject to the provisions of Article 3.4.2, 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 result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.

Proxy

- 3.3.8 The instrument appointing a proxy shall be in writing, dated and signed by the Member and shall be in such other form as the Board may approve.
- 3.3.9 The instrument appointing a proxy shall be deposited at the office of the Association not less than 48 (Forty Eight) 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 specifically otherwise provides.
- 3.3.10 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided no intimation in writing of the death or 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 or trust, such Member shall lodge at the offices 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 offices of the Association at least 48 (Forty Eight) 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

3.4.1 Subject to the provisions of Article 3.4.2, on a show of hands, each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote. On a poll, which may be called for by any Member or his proxy or the Chairman of the meeting, the value of the Member's vote shall be calculated with reference to the Bulk attaching to the land owned by such Member represented as a percentage of the Total Bulk at that point in time, provided that a Body Corporate of a sectional title scheme laid out on land, shall be deemed to be the owner of all Bulk attaching to the land on which such sectional title scheme is laid out;

3.4.2 Notwithstanding the foregoing, during the Development Period, the Developer shall, for the purposes of voting on any proposed resolution of the Association, be deemed to have the higher of the actual number of votes that then vest in the Developer and the number of votes as are held, in aggregate, by all of the other members present in person or by proxy at the relevant meeting.

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.

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 INSPECTION OF MINUTES

The minutes kept of every general meeting and annual general meeting of the Association under Section 24 of the Act, may be inspected and copied as provided in Section 26 of the Act.

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 general meeting subject to the following provisions:

5.1.1 During the Development Period, there shall be a maximum of 7 (Seven) Directors and a minimum of 3 (THREE) Directors, 3 (THREE) of whom shall be nominees of the Developer.

5.1.2 After the expiry of the Development Period, there shall be a maximum of 10 (Ten) Directors and a minimum of 4 (Four) 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 Developer does not revoke his appointment.

5.2 Save as is set out in Article 5.3 and Article 10, and save for the Director's nominated by the Developer in terms of Article 5.1, each Director shall continue to hold such office from the date of his commencement of office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board 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 of Incorporation. If the Director so retiring or resigning was the nominee of the Developer, his successor shall be appointed by the Developer. The validity of

any resolutions taken or acts performed by the Board during a period when the number falls short of that provided in 5.1 above 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 for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted shall be entitled to attend board meetings but shall not be a director and shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 5.7 The chairman and deputy chairman shall be elected by the Directors at their first meeting in the financial year, provided that for the Development Period, the Chairman and the Deputy Chairman shall be directors nominated by the Developer.

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 of Incorporation shall prohibit him from 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 Board, 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 specifically required by the Act, or by this Memorandum of Incorporation, to be exercised by the Association in general meeting.

8.2 Without in any way affecting the generality of Article 8.1 the Board shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum of Incorporation.

8.3 The Board may, pursuant to their rights, obligations and duties in terms of this Memorandum of Incorporation and as provided for and contemplated under this Memorandum of Incorporation, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of the Memorandum of Incorporation of the Association.

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 Board, provided that no resolution of the Association shall invalidate any prior act of the directors which would otherwise would have otherwise been valid.

Conduct Rules

- 8.5 The Board shall have the power to make conduct 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 Town Centre (Residential), for the purposes of giving proper effect to the provisions of the Memorandum of Incorporation 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 of Incorporation or the conduct rules.
- 8.5.1 In no way detracting from the generality of the aforesaid, the Board may from time to time make conduct rules, applicable within Town Centre (Residential), specifically in regard to:
- 8.5.1.1 the preservation of the natural environment;
 - 8.5.1.2 vegetation and flora and fauna in the Town Centre (Residential);
 - 8.5.1.3 the placing of movable objects upon or outside the buildings included in the Town Centre (Residential), 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 Town Centre (Residential) and the prevention of nuisance of any nature to any owner of immovable property in the Town Centre (Residential);
 - 8.5.1.6 the use of land within the Town Centre (Residential);
 - 8.5.1.7 the use of roads, pathways and open spaces;
 - 8.5.1.8 the imposition of fines and other penalties to be paid by members of the Association;
 - 8.5.1.9 the management, administration and control of the common areas, open

spaces and savannahs;

- 8.5.1.10 the Design Guidelines for the erection of all buildings and other structures, including service connections to buildings;
- 8.5.1.11 the Design Guidelines for the establishment, installation and maintenance of gardens, both public and private;
- 8.5.1.12 the use by owners and their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 8.5.1.13 the use of road frontages and parking areas;
- 8.5.1.14 security;
- 8.5.1.15 the accreditation of an estate agents authorised to sell property in the Town Centre (Residential);
- 8.5.1.16 the accreditation of managing agents authorised to manage Sectional Title Bodies Corporate with the Town Centre (Residential) and
- 8.5.1.17 generally in regard to any other matter which the Association from time to time considers appropriate.

8.5.2 **Enforcement of Conduct Rules**

- 8.5.2.1 The Board may take or cause to be taken such steps as they may consider necessary to remedy the breach of any conduct 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 Board 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 conduct rules by any tenant or occupier of any land owned by the Member, such breach shall be deemed to have been

committed by the Member and the Board shall be entitled to take such action as they deem fit against the responsible Member.

8.5.2.3 Notwithstanding the foregoing, the Board may in the name of the Association enforce the provisions of any conduct rules by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or Counsels they may deem fit.

8.6 Any conduct rules made by the Board shall reasonably be in the interest of the Association and Town Centre (Residential) and, where applicable, shall apply equally to all Members or "class" of members, as the case may be.

8.7 The conduct rules made by the Board 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 of Incorporation, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum of Incorporation 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 Board shall, as provided for in 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 at every meeting of the Directors 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

The office of Director shall be vacated if the Director:-

- 10.1 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 of Incorporation; or
- 10.2 resigns his office by notice in writing to the Association and the Registrar; or
- 10.3 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- 10.4 is found to be a lunatic or of unsound mind; or
- 10.5 is absent for three consecutive regular meetings of the Directors without obtaining prior leave of absence;
- 10.6 in the case of a Director appointed by the Developer, on the Developer revoking his appointment.
- 10.7 if the Director is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.

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) day's 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% of the total number of Directors, provided that for the Development Period at least one of such Directors must be the nominee of the Developer;
- 11.4 If at a meeting neither the chairman nor the deputy chairman is present within 10 (Ten) minutes after the time appointed for holding the same, the Directors present may choose 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. Notwithstanding the foregoing, during the Development Period, the Directors who are nominees of the Developer and are present at such meeting, shall, for the purposes of voting on any proposed resolution of the Board, be deemed, jointly, to hold between them 51% of the votes of Directors present at the meeting.
- 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 a 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 the Board.
- 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.

Committees

11.9 The Board 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 Board. 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 Board.

11.10 Should the Board 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 one of their number to be chairman for that meeting.

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

11.82 Limitation of Liability of Directors

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.

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 ASSIGNMENT OF POWERS AND FUNCTIONS

The Association shall carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Association may require to be delegated to it by the relevant Body Corporate and those functions imposed in terms of the Share Blocks Control Act (and in particular Sections 13, 15 and 19 thereof), as the Association may require to be delegated to it by a Share Block Company, in relation to any Sectional Title or Share Block Scheme in Town Centre (Residential). In addition to the foregoing any controlling body of any Share Block Scheme or Sectional Title Scheme, shall assign such powers and functions to the Association as may be require of it by the Association.

14 LEVY FUND

14.1 The Board shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of Town Centre (Residential) including the provision of security services for Town Centre (Residential), garden maintenance services, verge and private road maintenance, insurance premiums, the payment of rates and taxes and other charges on Town Centre (Residential) levied by the local or any other authority, any charges for the supply of electric current, gas, water, fuel and sewage disposal, refuse collection and any other services to Town Centre (Residential) including any matter arising from the provisions of Article 13, 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 Town Centre (Residential) and for the discharge of any other obligation of the Association (provided that nothing in this Memorandum of Incorporation shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).

- 14.2 All levies due by Members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.
- 14.3 Notwithstanding anything contained herein or elsewhere, during the Development Period, the Developer alone in his sole and absolute discretion, shall determine what portion of the total expenditure of the Association is to be paid by the Developer.
- 14.4 Subject to the provisions of Articles 14.3, 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:
- 14.4.1 they shall assign those costs arising directly out of the land itself to the Member owning such land;
- 14.4.2 they shall assign those costs relating to Town Centre (Residential) generally, (including but in no way limited to the maintenance of the Common Spaces) to a Member in the ratio of Bulk attaching to that Member's land represented as a percentage of the Total Bulk at that point in time (after the deduction of the Developer's contribution referred to in Article 14.3 above), provided that the Body Corporate of a Sectional Title Scheme laid out on land, shall be deemed to be the owner of all Bulk attaching to the immovable property on which such Scheme is laid out, for the purposes of this clause;
- 14.4.3 they may reduce or otherwise adjust the levy payable by Owners of Progressive Lifestyle Units,

provided however that the Board may (subject to the provisions of Article 14.3 above) in any case where they consider it equitable to do so, assign to any

owner any greater or lesser share of the costs as may be reasonable in the circumstances; and provided further that any replacement or other reserves shall be determined by the Board.

- 14.5 All contributions 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.
- 14.6 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 14.1 above.
- 14.7 Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be of full force and effect and recoverable from such person.
- 14.8 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum of Incorporation, 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 that charged by the Standard Bank of South Africa Limited as its prime overdraft rate plus 3 (Three) percentage points. Such interest shall be calculated and compounded monthly.
- 14.9 Subject to the provisions of Article 14.3, the Board shall have the power to impose additional special levies on Members 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 14.4.
- 14.10 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 14.11 All contributions levied under the provisions of this Memorandum of Incorporation shall be due and payable by Members on the passing of a resolution to that effect by the Board and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent

jurisdiction from the persons who were Members at the time when such contributions became due.

- 14.12 The Board shall establish a Levy Stabilisation Fund for the purposes of meeting extraordinary expenditure and expenditure of a capital nature, to be incurred by the Association in carrying out its main objects under provisions of this Memorandum of Incorporation. In the event of any land or any sectional title unit laid out on land being sold, alienated or otherwise disposed of, the new owner shall be obliged to pay the Levy Stabilisation Fund contribution applicable at that time and the ex-owner shall not be entitled to a refund of the Levy Stabilisation Fund contribution paid by him. Further, in the event of a member being a Juristic Person and the Beneficial Interest in such Juristic Person being alienated or otherwise disposed of, the new holder of such Beneficial Interest shall similarly be obliged to pay the Levy Stabilisation Fund contribution applicable at the time, and the ex-holder of such Beneficial Interest shall not be entitled to a refund of any Levy Stabilisation Fund contribution paid.
- 14.13 Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this Memorandum of Incorporation or any other amount of any nature whatsoever due to the Association by such Member (including by 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 certificate by the Chairman of the Board, dated not more than 14 (Fourteen) 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 certificate having been signed by the Chairman of the Board).
- 14.14 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.

15 ACCOUNTING RECORDS

15.1 The Board 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 to explain the transactions and financial position of the trade or business of the Association.

15.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Board think fit, and shall always be open to inspection by the Members.

16 ANNUAL FINANCIAL STATEMENTS

16.1 The Board 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.

16.2 A copy of any annual financial statements shall be laid before the Association in annual general meeting. A copy of the aforesaid financial statements shall, not less than 21 (Twenty One) days before the date of the meeting, be sent to every Member of the Association: provided that this Memorandum of Incorporation shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

17 AUDITOR

An auditor shall be appointed in accordance with the Act.

18 **NOTICES**

18.1 A notice may be given by the Association to any Member either by advertisement or personally, or by sending it by post by prepaid letter addressed to such Member at his registered address, or if he has no registered address in the Republic at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him. Any notice which may be given by advertisement shall be inserted in such newspaper as the Board may from time to time determine.

18.2 Notice of every general meeting shall be given in any manner authorised:

18.2.1 to every Member of the Association. If a Member has not supplied the Association with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the Association to serve notice at the address of the immovable property owned by the Member;

18.2.2 to the auditor for the time being of the Association.

18.3 No other person shall be entitled to receive notice of general meetings.

18.4 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

18.5 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.

18.6 Notwithstanding anything contained herein or elsewhere, the sending of any notice or other communication to a Member at an electronic mail address, nominated by such Member for these purposes in writing to the Association,

shall be deemed to be good and proper services of such notice or other communication, in terms of this Memorandum of Incorporation, and shall be deemed to have been received by the Member on the date that such communication or other notice was sent by electronic mail.

19 WINDING-UP OF ASSOCIATION

Subject to the provisions of Article 21.4.2, 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 objects similar to those of the Association.

20 DESIGN REVIEW COMMITTEE

20.1 The Design Review Committee shall be comprised of:

20.1.1 during the Development Period, an architect, urban designer or other competent professional and two (2) other individuals appointed by the Developer. The balance of the members of the Committee shall be appointed by the Board, provided that the Board shall not make any appointment in terms hereof to the Design Review Committee unless such appointee has been pre-approved of by the Developer (which approval shall not unreasonably be withheld); and

20.1.2 after the expiry of the Development Period, three (3) individuals appointed by the Board provided that at all times at least one of the members of the Design Review Committee shall be an architect.

20.2 The Design Review Committee shall act as, *inter alia*, an aesthetics committee with a view to ensuring any development within Town Centre (Residential) is in accordance with the Development Manual, the Scheme and with standards and an architectural theme which will enhance the attraction of Town Centre (Residential) as a whole.

- 20.3 The Board shall ensure that the Design Review Committee carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Development Manual.
- 20.4 Any individual appointed to the Design Review Committee by the Developer may, for any reason or for any time, appoint an alternative.
- 20.5 The Chairman and Deputy Chairman of the Design Review Committee shall be elected by the Committee at their first meeting in the financial year of the Association, provided that, during the Development Period, the Chairman and Deputy Chairman shall be members of the Committee nominated by the Developer.
- 20.6 A meeting of the Design Review Committee may be called by any Member on 14 (Fourteen) days' written notice to the other Members.

21 REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE TOWN CENTRE (RESIDENTIAL)

21.1 Buildings and improvements

- 21.1.1 In order to procure compliance with the nature and amenity of Town Centre (Residential) nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Design Review Committee and no building, extension or alteration to an existing building or other structure shall be built or erected within Town Centre (Residential), other than in accordance with the Scheme, the Development Manual and plans approved by the Design Review Committee which approval shall be in writing and signed by a duly authorised representative of the Design Review Committee. The Design Review Committee shall be entitled to charge members a fee, as determined by the Board in this regard. Before giving such approval, the Committee may require that there be lodged with them such description and/or drawing and/or plan as may be necessary, in the opinion of the Committee, to enable them to consider the matter. Any approval as contemplated herein may be subject to such

conditions as the Design Review Committee may deem fit. In the event of any building or other structure being erected, save in accordance with the plans approved of by the Design Review Committee as set out in this clause, then in that event, the Board shall be entitled to make such amendments to such building or other structure in order to procure compliance with building plans approved of by the Design Review Committee and recover the costs of such alterations from the relevant owner in question which amount shall be deemed to be part of the levy due by the Member to the Association. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period. This clause shall in no way alter or supersede any requirements of or obligations to the relevant Local Authority.

21.1.2 Members shall ensure that their land is kept in a neat and tidy state at all times. In no way detracting from the generality of the aforesaid, Members shall ensure that, while their land is undeveloped, it is kept grassed and mowed.

21.2 Landscaping

21.2.1 Save as may otherwise be agreed by the Board, any landscaping on land to be undertaken by a Member shall be undertaken in accordance with a landscape plan approved by the Design Review Committee and no Member shall commence landscaping of any land until such time as such landscape plan has been approved in writing.

21.2.2 Notwithstanding anything to the contrary herein or elsewhere contained, no Member shall have the right to landscape any part of Town Centre (Residential) or attempt to erect any fence or wall or any other structure or remove same on any land without the prior written consent of the Design Review Committee. Notwithstanding the foregoing, the provisions of this clause shall not be binding on the Developer during the Development Period.

21.3 Provision of Services

The Association may, from time to time, contract with suppliers of services to

provide services to Town Centre (Residential).

21.4 Common Spaces and Private Roads

21.4.1 Members, their employees and invitees shall be entitled to use all common spaces and Private Roads, owned or managed by the Association in Town Centre (Residential), subject to the rules and restrictions as the Board may lay down from time to time, provided that at all times Owners shall have vehicular and pedestrian ingress and egress from their land to a public road, subject to security measures as the Board may implement from time to time.

21.4.2 No resolution for the winding up of the Association shall be passed prior to the rights of vehicular and pedestrian ingress and egress above referred to being secured by way of servitudes registered against the title of Town Centre (Residential) or the transfer of such accesses to a local authority, as public roads.

21.5 Maintenance of Building

Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition by the Member and no Member shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Design Review Committee which consent shall not unreasonably be withheld. An Owner shall, on receipt of a notice given by the Design Review Committee, undertake such work as may be specified in such notice relative to such Owner's building. Should an Owner fail to carry out any work as required by the Design Review Committee, after the Design Review Committee has given the owner notice, which the Design Review Committee deems reasonable in the circumstances, so to comply, the Board shall be entitled to carry out such work and to recover the reasonable cost thereof from the Member concerned which amount shall be deemed to be part of the levy due by the Member to the Association.

21.6 Occupation of Building

Occupation and use of a building shall, at all times, be in compliance with the Scheme and this Memorandum of Incorporation. No Member shall use any building within Town Centre (Residential) or allow any other person to use such building for purposes not permitted by the Scheme or this Memorandum of Incorporation or the Rules, nor occupy any building not approved of by the Design Review Committee and confirmed in writing by the Design Review Committee as being complete and compliant with its requirements.

21.7 Services

Inasmuch as the provision, establishment, maintenance and repair of services may be required to take place in Town Centre (Residential), Members shall be obliged to accept the laying out and installation of such services across their land, in such places as the Design Review Committee determines, from time to time. The Design Review Committee or persons authorised by it, shall be entitled to enter upon such land for the purpose of providing, establishing, maintaining and/or repairing the services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

21.8 Security of Town Centre (Residential)

The Association shall provide such security in Town Centre (Residential) as it deems appropriate, from time to time.

Maintenance of Common Spaces, Private Roads and Municipal Services

21.9 The Association shall be responsible for the maintenance, upkeep and repair of the Common Spaces. Further, in the event of the Local Authority, or any other provider of services to an area in, or in the vicinity of Town Centre (Residential),

not having the means or being unwilling to maintain or provide the services normally provided by a local authority or, in the event of the Local Authority or any other service provider not maintaining the services normally provided by a local authority to a standard acceptable to the Association, then in that event, the Association may provide and maintain such services (in consultation, where possible, with such Local Authority or other service provider).

21.10 It is recorded that the Association will be the holder of a number of servitudinal rights over various immovable properties within Town Centre (Residential) (including, but not limited to right of way servitudes, sidewalk servitudes, parking servitudes, landscaping servitudes and non-user servitudes). Although the Board may from time to time, in its sole discretion and as it deems fit, pass on the benefit of these various servitudinal rights to individual Members or service providers, it shall be under no obligation to do so, and shall exercise these rights reasonably as it, in its sole discretion, deems it to be in the best interests of the Association and its Members as a whole.

21.11 **Environmental Management Plan**

Notwithstanding anything contained herein or elsewhere, no immovable property within Town Centre (Residential) shall be developed or utilized in any manner save in accordance with the Environmental Management Plan.

21.12 **Development Manual**

Notwithstanding anything contained herein or elsewhere, no immovable property within Town Centre (Residential) shall be developed save in accordance with the provisions of the Development Manual.

22 **SECTIONAL TITLE SCHEMES**

22.1 As is clear from Article 1 hereof, in the event of a Sectional Title register being opened on any land, as contemplated in terms of the Sectional Titles Act, then

in that event, the Body Corporate of such sectional title scheme (as opposed to the individual owners of the sectional title units therein) shall be the member of the Association in respect of that particular piece of land.

22.2 It is recorded that although the aforesaid Body Corporate, as the member of the Association, is obliged to comply with the provisions of the Memorandum of Incorporation and the Rules, (and further obliged to ensure that the Body Corporate's members, guests and invitees or any other person who may come upon the land in question or the Town Centre (Residential) by virtue of their rights thereto, do likewise) each owner of each sectional title unit in such sectional title scheme shall, should the Board, so require, be obliged to sign an undertaking in favour of the Association agreeing to comply with the Memorandum of Incorporation and Rules and to pay a portion of the levy payable by the Body Corporate to the Association (which portion shall be calculated by multiplying the total levy payable by the Body Corporate by the participation quota, as contemplated in the Sectional Titles Act, of that particular section) directly to the Association in the event of the Body Corporate failing to make payment of the total monthly levy to the Association timeously.

22.3 The levy and other amounts due by the Body Corporate to the Association shall constitute a first charge on all amounts collected by the Body Corporate from its members.

22.4 The Association shall be entitled to carry out all functions and assume all powers as provided for in the Sectional Titles Act (and in particular sections 37 and 38 thereof) as the Association may be require it to be delegated by it by the relevant Body Corporate, should the Board be of the view that such functions are not being carried out in a good and proper manner by the Body Corporate in question. All costs incurred by the Association in this regard shall be payable by the Body Corporate in question.

22.5 In no way detracting from the generality of the aforesaid, or anything contained in this MOI, it is specifically recorded that each Body Corporate shall ensure

that no section in its scheme is transferred until such time as, inter alia, the transferee of such Section has secured the payment of the Levy Stabilisation Fund contribution (as more fully referred to in Article 14.12 hereof) to the satisfaction of the ASSOCIATION.

23 ENFORCEMENT OF OBLIGATIONS OF OWNERS

23.1 Should any Member or any lessee of a Member fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Board 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. The Member shall be obliged to bring to the attention of any tenant of his immovable property, the rules and regulations of the Association. In addition, a Member shall utilise its best endeavours to ensure that any invitee of the Member who goes upon Town Centre (Residential) complies with the Association's rules and regulations.

23.2 It shall be incumbent upon the Body Corporate of any Sectional Title Scheme laid out on land, to ensure that its members, or any lessees of units within such scheme, comply at all times with the provisions of this Memorandum of Incorporation and the Rules and Regulations made in terms hereof. Should any member of such Body Corporate or any lessee of a unit within such Sectional Title Scheme, fail to comply with any obligations incumbent upon it, if applicable, within the period of any notice given for compliance, the Board shall be entitled, but not obliged, to do all things and incur all such expenditure as is, in the opinion of the Board, necessary to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Body Corporate concerned, which shall be payable on demand. The Body Corporate shall be obliged to bring to the attention of all its members and their tenants, the Rules and Regulations of the Association. In addition, the Body Corporate shall utilize its best endeavours to ensure that any invitee of its members who go upon

Town Centre (Residential), comply with the Association's Rules and Regulations.

24 DETERMINATION OF DISPUTES

24.1 Subject to Article 14.13 above, 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, obligations or liabilities of the Association or any Member in terms of this Memorandum of Incorporation, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 90 (ninety) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.

24.2 The arbitrator shall be if the question in issue is:

24.2.1 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 Kwazulu-Natal;

24.2.2 primarily a legal matter, a practising senior Advocate of not less than 10 (ten) years standing as such, or a practising 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);

24.2.3 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 therefor.

- 24.2.4 If agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under 24.2.1, 24.2.2 or 24.2.3, then a practising Advocate of not less than 10 (ten) years standing or alternatively practising 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.
- 24.2.4.1 The arbitration referred to in 24.1 shall be held:
- 24.2.4.1.1 in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:
- 24.2.4.1.2 the usual formalities or procedure, which may be otherwise be prescribed in terms of the laws referred to in clause 24.4.3 below, or
- 24.4.1.2 the strict rules of evidence;
- 24.4.2 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 fulfil 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 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 arbitrator 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 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 any 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 binding upon the relevant parties;

24.4.3 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.

24.5 The arbitrator shall:

23.5.1 be entitled to make any award as to costs of the proceedings;

24.5.2 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.

24.6 The parties irrevocably agree that the decision of those arbitration proceedings:

24.6.1 shall be binding on all of them and shall be forthwith carried into effect;

24.6.2 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.

- 24.7 Notwithstanding anything to the contrary contained in this Article 24, 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 an 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.

25 DEVELOPER'S RIGHTS REGARDING TOWN CENTRE

The Developer shall, during the Development Period, be entitled to develop any land within Town Centre (Residential) of which it is the owner in conformity with the Scheme, without the approval of the Association.

26 INCORPORATION OF ADDITIONAL LAND

- 26.1 The Developer may, on notice in writing to the Board, have any land contiguous to Town Centre (as currently defined in this Memorandum of Incorporation) incorporated into Town Centre (Residential). The date of such incorporation of any aforesaid additional land shall be the date on which notice is given by the Developer to the Board. (Provided that, for the purposes of this clause 25.1, any property separated from Town Centre (Residential) by a public road, shall be regarded as contiguous to Town Centre (Residential).

26.2 In addition, the Developer may, with the prior written consent of the Board, incorporate any additional land into Town Centre (Residential) which is not contiguous to Town Centre (Residential) (as currently defined in this Memorandum of Incorporation).

27 DISCLAIMER OF RESPONSIBILITY

27.1 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 Town Centre (Residential) regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within Town Centre (Residential). 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.

27.2 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 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 Town Centre (Residential), regardless of the cause thereof.

27.3 Members hereby 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 clause 27.

28 AMENDMENT TO ARTICLES

Save as otherwise herein provided, this Memorandum of Incorporation may only be amended or varied by way of a Special Resolution of Members, provided that during the Development Period, this Memorandum of

Incorporation shall not be varied or amended without the prior written consent of the Developer.

29 **EXCLUSION OF LAND**

The Developer may, on notice in writing to the Board, have any land owned by the Developer, excluded from Town Centre (Residential). The date of such exclusion of any aforesaid land shall be the date on which notice is given by the Developer to the Board.