

# ARTICLES OF ASSOCIATION OF THE SOMERSET PARK HOMEOWNERS' ASSOCIATION

## 1. PRELIMINARY

The Articles of Table "A" contained in Schedule 1 to the Companies Act 1973, shall not apply to the Association.

## 2. DEFINITIONS

2.1 In these Articles, unless the context otherwise requires the following words or expressions shall have the corresponding meanings assigned to them:

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|--------|------------------------|--|
| 2.1.1  | "Act"                  | means the Companies Act 1973, as amended from time to time;  |
| 2.1.2  | "Articles"             | means the Articles of Association for the time being of the Association;   |
| 2.1.3  | 'Association'          | means the Somerset Park Home Owners' Association (Incorporated Association not for gain);  |
| 2.1.4  | "Auditors"             | means the auditors of the Association;   |
| 2.1.5  | "Board"                | means the board of directors of the Association for the time being and from time to time;  |
| 2.1.6  | "Developer"            | means Moreland Developments (Proprietary) Limited No. 81/12378/07 or its successors in title or assigns;   |
| 2.1.7  | "Development Period"   | means that period from the date of registration of the Association to the date that the Developer gives written notice to the Association of its resignation as a Member;  |
| 2.1.9  | "Town Planning Scheme" | means the town planning scheme in the course of preparation for Somerset Park as amended from time to time;  |
| 2.1.8  | "Directors"            | means the directors of the Association for the time being;   |
| 2.1.10 | "Member"               | means an Owner, the Developer during the Development Period, and a Body Corporate as defined in terms of the Sectional Titles Act, No. 95 of 1985;   |
| 2.1.11 | "Owner"                | means any person who is the registered owner of a Unit, provided that in the case of joint owners, the person first named shall be deemed to be the Owner, but notwithstanding, all joint owners shall be bound by these Articles as if they were Owners;  |
| 2.1.12 | "Somerset Park"        | means immovable property/ies known as Er# 1836 Umhlanga Rocks owned and developed by the Developer in phases as a residential township with such permitted commercial erven known as Somerset Park, and shall include any additional immovable property which the Developer may include as part of Somerset Park as provided for in Article 29;  |
| 2.1.13 | "Unit"                 | means immovable property situated in Somerset Park capable of registration under separate title, and includes a sectional title unit in terms of the Sectional Titles Act, 1956, and that portion of immovable property in respect of which a holder of a shareblock is granted the exclusive use thereof as contemplated under the Share Blocks Control Act, 1980, but excludes all public open spaces as zoned and permitted in the town planning scheme in the course of preparation from time to time for Somerset Park. |

2.2 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 only shall include the other gender.

2.3 Words or expressions defined in the Act or in the Sectional Titles Act No. 95 of 1986 or any statutory modifications of such legislation in force at the date on which these Articles become binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

2.4 The headings of these Articles are intended for reference purposes only and shall not influence the interpretation of these Articles.

## 3. MEMBERSHIP

3.1 Membership of the Association shall be obligatory for an Owner, and the Developer during the Development Period.

3.2 Where any Unit in Somerset Park is owned by more than one person, all the registered owners of that Unit shall together be deemed to be one Member of the Association.

3.3 When a Member ceases to be the registered owner of a Unit, he shall *ipso facto* cease to be a Member of the Association.

- 3.4 If the Developer, in one transaction alienates all its rights and all undeveloped land vested in it in respect of Somerset Park, the Developer shall be entitled to cede to the transferee all its rights in terms of these Articles and the transferee shall be entitled to exercise all such rights.
- 3.5 The Developer may at any time terminate in whole or in part the particular rights conferred upon it during the Development Period, and shall be deemed to have done so at the end of the Development Period, provided that nothing contained in these Articles shall be construed as depriving the Developer of any rights it may have as an ordinary Member of the Association.
- 3.6 A Member, other than the Developer, shall not in any manner alienate, with the exception of the registration of a mortgage bond, a Unit unless it is a condition of the agreement of alienation that:
- 3.6.1 the proposed transferee has bound himself, to the satisfaction of the Association, upon transfer of the unit, to him.
- 3.6.2 the registration of transfer of the Unit into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association.
- 3.7 The provisions of Article 3.6 shall apply mutatis mutandis to any alienation of an undivided share in and to a Unit.
- 3.8 An Owner may not resign as a Member of the Association.
- 3.9 Subject to the rights of membership as prescribed by the Act, membership of the Association shall confer upon each Member, unless otherwise stipulated, the following rights:
- 3.9.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
- 3.9.2 the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with the provisions of these Articles;
- 3.9.3 should 25 % (TWENTY FIVE PERCENT) of Members, from time to time, so collectively decide, the right of to call a general meeting.
- 3.10 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.
- 3.11 Membership of the Association shall cease:
- 3.11.1 upon a Member ceasing to be an Owner;
- 3.11.2 upon the issue of a final order of sequestration or liquidation of the Member concerned;
- 3.11.3 upon the death of a Member, or upon the Member declared insane or incapable of managing his affairs;
- 3.11.4 in the case of the Developer on delivery of written notice to the Association as contemplated in Article 2.1.7;
- provided in the event of a member ceasing to be a member in terms of Article 3.11.2 or 3.11.3 the legal representative of such Member shall, for all purposes be recognised and be bound as the Member under these Articles.
- 3.12 The rights and obligations of a Member shall not be transferable and every Member shall:
- 3.12.1 to the best of his ability further the objects and interests of the Association;
- 3.12.2 observe all house rules made by the Association or the Directors;
- provided that nothing contained in these Articles shall prevent a Member from ceding his rights in terms of these Articles as security to the mortgagee of a Unit.
- 3.13 The liability of Members, 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.
- 3.14 The Association shall maintain at its registered office a register of Members as provided in Section 105 of the Act. The register of Members shall be open to inspection as provided in Section 113 of the Act.

#### **4. LEVIES**

- 4.1 The Board shall from time to time, make levies upon Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Board reasonably anticipates the Association will be put in effecting attainment of the objects of the Association, including costs of maintenance, repair, improvement, and keeping in good order and condition the open space and services in Somerset Park which have been delegated to the Association, and/or for payment of all rates and other charges payable by the Association in respect of the immovable property acquired by or vested in the Association and/or for the services rendered to such property, and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, Somerset Park, and the Association's affairs.
- 4.2 In computing the levy, the Board shall take into account all expenses incurred or to be incurred by the Association in its administration and management of Somerset Park, as well as all income, if any, earned by the Association from whatever source.

- 4.3 The Board shall not less than thirty (30) days prior to the end of each financial year, or as soon thereafter as reasonably possible, prepare and serve upon all Members at the address chosen by such Member a notice giving an estimate in reasonable detail of the amount which shall be required by the Association to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Board may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 4.4 The notice referred to in Article 4.3 shall specify the annual contribution payable by the Members to meet the expenses and contribute to the reserve fund.
- 4.5 Levies shall be payable by Members annually in advance on the first day of each financial year.
- 4.6 In the event that the Board for any reason whatsoever failing to prepare and serve the notice referred to in Article 4.3 timeously, Members shall until service of such notice continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in Articles 4.3 and 4.4.
- 4.7 The Board may from time to time make special levies upon the Members in respect of all such expenses which were not included in the notice made in terms of Article 4.3 and the Board may in imposing such special levies determine the terms and payment thereof.
- 4.8 The Board shall be empowered, in addition to such other rights as the Association may have in law as against Members, to determine the rate of interest chargeable upon arrear levies from time to time.
- 4.9 Any amounts due by a Member by way of a levy and interest shall be a debt due by such Member to the Association. The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member without prejudice to the Association's right to recover arrear levies and interest. No levies or interest paid by a Member shall under any circumstances be refundable by the Association upon his ceasing to be a Member.
- 4.10 A Member and any successor in title to a Unit shall be liable to the Association to pay the levy and any interest thereon from the date upon which such person becomes an Owner.
- 4.11 In calculating the levy payable by Members the Board shall as far as reasonably practicable assign those costs relating to Somerset Park generally to all the Owners equally.
- 4.12 The Association may come to agreements with the local authority in respect of and concerning the maintenance of road verges and open spaces and any other services in Somerset Park.
- 4.13 No Member shall be entitled to any of the privileges of membership of the Association unless and until such Member shall have paid every levy, interest thereon in terms of Article 4.8, and any other sum (if any) which may be due and payable to the Association, from whatsoever cause arising.
- 4.14 The Board shall be entitled to raise levies in accordance with the principles set out in this Article 4 from the date of registration of these Articles.

## **5. HOUSE RULES**

- 5.1 Subject to any restriction imposed or direction given at a general meeting of the Association, the Directors may from time to time make house rules in regard to:
  - 5.1.1 the preservation of the natural environment, vegetation and fauna in Somerset Park;
  - 5.1.2 the use of common areas, including road verges within Somerset Park;
  - 5.1.3 the enforcement of prescribed standards, conditions and guidelines as laid out in the Somerset Park Design Guidelines for the erection, layout, maintenance and design of any buildings, and external fixtures, appurtenances and fittings thereto, including aerials of any description, erected or to be erected in Somerset Park and any improvements thereto and structures thereon and thereby to exercise control over the external appearance of all buildings, structures, appurtenances, erections, land and garden areas in Somerset Park;
  - 5.1.4 the maintenance of the gardens, open spaces and recreational amenities which the Association may have utilisation of from the Local Authority or any other body and to make and enforce regulations governing the use by Members thereof;
  - 5.1.5 the levying of reasonable fees for the use by Members of such gardens, open spaces and recreational amenities;
  - 5.1.6 the conduct of any persons within Somerset Park and the prevention of nuisance of any nature to any Owner;
  - 5.1.7 the placing of movable objects upon the outside of buildings, including the power to remove any such objects;
  - 5.1.8 the right to keep animals, reptiles and birds as pets;
  - 5.1.9 any such matters as may in the opinion of the Directors require to be regulated from time to time.

- 5.2 In the event of any breach of the house rules by Members or their guests, or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to anything contained in these Articles, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 5.3 Any fine imposed upon a Member pursuant to a breach of the house rules or these Articles shall be deemed to be a debt due by the Member to the Association and shall be recoverable by ordinary civil process.
- 5.4 The Directors may in the name of the Association enforce the provisions of any house rules or these Articles by civil application or action in a Court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit, and recover such a costs as may be incurred pursuant thereto.
- 5.5 Each Member undertakes to the Association that he shall comply with any house rules made in terms of Article 5.
- 5.6 Any house rules made by the Directors shall be reasonable, and shall apply equally to all Owners put substantially to the same purpose.
- 5.7 For the enforcement of any of the house rules made by the Directors, the Directors may take or cause to be taken such steps as they may consider necessary to remedy the breach of any house rules of which a 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, and in addition the Directors may impose a system of fines and other penalties, the amounts of which fines and penalties shall be determined by the Board from time to time.

## **6. DIRECTORS**

- 6.1 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 constraints:
  - 6.1.1 for the Development Period the total number of directors shall be four (4) of whom at least two (2) Directors shall be nominees of the Developer, save in respect of the formation of the Association when it shall be sufficient that only two (2) Directors are appointed. However, as soon as is reasonably possible after the formation of the Association as many directors as may be necessary shall be nominated to ensure that the total number of Directors is as above provided;
  - 6.1.2 a retiring Director shall be eligible for re-election;
  - 6.1.3 a nominee of the Developer shall be a Director for so long as the Developer does not revoke his appointment.
- 6.2 The retirement of a Director shall not in itself necessitate that individual resign his membership.
- 6.3 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 these Articles. If the Director so retiring or resigning was the nominee of the Developer, then during the Development Period his successors shall be appointed by the Developer. The validity of any resolutions taken or acts performed by the directors during a period when the number falls short of that provided in Article 6.1 shall not be prejudiced by such shortfall.
- 6.4 Any Director, with the exception of a director appointed by the Developer, may be removed by a majority Board decision, for any reason whatsoever.
- 6.5 The appointment of any Director to fill any vacancy for whatever reason, shall be made within forty five {45} days of the date upon which such vacancy occurs.
- 6.6 The Directors shall have the power to co-opt persons onto the Board for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted onto the Board shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 6.7 The Chairman and Vice-Chairman shall be elected by the Directors at their first meeting in the financial year, provided that for the Development Period the Chairman and Vice-Chairman shall be Directors nominated by the Developer.

## **7. ALTERNATE DIRECTORS**

- 7.1 Any Director appointed by the Developer may for any reason and at or for any time appoint an alternate.

7.2 Any other Director may obtain leave of absence by a resolution of the majority of the Directors, and such Director 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.

## **8. REMOVAL AND ROTATION OF DIRECTORS**

8.1 Subject to the provisions of Article 8.3 and save for the four Directors appointed by the Developer in terms of Article E.3, each Director shall continue to hold office as such from the date of his appointment to office until the annual general meeting next following his 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.

8.2 A Director shall be deemed to have vacated his office as such upon:

- 8.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
- 8.2.2 the commission by him of any act of insolvency;
- 8.2.3 his conviction for any offence involving dishonesty;
- 8.2.4 his becoming of unsound mind or being found lunatic;
- 8.2.5 his resigning from such office in writing delivered to the Association;
- 8.2.6 his death;
- 8.2.7 his being removed from office as provided in Section 220 of the Act;
- 8.2.8 in the event of his being a member of the Association, his being disentitled to exercise a vote in terms of Article 20.2;

provided that anything done in the capacity of a Director in good faith by a person who ceases to be a Director, shall be valid until the fact that he is no longer a Director has been recorded in the Minute Book of the Board of Directors.

8.3 Upon any vacancy occurring on the Board prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board provided, however that if the Director who has vacated his office was the nominee of the Developer, the Developer shall be entitled to nominate a Director in his stead.

## **9. CHAIRMAN AND VICE-CHAIRMAN**

9.1 Subject to the provisions of Article 6.7, within seven {7} days of the holding of each Annual General Meeting, the Board shall elect the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their appointments, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be appointed to more than one of the offices of Chairman or Vice-Chairman. In the event of any vacancy occurring in any of these offices at any time, the Board shall immediately appoint one of their number as a replacement in such office.

9.2 Save as otherwise provided in these Articles, the Chairman shall preside at all meetings of the Board, and all General Meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Board or Members.

9.3 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Board.

## **10. DIRECTORS' REMUNERATION**

10.1 A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Association, provided that nothing in these Articles shall prohibit him from reimbursement of all 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.

10.2 If any Director commits a breach of Article 10.1 he shall forthwith cease to be a Director and shall not be eligible for re-election.

## **11. FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS**

11.1 Subject to the express provisions of these Articles the Directorship, shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, and save as may be expressly provided in these Articles, may exercise all such powers of the Association, and do all such acts on

behalf of the Association as may be exercised and done by the Association, and as are not by the Act or by these Articles required to be exercised or done by the Association in general meeting, subject nevertheless to any provisions of the Act, and to such house rules as may be prescribed by the Association in general meeting from time to time; provided that no house rule made by the Association in general meeting shall invalidate any prior act of the Board which would have been valid if such house rule had not been made.

- 11.2 The Board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 11.3 The Board shall have the right to co-opt onto the Board any person or persons chosen by it. A co-opted Director need not necessarily be a Member. A co-opted Director shall have the right to be notified of and to attend all Directors meetings and to speak thereat in all respects as if he were a full Member but shall have no vote at any such meetings and may not be elected to the office of Chairman or Vice-Chairman. Save as aforesaid, a co-opted Director shall enjoy all the rights and be subject to all the obligations of a Director.
- 11.4 The Directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including a nominee of the Manager as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 11.5 The Board may in addition to the powers conferred upon them in terms of Article 5 make house rules not inconsistent with these Articles or any house rules prescribed by the Association in general meeting, for the furtherance and promotion of any of the objects of the Association, for the better management of the affairs of the Association, for the advancement of the interest of Members, for the conduct of Directors meetings, and general meetings, and to assist it in administering and governing its activities generally, and shall be entitled to cancel, vary or modify the same from time to time.
- 11.6 The Association may in general meeting make any house rules which the Directors are in terms of Articles 5 and 11.5 entitled to make, and shall be entitled to cancel, vary or modify any house rules made by it or by the Directors from time to time, provided that no decision or resolution made by the Association in general meeting shall invalidate any prior act of the Board which would have been valid if such decision or resolution had not been made.
- 11.7 The Directors or the Board shall not be entitled to undertake on behalf of the Association any works of a capital nature; without the sanction of a resolution of the Association in general meeting.
- 11.8 The Directors shall be entitled to appoint a manager or any other person or body as may be empowered by the Directors by resolution of the Association in general meeting to ensure compliance by the Members of these Articles and with the house rules in operation from time to time, and to issue such notices and do such things as may be necessary or requisite.

## **12. PROCEEDINGS OF DIRECTORS**

- 12.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these Articles.
- 12.2 Meetings of Directors shall be held at least four (4) times during a financial year; provided that a Director may at any time, and the Secretary shall on requisition of a Director, summon a meeting of Directors.
- 12.3 The quorum necessary for the transaction of the business of the Directors shall be at least two (2) Directors, provided that for the Development Period at least 50% of Directors present shall be nominees of the Developer.
- 12.4 The Chairman shall preside as such at all meetings of Directors provided that should at any meeting of Directors the Chairman not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes of the time appointed for the holding of such meeting, those Directors present shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 12.5 The Directors shall cause minutes to be taken of every Directors meeting; although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting. All minutes of Directors meetings shall after certification as aforesaid be placed in a Directors Minute Book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of Companies: The Directors Minute Book shall be open for inspection at all reasonable times by a Director, the Auditors and the Members.

- 12.6 All competent resolutions recorded in the minutes of any Directors meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolutions or purported resolution of the Directors shall be of any force and effect, or shall be binding upon the Members or any of the Directors unless such resolution is competent within the powers of the Directors.
- 12.7 Save as otherwise provided in these Articles, the proceedings at any Directors meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 12.8 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 duly convened.
- 12.9 Questions arising at any meeting of Directors shall be decided by a majority of the votes of the Directors, present, in person or by an alternate, with each Director being entitled to exercise one (1) vote. In the event of an equality of votes the Chairman shall have a second or casting vote. Where a person is an alternate Director to more than one Director, or where a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors whom he is representing.
- 12.10 All acts done by any meeting of the Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in acting or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and has qualified to be a Director.

### **13. GENERAL MEETINGS OF THE ASSOCIATION**

- 13.1 The Association shall within six (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 the general meeting as such in the notice calling such general meeting in terms of Article 14.
- 13.2 An Annual General Meeting shall be held at such time and place, as the Directors shall decide from time to time.
- 13.3 All general meetings other than Annual General Meetings shall be called extraordinary general meetings.
- 13.4 The Directors may, whenever they think fit, convene an extraordinary general meeting; and an extraordinary general meeting shall also be convened on a requisition made in terms of Section 181 of the Act, or in default, may be convened by the requisitionists as provided by and subject to the provisions of that Section.

### **14. NOTICES OF MEETINGS**

- 14.1 An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by at least twenty one (21) clear days notice in writing, and an extraordinary general meeting, other than one called for the passing of a special resolution, shall be called by at least fourteen (14) clear days notice in writing. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting, and in the case of special business, in addition to any other requirements contained in these Articles, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be giving in the manner set out in these Articles or in such other manner, if any, as may be prescribed by the Directors to such persons as are under these Articles entitled to receive such notices from the Association, provided that a general meeting of the Association shall notwithstanding that it is called by shorter notice than that specified in these Articles, be deemed to have been duly called if it is so agreed.
- 14.1.1 in the case- of a meeting called as the Annual General bu all the Members entitled to atend and vote thereat, and
- 14.1.2 in the case of and extraordinary general meeting, by a majority in number of the Members havig a right to attend and vote at the meeting, being amajority together holding not less than 75% (SEVENTY FIVE PER CENT) of the total voting rights of all Members.
- 14.2 Insofar as special notice may be required of a resolution, whether by any provision of the Act orahese.Articles, then the provisions of Section 188 of the Act shall apply.
- 14.3 The Association shall comply with the provisions of Section 185 of the Act as to giving of notice and circulating statements on the requisition of Members.
- 14.4 The non-receipt of any notice of a meeting or of any resolution, notification or document by any Member or any other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at,any meeting.

### **15. VENUE OF MEETINGS**

General Meetings of the Association shall take place at such place as shall be determined by the Directors from time to time, provided however that 'such place shall be within the municipal boundaries of the North Local Council.

## **16. QUORUM**

- 16.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. During the Development Period the quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote as together for the time being, represent the votes of the Developer and 25% (TWENTY FIVE PERCENT) of the votes of all other Members of the Association entitled to vote for the time being. After the Development Period the quorum shall be such of the Members entitled to vote, as together for the time being, represent the votes of 25% (TWENTY FIVE PERCENT) of all Members entitled to vote for the time being.
- 16.2 If within thirty (30) minutes from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned to thirty (30) minutes later on the same day at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present at the time appointed for the holding of the adjourned meeting, the Members present shall be a quorum.

## **17. AGENDA AT MEETINGS**

In addition to any other matters required by the Act or these Articles to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 17.1 the consideration of the Chairman's report to the Members;
- 17.2 the election of Directors;
- 17.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 17.4 the consideration of the balance sheet and financial statement of the Association for the last financial year of the Association preceding the date of such meeting;
- 17.5 the consideration of the report of the Auditors;
- 17.6 the noting of the levy (as referred to in Article 4.3) for the financial year during which such annual general meeting takes place;
- 17.7 the consideration and fixing of the remuneration of the Auditors for the financial year of the Association preceding the annual general meeting.

## **18. PROCEDURE AT GENERAL MEETING**

- 18.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five (5) minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five (5) minutes after the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 18.2 The Chairman may, with the consent of any general meeting at which a quorum is present, and shall if so directed by the meeting, adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 18.3 Except as otherwise provided. for in these Articles, all general meetings shall be conducted in accordance with Roberts Rules of Order, latest revised edition.

## **19. PROXIES**

- 19.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, a majority of those persons shall sign the instrument appointing a proxy of such Member's behalf. Where, a Member is a company the proxy may be signed by the Chairman of the Board of Directors of that company or by its Secretary, and where an association of persons or body corporate, by the Secretary thereof.
- 19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the registered office of the Association at least four (4) hours



before the time appointed for the, commencement of the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote unless the Chairman otherwise directs: No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.

19.3 A vote given 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 that no intimation in writing of the death or revocation shall have been received by the Directors at least one (1) hour before the time fixed for the holding of the meeting.

## **20. VOTING**

20.1 At every general meeting each Member present, in person or by proxy, shall be entitled to one (1) vote, provided that for the Development Period no resolution shall be carried unless the nominee of the Developer present, in person or by proxy, votes in favour of such resolution and any ordinary resolution shall be carried if the nominee of the Developer present, in person or by proxy, votes in favour of such resolution.

20.2 Subject to express provisions in these Articles to the contrary, no person other than a Member duly registered, and who shall have paid every levy and other sum, if any, which shall be 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 or to vote on any question, either personally or by proxy, at any general meeting.

20.3 Unless the Chairman of the meeting otherwise directs all voting shall be in writing, by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairman of the meeting may direct.

20.4 Notwithstanding the provisions of Article 20.3, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

20.5 Every resolution and every amendment of a 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.

20.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes of votes for and against any resolution, the resolution shall be deemed to have been defeated.

20.7 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 by poll, 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, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

## **21. PROFESSIONAL OFFICERS**

Subject to express provisions in these Articles to the contrary, the Directors shall at all times have the right to engage on behalf of the Association, the services of accountants, auditors, attorneys, advocates, architects, engineers, managers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Directors and on such terms as the Directors shall decide, subject to any of the provisions of these presents.

## **22. ACCOUNTS**

22.1 The Association in general meeting or the Directors may from time to time make reasonable conditions and house rules as to the time and manner of the inspection by the Members of the accounts and books of the Association, or any of them, and subject to such conditions and house rules, the accounts and books of the Association shall be open to the inspection of Member at all reasonable times during business hours.

22.2 At each Annual General Meeting the Directors shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the Association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association. Every such balance sheet shall be accompanied by proper and extensive reports of the Directors and the Auditors and there shall be attached to the notice sent to members convening each Annual General Meeting, as set forth in Article 14, copies of such accounts, balance sheet and reports (all of which shall be framed in accordance with the provisions of the Act) and of any other documents required by law to accompany the same.

## **23. AUDIT**

23.1 At least once in every financial year the accounts of the Association shall be examined, and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

23.2 The duties of the Auditors shall be regulated in accordance with Chapter "X" of the Act.

#### **24. SERVICE OF NOTICES**

24.1 A notice may be served by the Association upon any Member, either personally or by sending it through the post in a prepaid registered letter, addressed to such member at such address as he may have notified the Association in writing, or if such Member has failed to notify the Association in writing of any such address at the address of the Unit owned by that Member.

24.2 Any notice, if served by post, shall be deemed to have been served on the day but five (5) following that on which the letter containing the same was put into the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office as a prepaid registered letter.

#### **25. INDEMNITY**

25.1 All Directors and the Auditors shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective capacities, and in the case of a Director in his capacity as, Chairman, Vice-Chairman, Whether defending any proceedings, civil, criminal or otherwise, or in connection with any application under Section 248 of the Act, in which relief is granted to any such person/s by the Court.

25.2 Every Director, every servant, agent and employee of the Association, the Manager and the Auditors shall be indemnified by the Association against liability and it shall be the duty of the Directors out of the funds of the Association to pay, all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done by such person or persons in the discharge of any of his/their respective duties, including in the case of a Director, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties; provided that any such act, deed or letter has been done or written in good faith.

25.3 A Director shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Directors, whether in their capacities as Directors or as Chairman or Vice-Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Directors for or on behalf of the Association or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the insolvency or tortious act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

#### **26. WINDING UP OF ASSOCIATION**

In the event of the Association being wound up, its assets shall devolve upon such other corporation or association as the Members in such winding up order determine, provided that such corporation or association has aims and objects similar to those of the Association.

#### **27. GENERAL**

27.1 Any notice required to be served upon any Body Corporate as defined in the Sectional Titles Act, 1986 shall be deemed to have been properly served if served in terms of Article 24 at the address given as the *domicilium citandi et executandi* of that Body Corporate.

27.2 No Member shall transfer his Unit until the Association has certified in writing that the Member has, at the date of transfer, fulfilled all his financial obligations to the Association.

27.3 A Member, other than the Developer may not alienate, with the exception of the registration of a mortgage bond, a Unit or an undivided share in such Unit owned, by that Member without the written consent of the Association, which consent shall not be withheld unless:

27.3.1 such Member is indebted to the Association in any way in respect of levies or other amounts which the Association may in terms of these Articles be entitled to claim from that Member;

27.3.2 the proposed transferee of that Unit has not agreed to become a Member of the Association.

## **28. DETERMINATION OF DISPUTES**

- 28.1 In the event of any dispute or difference arising between the Members inter se or between a Member and the Association as to the construction, meaning, interpretation or effect of any provision of these Articles or as to the rights, obligations or liabilities of the Association or any Member in terms of these Articles, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of thirty (30), days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.
- 28.2 The arbitrator shall be if the question in issue is:
- 28.2.1 primarily primarily an accounting matter, an independent chartered accountant of not less than fifteen (15) years standing as such appointed by the President for the time being of the South African Institute of Chartered Accountants in Natal;
- 28.2.2 primarily a legal matter, a practising senior Advocate of not less than ten (10) years standing as such, or a practising attorney of not less than fifteen (15) years standing as such, in either event as may be appointed by the President for the time being of the Natal Law Society;
- 28.2.3 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 Natal Law Society regard being had to the needs of The dispute and the qualifications required therefor.
- 30.3 If agreement cannot be reached within ten {10} business days after the arbitration has been demanded as to whether the question in issue falls under Articles 30.2.1, 30.2.2 or 30.2.3, then a practising Advocate of not less than ten (10) years standing or alternatively a practising attorney of not less than fifteen (15) 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 Natal Law Society as soon as possible thereafter, shall determine where the question in issue falls so that an arbitrator can be appointed in terms of Article 30:2 and the arbitration can be held and concluded, if possible, within the prescribed periods referred to in Article 30.4.
- 28.4 The arbitration referred to in 30.1 shall be held:
- 28.4.1 in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:
- 30.4.1.1 the usual formalities or procedure, which may otherwise be prescribed in terms of the laws referred to in Article 30.4.3, or
- 30.4.1.2 the strict rules of evidence;
- 28.4.2 immediately and with a view to it being completed within thirty (30) 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 it's election and upon the expiration of six (6) 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 fourteen (14) days beyond the original thirty (30) day period as the arbitrator may determine, or alternatively and in the discretion of the party serving such six (6) day notice aforesaid, to require the arbitrator to proceed with the arbitration without the further participation of the defaulting party, iti 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 parties serving the six (6) 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;
- 28.4.3 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.
- 28.5 The arbitrator shall:
- 28.5.1 be entitled to make any award as to costs of the proceedings;
- 28.5.2 decide the matter substituted 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.
- 28.6 The parties irrevocably agree that the decision of those arbitration proceedings:

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

28.6.2 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.

28.7 Notwithstanding anything to the contrary contained in this Article 30, 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 laws applicable.