

SILVERHURST

SILVERHURST ESTATE HOME OWNERS ASSOCIATION NPC

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY

REGISTRATION NUMBER

1991/001082/08

NAME OF COMPANY:

SILVERHURST ESTATE HOME OWNERS ASSOCIATION NPC

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1. DEFINITIONS

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

Words	Meanings
"The Act"	The Companies Act 71 of 2008
"The Association"	SILVERHURST ESTATE HOME OWNERS ASSOCIATION NPC
"Auditors"	The Auditors of the Association
"Board"	means the Board of Directors of the Company
"Chairman"	The person elected to serve as the Chairman of the Board of Directors of the Association
"Design Manual"	means the Silverhurst Development and Design Manual dated 28th November 1989 lying for inspection at the registered offices of the Registered Owner and at the offices of the Western Cape Regional Services Council and which Manual lays down Rules for the control of the development of the property.
"Directors"	means the Board of Directors of the Association
"Estate manager"	means the person appointed by the Directors to manage the business of the Association
"Estate house"	means the dwelling on Erf 10328 of the Private Area
"Expenditure authority levels"	means the expenditure authority levels approved by Members annually at the Annual General Meeting for application by Management and the Directors in managing the business and affairs of the Association
"Member"	A member of the Association

“Month”	calendar month
“the office”	the registered office of the Association
“These Presents”	This Memorandum and any Rules of the Association, from time to time in force
“the private area”	that portion of the REMAINDER ERF 1203 CONSTANTIA, in the Area of the Local Council of Constantia Valley, Administrative District of the Cape, which is reflected as erven 10251, 10264, 10268, 10269, 10298, 10328,10329.
“the Property”	Remainder Erf 1203 Constantia, in the Area of the Local Council of Constantia Valley, Administrative District of the Cape
“Publish”	means notice given by letter(which need not be registered mail), electronic format, hand delivery to the legal address, fax, or SMS to the Owners information on record
“Recoverable expenses”	means the cost of water, sewage, security and any other costs incurred by the Association on behalf of Members and as such are recoverable from members based on cost or actual usage or a Board approved basis of recovery from individual Members.
“Rules”	means rules of the Association as determined by the Directors from time to time, in accordance with these presents, to promote the furtherance of the objectives of the Association, and does not mean “rules” and “rules of a company” as defined in the Act.
“Township Plan”	the Township Plan applicable to Remainder Erf 1203 Constantia and upon which the Unit Erven are laid out. Sub-division plan shall have the same meaning.
“the Unit Erven”	the residential erven (with the exclusion of Erf

10328) resulting from the sub-division of
REMAINDER ERF 1203 Constantia in the area
of the local Council of Constantia Valley,
Administrative district of the Cape

“In Writing” Written, printed or lithographed or partly one and
partly another, and other modes of representing or
producing words in a visible form.

“year” calendar year

2. INTERPRETATION

- 2.1. Words which describe a natural person will also describe an Association, Body Corporate, the Trustees of a Trust or other legal persons, and *vice versa*;
- 2.2. Words which describe the masculine will also describe the feminine or refer to the neutral. For convenience only, this agreement refers to the masculine singular.
- 2.3. Words which are singular include a reference to the plural and *vice versa*;
- 2.4. Annexures to this agreement are an integral part of it;
- 2.5. Reference to a party includes that party's successors and permitted assigns;
- 2.6. Where the day on or by which anything is to be done is not a business day, it must be done on or by the first business day that follows;
- 2.7. When a number of days is prescribed in this agreement, they must be calculated exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;
- 2.8. Any reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 2.9. The captions appearing in this agreement are for reference purposes only and do not affect the interpretation hereof;
- 2.10. Where figures are referred to in numerals and words, if there is any conflict between the

two, the words prevail;

2.11. Where the Act refers to “a shareholder, “the holders of a company’s securities”, “holders of issued securities of that company”, or “a holder of voting rights entitled to be voted, the reference must be read to be a reference to the voting of members of the Association;

2.12. Where notice needs to be given in terms of this Agreement:

2.12.1. A notice may be published by the Association to any Member;

2.12.2. The onus is on the Member to inform the Estate Office of the Association of any changes in any of his contact details, and to receive written acknowledgement of the change. In the event that a Member does not receive written acknowledgement of the change from the Association, the change will not be effective against the Association.

3. FORMAT OF MEMORANDUM OF INCORPORATION

Neither the short nor the long standard form of Memorandum for a Non-Profit Company, being Forms CoR.15.1.E and respectively CoR15.1.F, will apply to the Company.

This Memorandum is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.

4. STATUS OF THE ASSOCIATION

4.1. The Association will:

4.1.1. have legal personality and be capable of suing and being sued in its own name;
and

4.1.2. operate for the benefit of the Members.

4.2. No Member shall have any right, title or interest in or to the funds or assets of the Association in his personal capacity, all of which shall vest in the Association.

5. MAIN OBJECT

The main objective of the Association is to promote, advance and protect the common interest of its Members and the Property and, in particular, in so promoting such common interest, ensure acceptable aesthetic, architectural and environmental standards on the Property, and to deal with other matters relating to the Property which are of common interest to all its Members, including the payment of levies and making rules to promote the objectives of the Association.

6. MEMBERSHIP

6.1. Membership of the Association shall be limited to the registered owners of the Unit Erven provided that:

6.1.1. A person who is entitled to obtain a certificate of registered title to any such Unit Erf shall for the purpose of this Memorandum of Incorporation be deemed to be the registered owner thereof;

6.2. Where any such owner is more than one person, all the registered owners of that Erf shall be deemed jointly and severally to be one member of the Association.

6.3. A person becomes a Member of the Association on date of registration of transfer of the property into his name.

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

6.5. A Member shall not transfer a Unit Erf unless it is a condition of the transfer that:

6.5.1. the transferee becomes a Member of the Association;

6.5.2. the registration of transfer of that Unit Erf into the name of that transferee shall ipso facto constitute the transferee as a Member of the Association.

6.5.3. the Association has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Association.

6.6. The registered owner of a Unit Erf may not resign as a Member of the Association.

6.7. The Directors may provide for the issue of a membership certificate which certificate shall be in such form as may be prescribed by the Directors.

6.8. The rights and obligations of a Member shall not be transferable and every Member shall –

- 6.8.1. further to the best of his ability the objects and interest of the Association;
- 6.8.2. comply with the provisions of this Memorandum;
- 6.8.3. observe all Rules made by the Association.

provided that nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms of this Memorandum as security to the Mortgagee of that Member's Unit Erf.

6.9. If the registered owner of a Unit Erf is a company registered in terms of the Companies Act No. 71 of 2008; a Close Corporation registered in terms of the Close Corporation Act No. 69 of 1984; or a trust registered in terms of the Trust Property Control Act No. 57 of 1988 (the "Corporation"), each of the Members or beneficiaries of the Corporation shall be deemed to be Secondary Members of the Association ipso facto (the "Secondary Members"). Secondary Members are deemed to be Members, as defined, of the Association in terms of the application of this Memorandum and of the Act.

6.10. When a Member which is a Corporation ceases to be the registered Owner of a Unit Erf in terms of clause 6.3, all Secondary Members affiliated to the said Member as described in clause 6.8 shall ipso facto cease to be Secondary Members of the Association.

6.11. A Secondary Member shall not transfer his/her shareholding, Member's interest or benefit (the "Interest") unless it is a condition of the transfer of the said interest that:

- 6.11.1. the transferee of the interest becomes a Secondary Member of the Association;
- 6.11.2. the acquisition of transfer of the interest into the name of the transferee shall ipso facto constitute the transferee as a Secondary Member of the Association.

6.12. No registered owner of a Unit Erven on the Property may lease or rent such property unless it is stipulated in a written agreement between the registered owner and the leaseholder/renter that the leaseholder/renter abides by all the Rules of the Association and will comply with all rulings made by the Directors.

6.13. The registered owner of a leased or rented Unit Erven is responsible for the compliance of the tenant with the Rules of the Association. The registered owner is still subject to the Memorandum of Incorporation of the Association, and which may not be subcontracted or abrogated to the tenant and remains responsible for all levies and payments that are due from time to time to the Association.

- 6.14. Members in good standing have the right to use all common property owned or leased by the Association and are entitled to enjoy all other privileges offered by the Association.
- 6.15. The Directors may restrict a Members access to, or otherwise suspend the use of common property or leased premises of the Association, in the event that a Member is suspended, under pending suspension, or is in any other way in bad standing with the Association.

7 SUSPENSION FROM MEMBERSHIP

- 7.1. If a Member is overdue in paying his levies or has failed to pay any money to the Association that is owed to it, the overdue Member, may, at the discretion of the Directors, be suspended from the benefits of Membership. The Directors must publish notification of the suspension to the Member informing him of his suspension, and the reasons for it.
- 7.2. If a Member has broken the Rules of the Association, the Member may, at the discretion of the Directors, be suspended by the Directors at a Directors meeting. The Directors must publish notification of the suspension to the Member informing him of his suspension, and the reasons for it. The suspension is effective immediately.
- 7.3. If a Member is suspended in terms of clause 7.1 or 7.2 the Member is not entitled to the privileges of Membership of the Association, which include but are not limited to the right to attend or vote at any meeting and to use any additional Member service paid for by levies, including security access cards or other systems, to advertise in official publications or receive news bulletins.
- 7.4. The Member may appeal the suspension arising from clause 7.1 or 7.2 by following the arbitration proceedings set out in this Memorandum.
- 7.5. The Member's suspension shall, at the discretion of the Directors, remain in force pending such appeal or arbitration.

8 CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of subscriptions or other sums due from him to the Association at the time of his so ceasing to be a Member.

9. LEVIES AND RECOVERABLE EXPENSES

- 9.1 The Directors shall from time to time make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the Directors reasonably anticipate the Association will be put by way of items of a capital nature, maintenance, repair, improvement and keeping in order and condition of the Private Area, and/or for payment of all rates and other charges payable by the Association in respect of the Private Area, and/or for the services rendered to it, and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessary or reasonably incurred in connection with the Management of the Association, the Private Area and the Association's affairs. In calculating levies, the Directors shall take into account income, if any, earned by the Association.
- 9.2 The Directors shall estimate the amount which shall be required by the Association to meet its expenses during each financial year, together with such estimated deficiency, if any, as shall result from the preceding year and shall make a levy upon the members equal as nearly as is reasonably practical to such estimated amount. The Directors may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature and an amount to cover deficits that may have been incurred during a previous year. The levies so determined by the Directors shall be capable of implementation from the beginning a financial year but shall be approved by Members at the Annual General Meeting held in the financial year in which the levies are to be implemented (Clause 17.2.4).
- 9.3 If in any financial year the Directors anticipate the estimate referred to in clause 9.2 being exceeded, in total, by more than 10% of the original estimate, then the Directors shall immediately be required to prepare a revised estimate in accordance with clause 9.2 and to obtain Member approval of the revised estimate and proposed funding thereof at a Special General Meeting convened for that purpose.

- 9.4 Every such levy shall be made monthly instalments, as determined by the Directors. The instalments will be payable by Members on the first day of each month. Where the first day falls on a non-banking day it will be payable on the next available day.
- 9.5 All recoverable expenses will be billed monthly and will be payable by Members on the 15th day of the following month or the next banking day.
- 9.6 The Association may charge interest on any amount owing to it. The Directors may decide the rate of interest, which must not be more than is allowed by the National Credit Act 34 of 2005. The Directors must from time to time pass a resolution related to the interest payable by Members, and have the resolution available in the minute book. All partial payments on overdue amounts owing by Members will first be applied to the interest before reducing the overdue levy.
- 9.7 The Directors may from time to time make special levies upon the Members in respect of all such expenses as are mentioned in clause 9.1 (which are not included in any estimate made in terms of clause 9.2), and such levies may be made in the sum or by such instalments and at such time or times as the Directors shall think fit. The expenditure giving rise to a special levy on Members shall be subject to the Member approved expenditure authority levels.
- 9.8 Any amount due by a Member by way of a levy shall be a debt due by him to the Association. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear levies. Other than in circumstances of prepayment or manifest error, no levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A Member's successors in title to a Unit Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf, to pay the levy attributable to that Erf.
- 9.9 The levy payable by a Member or a Secondary Member shall bear the same proportion to the total levy imposed on all Members or Secondary Members as the square root of the metric extent of the Unit Erf or Erven registered in the name of the Member bears to the aggregate of the square roots of the metric extents of all the Unit Erven; provided that for the purpose of calculating the levy payable by the owner of Erf 10252 Constantia, the extent thereof shall be deemed to be 1.0324 (One point Zero Three Two Four) hectares and the extents of all other Unit Erven shall be deemed to be as reflected in the records of the Registrar of Deeds at Cape Town.

- 9.10 On the transfer of ownership of a Unit Erf by any Member or by the Registered Owner and on transfer of the interest of a Secondary Member as provided for in clause 6.10, a termination levy of 1.0% (One point zero percent) plus VAT of the fair market value of the Unit Erf as at the date of such transfer will be due and payable by the Member or the Registered Owner, or the Secondary Member, to the Association; provided that:
- 9.10.1 a transfer of ownership of a Unit Erf by any Member as a result of any person inheriting a Unit Erf from a Member or a transfer of interest by a Secondary Member as described in clause 6.10 as a result of any person inheriting an interest from a Secondary Member; or,
- 9.10.2 a transfer of ownership of a Unit Erf by any Member, where, de facto, beneficial ownership remains with the current Member or his/her immediate family (spouse, children, step children, or grandchildren) shall not attract the payment of any termination levy to the Association;
- 9.11 No Member shall transfer his Unit Erf until the Association has certified that the Member or the Secondary Member referred to in clause 6.8 has paid the termination levy referred to in clause 9.10, or that payment thereof has been secured to the satisfaction of the Association.
- 9.12 In the event of a dispute between the Association and any Member or Secondary Member in regard to the fair market value referred to in clause 9.10, such dispute shall be submitted to and decided by arbitration in accordance with the Memorandum of Incorporation.
- 9.13 The termination levy referred to in clause 9.10 may be utilised by the Directors in their discretion, in furtherance of the Association's objectives, subject to the Member approved expenditure authority levels.

10. RULES

- 10.1 In furtherance of the Association's objectives and in accordance with clause 25.1, the Directors may establish the Rules for the Association and its Members as set out in the Act, and to set fines for breaking Rules.
- 10.2 If the Directors pass a resolution to include, amend or delete ("change") a Rule or fine, they must publish details of the change of Rule or fine to the Members.
- 10.3 Rules currently in effect remain in effect until notice of a change is published to Members.

10.4 Any change to the Rules becomes effective on the date specified in the publication, which may not be less than seven days after the change was published to Members.

11. BREACH

11.1 Should any Member or person for whom a Member is responsible:–

11.1.1 fail to pay on due date any amount due by that Member in terms of this Memorandum or any Rule made in terms of this Memorandum and remain in default for more than seven (7) days after being notified by the Directors in writing to do so; or

11.1.2 commit any other breach of the provisions of this Memorandum or any Rule made in terms of the Memorandum and fail to commence remedying that breach within a period of seven (7) days after the receipt of written notice to that effect by the Directors and complete the remedying of such breach within a reasonable time:-

then and in either such event, the Directors shall be entitled on behalf of the Association, without prejudice to any other rights or remedies which the Directors or the Association or any other Member may have in law, including the right to claim damages:–

11.1.2.1 to suspend his membership in terms of clause 7.1 and 7.2; and/or

11.1.2.2 to institute legal proceedings on behalf of the Association against such Member for payment of such overdue amount or for performance of his obligations in terms of this Memorandum or any Rule made in terms of this Memorandum, as the case may be; or

11.1.2.3 in the case of Clause 11.1.2, take or cause to be taken any steps as may be considered necessary to remedy such breach and immediately recover the total costs incurred by the Directors or the Association in so doing from such Member, which amount shall be deemed, without the necessity of taxation or debate, to be a debt owing by the Member.

11.2 Should the Directors successfully institute any legal proceedings against any Member pursuant to a breach by that Member of this Memorandum or any Rule, then without prejudice to any other rights which the Directors or the Association or any other Member may have in law, the Directors shall be entitled to recover from such Member all legal costs incurred by the Directors or the Association, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors), tracing fees and collection commission.

- 11.3 If a Member disputes a fine or suspension arising from a breach of the Rules, the Member should notify the Directors in writing, within seven days of receiving notice of the fine. For this clause, notice by a Member must be given at the Association office, and must be signed for.

12. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT and FINANCIAL ASSESSMENT PROCEDURE OF ASSOCIATION

- 12.1 The Association does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 (*Enhanced Accountability and Transparency*) of the Act.
- 12.2 The Association does not elect, in terms of section 118 (1)(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act nor to the Takeover Regulations provided for in the Act and will be bound by these provisions only to the extent contemplated in section 118(1)(c)(i).
- 12.3 The books, records and accounts of the Association must nevertheless be audited, in accordance with the scope to be determined, annually, by the Members at the Annual General Meeting.

13. GENERAL MEETINGS OF THE ASSOCIATION

- 13.1 The Association shall within three (3) calendar months of the financial year end of the Association hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year, and shall specify the meeting as such in the notices, in terms of clause 14.1 below calling it.
- 13.2 Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions and clause 15, as the Directors shall decide from time to time.
- 13.3 Should the financial year-end of the Association at any time be such that the provisions of clause 13.1 above would result in a contravention of the provisions of the Act, then the date for the holding of the Annual General Meeting shall be varied by resolution of the Directors to such date as shall comply with the requirements of the said Act, provided that Members shall be given immediate written notice of any such variation.
- 13.4 All general meetings other than the Annual General Meetings shall be called Special General Meetings.

13.5 The Directors, may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on a requisition made in terms of the Act, or in default, may be convened by the requisitionists as provided by and subject to the provisions of the Act.

14. NOTICE OF GENERAL MEETINGS

14.1 An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by FIFTEEN (15) BUSINESS days' notice in writing at the least, and a special general meeting, other than one called for the passing of a special resolution, shall be called by FOURTEEN (14) calendar days' notice in writing at the least. In each case the notice 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 presents, 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 given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Directors to such persons as are under these presents 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 presents, 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 Meeting, by all the Members entitled to attend and vote thereat, and

14.1.2 In the case of a Special General Meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than ninety-five per centum (95%) of the total voting rights of all Members.

14.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at any meeting.

15. VENUE OF GENERAL MEETINGS

General Meetings of the Association shall take place at such place(s), within the precincts of Cape Town, as shall be determined by the Directors from time to time.

16. QUORUM AT GENERAL MEETINGS

- 16.1 No business shall be transacted at any meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any meeting shall be such of the Members entitled to vote, as together for the time being, represented in person or by proxy, represent twenty-five percent (25%) of the total votes of all Members of the Association entitled to vote.
- 16.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

17. AGENDA AT GENERAL MEETINGS

- 17.1 The agenda of a meeting shall be decided by the Directors.
- 17.2 In addition to any other matters required by the Act or these presents to be dealt with at an Annual General meeting, the following matters shall be dealt with at every Annual General Meeting:
- 17.2.1 the consideration of the Chairman's report to the Members;
 - 17.2.2 the election of the new Directors, including determination of the number of directors required;
 - 17.2.3 the consideration and approval of the financial statements of the Association in respect of the financial year preceding the date of such meeting, including consideration of the Auditors report thereon, if any;
 - 17.2.4 the consideration and approval of the total levy (as referred to in clauses 9.1 and 9.2) for the financial year during which such Annual General Meeting takes place;
 - 17.2.5 the scope of the audit of the books and records of the Association by an independent auditor for the financial year end to be reported on at the next Annual General Meeting;
 - 17.2.6 the accounting standards to be applied in preparation of the annual financial statements for the financial year end to be reported on at the next Annual General Meeting;
 - 17.2.7 the consideration and approval of the expenditure authority levels for Directors for the period until the next Annual General Meeting, and

- 17.2.8 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 resolution.

18. PROCEDURES AT GENERAL MEETINGS

- 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 of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall vote to 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 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 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

19. VERIFICATION OF RIGHT TO ATTEND GENERAL MEETING

- 19.1 A person wishing to attend or participate in a Member's meeting (whether as a proxy or Member), must present reasonably satisfactory identification to the Chairperson of the meeting at least fifteen minutes before the time scheduled for the start of the meeting. The Chairperson must be reasonably satisfied that the right of the person to attend and vote has been reasonably verified. For the purposes of this clause 19, the following forms of identification shall be reasonably satisfactory: a valid identity document, driver's license or passport (or a certified copy of any of these documents), accompanied by a power of attorney, letter of authority or other instrument appointing the proxy or person to attend the meeting on behalf of a Member.
- 19.2 In the event that the identification process is not completed by the time that the meeting is scheduled to begin, then the commencement of the meeting shall be delayed until the identification process is complete.

20. PROXIES

- 20.1 Members who may vote at any general meeting may appoint any individual as a proxy to participate in, and speak and vote at, a meeting, or adjournment thereof, on behalf of that Member, or to give or withhold written consent on behalf of that Member.
- 20.2 A proxy must be appointed in writing by either a proxy form (which may or may not be in a form provided by the Association) or by a power of attorney or by such other means as may be acceptable to the Board and which shall comply with the provisions of the Act.
- 20.3 A Member may not appoint two or more persons concurrently as proxies.
- 20.4 A proxy may not delegate his authority to act on behalf of a Member to another person.
- 20.5 The proxy instrument or other authority appointing a proxy must be delivered to the Chairperson of the meeting at the same time the Members are verifying their status to attend the meeting or immediately before an adjourned meeting at which such proxy intends to vote or at such place or within such time as the Board may from time to time direct and unless such instrument or authority is so deposited, such proxy shall not be entitled to attend and/or vote at the meeting.
- 20.6 The Chairperson of the meeting has the discretion to accept a proxy instrument by way of a fax or email transmission.
- 20.7 A vote given by a proxy in accordance with the terms of the instrument appointing him shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the authority, unless notice in writing of the death, insanity or revocation has been received by the association before the meeting concerned.

21. PARTICIPATION BY WAY OF ELECTRONIC COMMUNICATION

Participation by Electronic Communication in any meeting of the Association will be allowed. Members must be present in person or by proxy to participate. *Updated by Special Resolution 17 November 2020*

22. VOTES AND POLLS AT GENERAL MEETINGS

- 22.1 Members who are suspended, owe money to or are otherwise not in good standing with the Association are not allowed to attend, or vote at meetings of the Association. They are also not allowed to appoint a proxy to attend or vote at the meetings for the Member. If they do vote, it will not be counted.

- 22.2 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Unit Erf registered in his name provided that if a Unit Erf is registered in more than one person's name, then they shall jointly have one vote.
- 22.2.1 A Secondary Member shall not be entitled to vote at a general meeting unless the relevant Member which is a Corporation is not represented at the said meeting personally or by proxy. In such a situation, a Secondary Member may vote at the relevant general meeting on behalf of the Member.
- 22.3 Any matters put to the vote will be decided on a show of hands and proxy votes voting in favour of the motion.
- 22.4 Members, or their proxies, may call for a poll on any vote, either before or on declaration of the result of a vote. A minimum of three Members, or their proxies, must support the call for the poll. Proxies may vote in a poll. A call for a poll may be withdrawn.
- 22.4.1 Any person present and entitled to exercise voting rights, must on a show of hands, have only one vote, irrespective of the number of voting rights he or she holds or represents. On a poll at any meeting of Members, any Member including his or her proxy, will be entitled to exercise all the voting rights held or represented by that person." Updated by Special Resolution on 17 November 2020.
- 22.5 The Chairman of the meeting will direct how the poll will take place. A demand for a poll on a resolution does not mean that the meeting must be interrupted. Other business must continue.
- 22.6 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 22.7 Save as expressly provided for in these presents, and is required by the Act, voting at a meeting of Members, whether by show of hands or by poll, is decided by a simple majority for Ordinary Resolutions and by at least 75% for Special Resolutions of the voting rights exercised on these resolutions by those Members present in person or by proxy, entitled to vote. Updated by Special Resolution on 17 November 2020.
- 22.8 In the case of an equality of votes, whether on a show of hands or on a poll the Chairman of the general meeting of Members shall have a casting vote in addition to his deliberative vote.

22.9 The Chairman must announce any resolution to be considered and he must record in writing:-

22.9.1 the proposed resolution;

22.9.2 the manner in which the vote on the proposed resolution was cast; and

22.9.3 whether the resolution was approved or not.

22.10 If a Member has an objection to the manner in which the meeting was run or votes were recorded, he must raise the objection before the close of the meeting. The Chairman must record the Members' objection.

22.11 If no objection is raised, the meeting is seen as having been in all respects properly and validly constituted and conducted, and the note of the outcome of any vote to have been correct.

23 ELECTION OF DIRECTORS

23.1 The Board of Directors of the Association (the "Directors") shall have a minimum of four (4) and a maximum of eight (8) Members. *Updated by Special Resolution 21.11.17*

23.2 A Director Member shall be an individual, but need not himself be a Member of the Association. A Director Member, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.

23.3 Each duly elected Director shall continue to hold office from the date of his appointment to office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office, but will be eligible for re-election to the Board of Directors at such meeting, should such Director make himself available for re-election.

23.4 The Directors may fill casual vacancies on the Board, which occur between Annual General Meetings.

23.5 The Members of the Association must fill the vacant offices, and decide to maintain, increase or decrease the number of Directors.

23.6 The vote may be cast by show of hands or ballot poll, as determined by the Chairman. Proxies will be included in the vote. *Updated by Special Resolution 25.03.14*

- 23.7 Nomination forms for directors must be included in the published notice for each Annual General Meeting.
- 23.8 A person who wishes to serve as a Director of the Association must be nominated and seconded by a Member of the Association and must accept the nomination at any time prior to the vote at which the Directors are to be voted for. *Updated by Special Resolution 25.03.14*
- 23.9 Where the number of proposed Directors is less than or equal to the maximum number of Directors allowed, a vote may be taken for the collective election of Directors. Where the number of proposed Directors is more than the maximum number of Directors allowed, each proposed Director is voted for individually. The number of votes for each proposed Director is counted and the nominees having the most individual votes are elected, up to the maximum number of Directors allowed. Proxies will be included in the vote. *Updated by Special Resolution 25.03.14*
- 23.10 *Clause deleted as per Special Resolution 25.03.14*
- 23.11 The Association may, at any Annual General or other general meeting and by ordinary resolution remove a Director from office before the end of his term.

24 DISQUALIFICATION OF DIRECTORS

- 24.1 A Director shall be deemed to have vacated his office as a director of the Association as such upon:
- 24.1.1 This estate being sequestered, whether provisionally or finally, or his surrendering his estate;
 - 24.1.2 his making any arrangement or composition with his creditor;
 - 24.1.3 his conviction for any offence involving dishonesty;
 - 24.1.4 his becoming of unsound mind or being found lunatic;
 - 24.1.5 his resigning from such office in writing delivered to the Chairman;
 - 24.1.6 his death;
 - 24.1.7 his being removed from office as provided in the Act;

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 Directors.

- 24.2 A Director who has, or will have, any direct or indirect, interest in any contract with the Association must disclose his interest.

- 24.3 The Directors may not enter into a contract in which one of their number has a financial interest, unless seventy five percent (75%) of the Directors, excluding the affected Director, approve the arrangement.
- 24.4 The Directors must disclose the nature of the contract and the interest of the Director, at the next Annual General Meeting.

25 BUSINESS OF AND MEETINGS OF THE DIRECTORS OF THE ASSOCIATION

- 25.1 Subject to the express provisions of these presents, the Directors 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 presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised or done by the Association, and as are not by the Act or by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to any provisions of the Act.
- 25.2 The Directors must meet at least every third month to discuss the business of the Association. All meetings must be minuted in detail in accordance with the Act. Any two Directors may call for an additional meeting at any reasonable time.
- 25.3 The Directors may otherwise regulate their business and meetings as they see fit.
- 25.4 The Directors shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 25.5 The Directors shall have the right to co-opt onto the Board any person or persons chosen by it. A co-opted Director shall enjoy all the rights and be subject to all the obligations of Director.
- 25.6 The Board may, should it so decide, investigate any suspected or alleged breach by any Member or Director of these presents, in such reasonable manner as it shall decide from time to time.
- 25.7 In accordance with clause 10, the Directors may make Rules not inconsistent with this Memorandum.

- 25.8 The Directors shall establish a Development Committee consisting of no less than three (3) persons. The composition of the Development Committee shall be the Estate Manager as well as no less than two Directors. The Development Committee will be entitled to retain the services of an architect to assist them with the exercise of their functions:-
- 25.8.1 examine drawings and specifications submitted to it in terms of the Design Manual and report its recommendations thereon or approval thereof to the Local Authority having jurisdiction; and
 - 25.8.2 consider waivers and/or departures applied for or proposed by Members of the Association or by the Board and report its recommendations thereon or approval thereof to the Local Authority having jurisdiction.
- 25.9 The quorum for a Director's meeting is half the number of Directors plus one if the number of directors is even, or one half the number of directors plus one half if the number is odd.
- 25.10 Each new Board of Directors must elect a Chairman and Vice-Chairman. If no office bearers are present within five minutes of the start of a meeting, the Directors present must elect one of them to hold office for the duration of that particular meeting.
- 25.11 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Directors, 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 Directors or of Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 25.12 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 Directors.
- 25.13 Directors shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Directors and/or Chairman, Vice-Chairman as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

25.14 The Chairman shall preside as such at all meetings of the Board, provided that should at any meeting of the Board 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 present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

25.15 A Director shall take minutes of every Directors meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have 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 Board 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 Board Minute Book shall be open for inspection at all reasonable times by a Director, the Auditors, and the Association Members.

25.16 Save as otherwise provided in these presents, the proceedings at any Board meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

25.17 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.

25.18 When a resolution of the Directors is called for, the Directors must record in writing:-

25.18.1 the proposed resolution;

25.18.2 the manner in which the vote on the proposed resolution was cast; and

25.18.3 whether the resolution was approved or not

25.19 Resolutions of the Directors may be:

25.19.1 passed in counterpart;

25.19.2 passed on a round-robin basis;

or in any combination of the above.

25.20 A simple majority of the Directors present must approve a resolution in order for it to pass. The Chairman shall have a casting vote in the event of equality of votes.

- 25.21 If the number of Directors is below the minimum number allowed in terms of this Memorandum, the Directors may not act, except in emergency or to vote to appoint additional directors as may be necessary to bring the number of Directors to the minimum number prescribed in this Memorandum.
- 25.22 Any director who acts in emergency must give full particulars of the emergency to the Directors at the next meeting held after the minimum number of Directors has been appointed, at which a quorum is present, for ratification by the Directors.
- 25.23 In the event of all Directors resigning at once, a Member shall call for a Special General Meeting within twenty one (21) days, for the purpose of electing Directors.
- 25.24 The Directors may delegate their powers to a committee of Members, or such other persons as they think fit (Clause 27).
- 25.25 Any decision taken at a Directors meeting, or by a Director or committee, is valid, even if it is found later that the appointment of the Directors or committee, was irregular, or that they were disqualified in some way from acting.

26 INDEMNIFICATION OF DIRECTORS

- 26.1 The authority of the Association's Board of Directors to advance expenses to a director, or indemnify a director in respect of the defence of legal proceedings, as set out in section 78(3) of the Act is not limited or restricted by this Memorandum.
- 26.2 The authority of the Association's Board of Directors to indemnify a Director in respect of liability as set out in section 78(5) of the Act is not limited or restricted by this Memorandum.
- 26.3 The authority of the Association's Board of Directors to purchase insurance to protect the Association, or a director, as set out in section 78(6) of the Act is not limited or restricted by this Memorandum.
- 26.4 All Director Members shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities, and in the case of a Director Member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, or in connection with any application under the Act, in which relief is granted to any such person(s) by the Court.

26.5 Every Director Member, every servant, agent and employee of the Association, shall be indemnified by the Association against [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 Member, 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 whatsoever 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.

26.6 A Director Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Director Members, whether in their capacities as Director Members or as Chairman or Vice-Chairman or for any loss or expenses sustained or incurred by the Association through the insufficiency or deficiency or 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 judgement 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(s) or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

27 BOARD COMMITTEES

27.1 The Directors may by resolution appoint any number of committees of the Board and may delegate any of their authority to any such committee. Any committee so formed shall, in the exercise of the powers so delegated, conform to the provisions of the Act, this Memorandum and any Rules that may from time to time be imposed on it by the Board.

27.2 Any such Board committee may comprise Members who are not Directors provided that any such Member must not be ineligible or disqualified from being a Director.

27.3 A committee appointed by the Board may with the prior approval in each instance of the Board, consult with or receive advice from any person, at the expense of the Association.

27.4 A committee has the full authority of the Board in respect of a matter referred to it, save that in the exercise of the authority delegated to it, and in carrying out its duties, the committee shall comply with any mandates or instructions that may from time to time be given by the Board.

28 ALTERATION TO MEMORANDUM

28.1 Notwithstanding any Alterable Provision, as defined in the Act, to the contrary, this Memorandum may be amended only if the proposed amendment is preceded by a Special Resolution passed at a properly constituted meeting of Members.

28.2 If the Memorandum is amended then the Directors must file a Notice of Amendment of the Memorandum within five Business Days and the amendment will take effect on the date the Notice of Amendment is filed or such later date as is specified in the Notice of Amendment.

28.3 The Directors, or any individual authorised by the Directors, may alter this Memorandum in a manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by providing written notice of the proposed alteration to each Member. If none of the Members raise any objection to the proposed alteration to the effect that the proposed alteration exceeds the authority provided for in this clause 28.3 within five Business Days of receiving the notice of the proposed alteration, the Board may file the required Notice of Alteration. If any Member objects to the proposed alteration on the grounds aforesaid, the proposed alteration must be preceded by a Special Resolution.

28.4 The Board must publish a copy of the relevant alteration or amendment to the Memorandum to each Member.

29 MEMBERS RIGHTS TO INFORMATION

A Member has the right to inspect and make a copy of the following documents as contemplated in sections 24, 26 and 85 of the Act:

29.1 this Memorandum (as amended);

29.2 the record of Directors;

29.3 reports presented at an Annual General Meetings;

- 29.4 annual financial statements;
- 29.5 Accounting Records;
- 29.6 notices and minutes of all Members meetings (including any resolutions adopted at such meetings and any documents circulated in relation to any such resolutions);
- 29.7 written communications sent generally by the Association to Members;
- 29.8 the record of the Auditor.

30 PRIVATE AREA OF THE ASSOCIATION, CLEARANCES AND GENERAL

- 30.1 Neither the whole nor any portion of the Private Area shall be -
 - 30.1.1 sold, let (other than as permitted in terms of clause 30.2), alienated, otherwise disposed of, subdivided or transferred; or
 - 30.1.2 mortgaged; or
 - 30.1.3 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the Members of the Association in terms hereof); or
 - 30.1.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Association exceeds the expenditure authority levels of the Directors as determined by the Members in terms of clause 17.2.7,without the sanction of a Special Resolution of the Association.
- 30.2 The Directors of the Association may let the Estate House, provided that the lease may not be longer than one year, with an option of renewal for a further year.
- 30.3 A Member may not apply to the Local Town Council or equivalent authority for a change in land use rights or other rights pertaining to their Unit Erf without first obtaining the consent of the Directors of the Association. Consent will not be unreasonably withheld.
- 30.4 A Member may not transfer his Unit Erf without first obtaining a clearance certificate which the Association may not unreasonably withhold.

- 30.5 Before issuing a clearance certificate the Member must satisfy the Association that:-
- 30.5.1 the Member does not owe the Association any money;
 - 30.5.2 the transferee has bound himself to be a Member of the Association, and has signed his agreement to this Memorandum; and
 - 30.5.3 at the time of making the application the Member does not contravene any of the Rules of the Association.
 - 30.5.4 the transfer attorney has given an undertaking to pay the termination levy, plus VAT.
- 30.6 In general, whenever the consent of the Association is required to any course of action, the Association or its Directors, as the case may be, are obliged to give proper consideration to the matter before them, and may not unreasonably refuse a Member's requests.
- 30.7 If consent is withheld, or a refusal given, the Member concerned may refer a dispute to arbitration in terms of this Memorandum, and must first exhaust all remedies in terms of this Memorandum, before taking further steps.

31 BOOKS OF ACCOUNT

- 31.1 The Association must maintain satisfactory books of account and contemporaneous records of the activities of the Association, in conformity with accounting standards determined annually by the Members at the Annual General Meeting.
- 31.2 The books and Minutes of Meetings, of the Association must be available during office hours to current Members or their duly authorised representatives, at the Associations' registered office.
- 31.3 Before each Annual General Meeting, the Directors must prepare and present financial statements, for review and approval by Members.
- 31.4 A copy of the financial statements must be distributed to Members of the Association no later than twenty-one calendar days before the meeting, and included on the agenda for the meeting.

32 PRIVILEGE IN RESPECT OF DEFAMATION

Every member of the Association and every Director member shall be deemed by virtue of his membership or, as the case may be, his holding office as a Director member, to have waived as against every other member, the Directors, the Chairman, or Vice-Chairman, every other Director member, and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Directors, or any sub-committee, all claims and rights of action which such Member or Director member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such member or Director member, or any reference to such member or Director member, made at any Directors meeting, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory of such member or Director member, or otherwise injurious to the dignity, reputation, business or financial interest of such member or Director member, whether such statement be true or false.

33 ARBITRATION

33.1 If the parties to this Memorandum disagree on any part of the agreement, or about a situation which arises as a result of this agreement, the dispute shall be settled first by mediation and then by arbitration.

33.2 Any party may demand mediation and then arbitration at any time after a dispute has arisen.

33.3 A Member ("the complainant") must notify the Association of any complaint or disagreement that may lead to mediation/arbitration in writing, within seven days of notice of fine/suspension or of his awareness of the potential grounds for dispute.

33.4 A Dispute Committee, consisting of three Members, headed by the Chairman of the Board of Directors, or his duly appointed representative must meet with the Complainant within five days of notification of a complaint or disagreement, in an attempt to resolve the complaint.

33.5 If possible, arbitration must commence within twenty one calendar days of demand and conclude within thirty days thereafter.

33.6 The arbitration will be held by the rules set out in the Arbitration Laws act No. 43 of 1965, or its amendment, but as far as possible the process will be informal.

33.7 Members may not be represented, although witnesses who are experts may be called upon to assist in the Arbitration.

33.8 The arbitrator must be settled by the parties. If the disagreement is about:-

33.8.1 the law, the person must be a senior attorney or advocate; and

33.8.2 accounting or bookkeeping, an independent chartered accountant or auditor;
and

33.8.3 anything else, a suitably qualified independent person agreed by the parties.

33.9 If the parties cannot agree on an arbitrator within three days of agreeing to arbitration, the council or association representing the profession must choose the arbitrator.

33.10 If the parties cannot agree on what the disagreement is mostly about, then a senior attorney or advocate is to be appointed as the arbitrator, either agreed to by the parties as above, or appointed by the Chairman of the Arbitration Foundation of South Africa (AFSA).

33.11 The arbitrators' decision is final. It will have the same effect as a court order on the parties.

33.12 If a party does not obey the decision, any other party may go to any court capable of hearing the matter, and have the arbitrators' decision made an order of court.

34 FENCING

If the boundary of any Member's Unit Erf is also the boundary of the Property, the Member must allow:

34.1 the Association access to their property, at mutually agreeable times, in order to inspect and repair the wall or fence, as is needed from time to time.

34.2 for a one (1) metre space between any vegetation on the Member's Unit Erf and the boundary wall or fence of the Property.

35 OTHER SERVICES

Save as specifically provided otherwise in this Memorandum, the Board shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other Employee(s) whatsoever, for any reasons thought necessary by the Board and on such terms as the Board shall decide, subject to any of the provisions of these presents.

36 ADDRESSES AND NOTICES

36.1 For the purpose of this agreement, the Association chooses legal address for service, or *domicilium citandi et executandi* ("*domicilium*") as follows:

1 The Avenue
Silverhurst Estate
Main Road,
Constantia, Cape Town

Tel: (021) 794 3699

Fax: 0866197867

36.2 The physical address of a Member's Unit Erf the Property is the Members' legal address for service of documents, notice or legal process. (*Domicilium citandi et executandi*.)

36.3 The Association (or the Member) may change its domicile at any time by notice in writing, provided that the new domicile is in the Republic of South Africa and is a physical address at which process can be served, provided that where the Member changes his domicile, he must attend at the Estate Office to do so, and he must be able to provide proof of the change in the form of a letter of acknowledgement of receipt from the Association. If he does not, the change is void.

36.4 Except where the Act forbids it, any notice given in connection with this Agreement may be delivered by hand or sent by prepaid registered post; telex or telefax; or by e-mail.

36.5 Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the domicile chosen by any party and it shall not be necessary to hand such process or notice to any party personally. In the case of the Association, the responsible person shall be the Estate Manager and in the case of a Member the responsible person shall be the person of record, as chosen by the Member and advised in writing to the Estate Manager.

36.6 A notice given as set out above shall be presumed to have been duly delivered:

36.6.1 on the date of delivery if delivered by hand, e-mail, telex or telefax; and

36.6.2 on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa.

37 INCOME AND WINDING UP

37.1 The income of the Association, from all sources, shall be applied solely toward the achievement of its main objectives and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Association; provided that, subject to clause 25.13, nothing herein contained shall prevent the payment, in good faith, of reasonable remuneration to any servant of the Association or to any Member thereof in return for services rendered to the Association.

37.2 In accordance with the Act, upon its winding up, deregistration or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main object, to be determined by the Members of the Association at or before the time of its dissolution or, failing such determination, by the Court.