

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT 71 OF 2008

MEMORANDUM OF INCORPORATION

OF AN ASSOCIATION INCORPORATED UNDER SECTION 21 OF
THE COMPANIES ACT 61 OF 1973 (hereinafter referred to as the Old Companies
Act) and THE COMPANIES ACT 71 OF 2008 (hereinafter referred to as the new
Companies Act)

Registration Number of Association

1996/14691/08

1. NAME

1.1 The name of the Association is:

WEDDERWILL HOME OWNERS ASSOCIATION NPC

1.2 The name of the Association in the other official language of the
Republic is:

Not Applicable

2. PRELIMINARY

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

3. DEFINITIONS AND INTERPRETATION

3.1 In this Memorandum of Incorporation (hereinafter referred to as MOI), the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them :

- 3.1.1 any reference herein to “the Act”, shall be a reference to the Old Companies Act and/or the New Companies Act, whichever is applicable;
- 3.1.2 ‘alienate’ means – alienate any Erf or part thereof and includes by way of sale, exchange, donations, deed, intestate succession, will, cession, assignment, court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolute condition, and alienation shall have a corresponding meaning;
- 3.1.3 ‘Association’ means – Wedderwill Home Owners Association;
- 3.1.4 ‘auditors’ means – the auditors of the Association;
- 3.1.5 ‘chairman’ means – the chairman of the board of Directors;
- 3.1.6 ‘cluster land’ means – that portion of the land zoned for Resort II use only;
- 3.1.7 ‘cluster owners’ means – the owners of the cluster land;
- 3.1.8 ‘cluster Directors’ means – the Directors appointed by the cluster owners;
- 3.1.9 ‘common property’ means – any part of the land which is not subject to an exclusive right of use by a member;
- 3.1.10 ‘developer’ means – the Mountain Development Trust;
- 3.1.11 ‘development period’ means – the period from the establishment of the Association until all the erven within the property have been sold by the developer; alternatively when the developer notifies the Association that it waives the rights herein conferred upon it during the development period;
- 3.1.12 ‘environmental management plan’ means – the plan drawn up by the developer and approved by the local authority for the environmental management of the land;
- 3.1.13 ‘Erf’ means – either the individual farms, the Resort II erven resulting from the subdivision of the land;
- 3.1.14 ‘facilities’ means – any facilities of whatsoever nature which may be provided in the township;
- 3.1.15 ‘farm land’ means – Portion 1, 70, 3 and 4 of the land and the remainder;
- 3.1.16 ‘farm owners’ means – the owners of the farm land;
- 3.1.17 ‘farm Director’ means – a Director appointed by the farm owners;
- 3.1.18 ‘financial year’ means – the financial year of the Association which shall run from the first day of March in any year until the last day of February in a subsequent year;
- 3.1.19 ‘land’ means – Farm No 1089, Stellenbosch, in the Division of Stellenbosch, excluding Farms 5 and 6;
- 3.1.20 ‘levy’ means – the levy referred to in Article 9;
- 3.1.21 ‘local authority’ means – the local authority having jurisdiction over the land;
- 3.1.22 ‘managing agent’ means – any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association;
- 3.1.23 ‘member’ means – a member of the Association;

- 3.1.24 'owner' means – all the registered owners of the farms, resort and cluster land;
 - 3.1.25 'registered owner' means – a registered owner of an Erf or farm as registered in the relevant Deeds Office;
 - 3.1.26 'remainder' means – that portion of the land excluding the Portions 1, 70 (2), 3 and 4 and those areas zoned for Resort II purposes;
 - 3.1.27 'roads' means – the roads on the land;
 - 3.1.28 'services' means – such utilities and amenities as may be provided by the Association for the property and residents of the land;
 - 3.1.29 'Directors' means – the Directors of the Association who shall, for the purposes of the Act, be the directors of the Association.
- 3.2 Unless the context otherwise indicates, any words importing the singular shall also include the plural and vice versa, words importing any one gender shall include the other and words importing persons shall include corporations.
 - 3.3 The headings to the respective articles are for reference purposes only and shall not be taken into account in the interpretation of these articles.
 - 3.4 Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed, shall not be unreasonably withheld, and shall be given prior to the member taken action.
 - 3.5 In the event of a member consisting of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of these articles.

4. PURPOSE AND MAIN BUSINESS OF THE ASSOCIATION

The main business which the Association is to carry on is:

To promote, advance and protect the communal interests of the owners and occupiers and visitors to Farm No 1089, Stellenbosch, excluding Farms 5 and 6, and in particular in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the land, and to promote and maintain recreational facilities available to the said owners and occupiers and visitors.

5. ANCILLARY OBJECTS

No ancillary objects shall be excluded from the unlimited ancillary objects of the Association.

6. MEMBERSHIP

- 6.1 Membership of the Association shall be limited to the developer in its capacity as such and to any other person who in terms of the Deeds Registry's Act referred to in the records of the Deeds Office concerned is a registered owner of any Erf situate on the land.
- 6.2 Where an Erf is owned by more than one person, all the registered owners shall together be deemed to be one member of the Association and shall have the rights and obligations of one member of the Association, subject to the provisions of article 24.

7. TERMINATION OF MEMBERSHIP

- 7.1 When a member ceases to be a registered owner of an Erf on the land, he shall *ipso facto* cease to be a member of the Association.
- 7.2 The developer shall be entitled to cede all of its rights in terms of these articles and the transferee shall be entitled to transfer all such rights.
- 7.3 The developer may at any time abandon, in writing, in whole or in part, any rights conferred upon it in terms of these articles.
- 7.4 The developer shall, when it is no longer the owner of any Erf on the land, cease to be a member of the Association.

8. ALIENATION

- 8.1 A member shall not in any manner alienate an Erf unless it is a condition of the agreement of alienation that:
 - 8.1.1 The proposed transferee has bound himself to become a member of the Association for the duration of his ownership of the Erf, and a clearance certificate has been issued by the Association to the effect that both the member has complied fully with the MOI in all respects, and that the proposed transferee has been ratified by the Association as a future member; and
 - 8.1.2 The registration of an Erf into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Association.
- 8.2 The provisions of clause 8.1 shall apply *mutatis mutandis* to any alienation of any undivided share in an Erf.
- 8.3 These articles shall also bind any person occupying an Erf and no member shall let or otherwise part with the occupation of his Erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound by these articles. Notwithstanding this, an owner shall remain bound by these articles, and shall be required to ensure compliance therewith by an occupier.
- 8.4 The registered owner of any Erf may not at any time resign as a member of the Association.
- 8.5 A restraint of alienation will be registered against all of the erven on the land in order to give effect to the terms of this article.

9. LEVIES

- 9.1 The Directors may from time to time, impose levies upon the members for the purpose of meeting all the expenses which the Directors have incurred or which the Directors reasonably anticipate the Association will be put to by way of payment of all charges payable by the Association, and/or the services rendered to it, and/or for payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, 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 may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in article 9.1 and the amounts of such levies and the manner of payment thereof by members shall be at the discretion of the Directors.

- 9.3 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. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A member's successor in title to an Erf shall be liable, as from the date upon which he becomes a member pursuant to the transfer of that Erf into his name, to pay the levy attributable to that Erf. No member shall be entitled to transfer his Erf until the Association has certified that the member has as at the date of transfer fulfilled all his financial obligations to the Association.
- 9.4 In calculating the levy payable by each member, the Directors as far as reasonably practical, and in their sole discretion:
- 9.4.1 assign those costs arising directly out of or directly attributable to the Erf itself to the member owning such Erf;
- 9.4.2 subject to 9.4.1 assign those costs relating to the land generally to the owners of all erven equally;
- provided however that the Directors may in any case where considered equitable to do so, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 9.5 The Director's decision in calculating the levy shall be final and binding on all members of the Association.
- 9.6 No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 9.7 Notwithstanding anything to the contrary contained herein, the developer shall not be liable to pay any levies on unsold erven on the land, save where the Erf in question has been developed by the developer and is occupied by a third party. For purposes hereof, 'developed' shall mean the erection of any habitable structure.

10. COSTS

A member shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of any arrear levy or other amounts due and owing to the Association. This includes enforcing compliance with any rules issued by the Association from time to time.

11. SPECIAL PROVISIONS

- 11.1 The developer shall provide the members with access to bridle paths and walking trails on the land. The precise nature, specification and route of such bridle paths and walking trails shall be determined by the developer in his sole and absolute discretion, which decision shall be final and binding on the Association and its members. The developer shall furthermore be entitled, in its sole discretion, to re-route such bridle paths and/or walking trails from time to time so as to ensure that such do not necessarily interfere with such farming activities as the developer may conduct on portions 5, 6 of Farm 1089 Stellenbosch and the remainder. Nothing herein contained shall be

construed as warranting or undertaking that the developer shall provide such bridle paths and/or walking trails over portions 5 and/or 6.

- 11.2 The Association shall ensure that all members shall have access, on a regulated basis, to the recreational facilities on the remainder and that all rights of access, egress and/or servitude required to provide such access over the land, for vehicular purposes and as detailed on the annexed diagram marked "A", are obtained.
- 11.3 The Association shall further maintain, at its cost, the bridle paths and walking trails provided by the developer as above and shall ensure that such bridle paths and/or walking trails at all times conform with the environmental management plan governing the land.
- 11.4 It is further recorded that a management plan shall be prepared by the developer which is acceptable to the local authority and such plan shall be implemented by and be binding upon the Association. Such plan shall include the management and development of the flora on the land, as well as establishing a fire management contingency plan.
- 11.5 The developer undertakes that it shall make available a minimum area of 5 hectares on the remainder for use by the members as paddocks, the locations of which shall be determined by the developer in consultation with the Association, subject to the developer's right to relocate such paddocks as it sees fit and at its own cost at any time.
- 11.6 The developer further undertakes to make available a minimum area of 1 hectare on the remainder for the erection of stables, which stables are to be built at the cost of the members utilising such facilities and the land so used shall be leased by the developer on the terms and at a rate to be agreed upon between the said member and the developer. The location of this land shall be determined by the developer in consultation with the Association subject to the developer's rights to relocate such stables as it sees fit and at its sole cost from time to time.
- 11.7 The Association shall further ensure that no perimeter or other fences of whatsoever nature or description may be erected on the land other than such paddock fences as may be approved in terms of Article 17.6 hereof. The provisions of Article 17 shall *mutatis mutandis* apply to such application to erect any fence mentioned above. Such fences shall only be allowed in areas specifically designated for the keeping of horses.
- 11.8 The Association shall, in addition to Article 11.4 above, be entitled to order the removal of alien vegetation, as well as water absorbing vegetation from any Erf on the land, excluding the Remainder, and shall be obliged to do so itself on areas that are either common property or over which a servitude operates in its favour. It is specifically stated that no alien vegetation shall be permitted at any time within 50 meters of any stream on the land, and the Association shall ensure that this provision is adhered to at all times.
- 11.9 The provision of Article 11.8 shall not apply to any pine tree forming part of a windbreak on the land, and further the removal of any pine tree with a stem in excess of 10 cm in diameter, shall require the specific approval of the Association.

12. RULES

- 12.1 Subject to any restriction imposed or direction given at a general meeting of the Association and subject to the conditions imposed by the local authority in approving the rezoning and subdivision of the land, the Directors may from time to time make house rules in regard to:
- 12.1.1 the standards and guidelines for the architectural design of all buildings and out-buildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any such buildings, out-buildings or structures erected or to be erected on the land, and in particular to control the design of the exterior of such buildings, out-buildings or structures and the materials used on such exteriors to ensure an attractive, aesthetically pleasing character to all buildings on the property, which house rules are contained in the design guidelines annexed hereto marked annexure "B", inclusive of the De Werf design manual dated September 2005.
 - 12.1.2 the siting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts, and all additions and alterations to any thereof;
 - 12.1.3 the preservation of the environment including the right to control and if necessary order the removal of vegetation and the right to prohibit an/or control the erection of fences, whether upon or within the boundaries of any erven;
 - 12.1.4 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 12.1.5 the conduct of any persons within the property for the prevention of nuisance of any nature to any member;
 - 12.1.6 the preservation of the natural environment, vegetation and fauna on the property;
 - 12.1.7 the use of services and recreation areas, amenities and facilities including the right to charge a reasonable fee for the use thereof;
 - 12.1.8 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents on the land;
 - 12.1.9 the maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the property;
 - 12.1.10 the controlling of the number of occupiers permitted on any one Erf.
- 12.2 The rules shall not be in conflict with any condition imposed by the developer upon any member or purchaser of an Erf in terms of the Deed of Sale whereby the member acquires an Erf.
- 12.3 For the enforcement of any of the rules made by the Directors in terms of this article, or of any of the provisions of these articles generally, the Directors may:
- 12.3.1 give notice to the member concerned requiring him to remedy such breach within such period as the Directors may determine;
 - 12.3.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be the debt owing by the member concerned to the Association; and/or
 - 12.3.3 take such action including proceedings in court, as they may deem fit.

- 12.4 In the event of the Directors instituting any legal proceedings against any member or resident on the property for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 12.5 In the event of any breach of the rules or provisions by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 12.6 In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of three Directors appointed by the chairman for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairman may direct.
- 12.7 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 12.8 The Association may in general meeting itself make any rules which the Directors may make and may in general meeting vary or modify any rule made by it or by the Directors from time to time.
- 12.9 All rules must be reasonable and must apply equally to all owners of erven put to substantially the same use.

13. DIRECTORS

- 13.1 The Directors of the Association shall be divided into 2 (TWO) classes, namely cluster Directors and farm Directors.
- 13.2 There shall be 8 (EIGHT) Directors of the Association of whom:
 - 13.2.1 6 (SIX) shall be cluster Directors appointed by the cluster owners;
 - 13.2.2 2 (TWO) shall be farm Directors appointed by the farm owners.
- 13.3 A Director shall be an individual and shall not necessarily be a member of the Association. A Director by accepting his appointment to office shall be deemed to have agreed to be bound by all the provisions of this MOI.
- 13.4 The Directors shall appoint one of their number to act as chairman for such term as they think fit, but not for longer than such person's tenure as a Director.
- 13.5 The first Directors shall on registration of the Association and after due consultation with any owners, be appointed by the developer.

14. REMOVAL AND ROTATION OF DIRECTORS

- 14.1 Save as set out in article 14.3 below, 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 said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the board of Directors at such meeting.
- 14.2 A Director shall be deemed to have vacated his office as such upon :
- 14.2.1 his having become disqualified to act as a director in terms of the provisions of the Act;
 - 14.2.2 his being removed from office, as provided in the Section in the New Companies Act that replaces Section 220 of the Old Companies Act, or any similar Section, if any;
 - 14.2.3 in the event of his being a member of the Association, his being disentitled to exercise a vote in terms of article 24.3;
 - 14.2.4 his estate being sequestrated, whether provisionally or finally;
 - 14.2.5 the commission by him of any action of insolvency;
 - 14.2.6 his conviction for any offence involving dishonesty;
 - 14.2.7 his becoming of unsound mind or being found lunatic;
 - 14.2.8 his resigning from such office in writing;

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 Association.

- 14.3 Upon any vacancy occurring in the board of Directors 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 of Directors.

15. DIRECTORS EXPENSES AND REMUNERATION

- 15.1 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.
- 15.2 Directors shall be entitled to remuneration in respect of the performance of their duties as determined by the Association in a general meeting.

16. POWERS OF ASSOCIATION

- 16.1 The powers of the Association are not subject to any restriction, limitation and/or qualification, as contemplated in Section 19(1)(b)(ii) of the New Companies Act.
- 16.2 The Association is also not subject to any provision contemplated in Section 15(2)(b) and/or (c) of the New Companies Act.
- 16.3 Upon dissolution of the Association, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 2 of the New Companies Act.

17. POWERS OF DIRECTORS

- 17.1 Subject to the express provisions of these Articles, 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 including the right of appointment and dismissal of the managing agent, 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 this MOI required to be exercised or done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Directors from time to time.
- 17.2 Save as specifically provided in this MOI, the Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, a managing agent or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors on such terms as the Directors shall decide.
- 17.3 The Directors shall further have the power:
- 17.3.1 to require that any construction of any sort on the land shall be supervised to ensure that the provisions of this MOI and the rules are complied with and that all such construction is performed in a proper and workmanlike manner;
- 17.3.2 to issue an architectural and environmental design and maintenance manual in respect of the land and ensure that such manual is complied with at all times.
- 17.4 The board of Directors shall have the right to vary, cancel or modify its decisions and resolutions from time to time.
- 17.5 The Directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 17.6 The Directors shall appoint an architectural review committee to exercise the powers set out above in article 17.3 which shall consist of:
- 17.6.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
- 17.6.2 one Director;
- 17.6.3 such other members as the Directors may determine.
- 17.7 Members of the architectural review committee shall not necessarily be required to be members of the Association.
- 17.8 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the developer, all plans for buildings, out-buildings, structures, additions and alterations shall be approved by the Directors who shall first submit such plans to the architectural review committee. The Directors shall not approve any such plan unless such plan shall first have been reviewed by the architectural review committee. The architectural review committee shall not act contrary to the provisions which the developer

may stipulate in any agreement of sale between the developer and the purchaser of an Erf on the land regarding the siting, design and construction of a dwelling on such an Erf.

18. PROCEEDINGS OF DIRECTORS

- 18.1 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 this MOI.
- 18.2 At all meetings of the Directors, the chairman shall divide the matters to be dealt with into :
- 18.2.1 matters pertaining to and reserved for the attention and decision of the cluster Directors;
- 18.2.2 matters pertaining to and reserved for the attention and decision of the farm Directors; and
- 18.2.3 matters of general concern for the attention and decision of all Directors.
- 18.3 Should there be any dispute over the classification of the matter in terms of article 18.2 above, then that matter shall be deemed to be a matter for general concern.
- 18.4 The quorum necessary for the holding of any meetings of the Directors shall be 4 (FOUR) present personally, provided that at least 3 (THREE) cluster Directors, and 1 (ONE) farm Director shall be necessary at all meetings of Directors to form a quorum.
- 18.5 Any resolution of the board of Directors shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the meeting shall have a second or casting vote.
- 18.6 In the event that the matter is one to be determined either in terms of clause 18.2.1, 18.2.2 or 18.2.3 then only those Directors for whose attention and decision the matter is, shall be entitled to vote thereon.
- 18.7 The Directors shall cause minutes to be kept of every Directors' meeting which minutes shall, without undue delay after the meeting has closed be reduced to writing and certified correct by the chairman. All minutes of Directors' meetings shall, after certification, 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 any Director, the auditors, the members and the managing agent.
- 18.8 A resolution signed by all the necessary Directors in terms of the above article shall be valid in all respects as if it had been duly passed at a meeting of the board of Directors.

19. GENERAL MEETINGS OF THE ASSOCIATION

- 19.1 The Association shall within 6 (six) 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 meeting as such in the notices in terms of the Section in the New Companies Act that replaces Section 179 of the Old Companies Act, or any similar Section, if any.

- 19.2 Such annual general meeting shall be held at such time and place as the Directors shall decide from time to time.
- 19.3 All general meetings other than annual general meetings shall be called special general meetings.
- 19.4 The Directors may, whenever they think fit, convene a special general meeting. A special general meeting may also be convened by the Directors on a requisition made in terms of the Section in the New Companies Act that replaces Section 181 of the Old Companies Act, or any similar Section, if any, or should the Directors not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that Section.

20. NOTICES OF MEETINGS

- 20.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty-one days' notice in writing and any other general meeting shall be called by not less than fourteen clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this MOI, entitled to receive such notices from the Association, provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by not less than 51% (fifty-one percent) of the members having a right to attend and vote at the meeting.
- 20.2 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, the consideration of the annual financial statements, the election of Directors, the noting of the levy for the financial year during which such annual general meeting takes place, the appointment of an auditor and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.
- 20.3 The chairman of the Directors shall, in his sole discretion, determine which of the business to be transacted at a general meeting, including the annual general meeting is :
- 20.3.1 of concern only to the cluster owners;
20.3.2 of concern only to the farm owners; or
20.3.3 of general concern;
- and his decision shall be final and binding.

21. PROXIES

- 21.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association.
- 21.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least twenty-four hours before the commencement of the meeting or adjourned meeting concerned but the board may from time to time determine that such documents :

- 21.2.1 are to be lodged at a particular place, or
- 21.2.2 are to be lodged a certain number of hours, not exceeding forty-eight in all, before the meeting, or
- 21.2.3 may be lodged at any time before or during the meeting.

Notwithstanding the foregoing the chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

- 21.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.
- 21.4 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit :

P R O X Y

(Association Incorporated Under Section 21 of the Old Companies Act
and under the relevant provisions of the New Companies Act)

I, _____ of _____
being a member of ("the Association") hereby appoint

_____ of _____ or failing him,
_____ of _____ of failing him,
_____ of _____ as my proxy to vote for me on
my behalf at the annual general meeting (as the case may be) of the Association
to be held on the _____ day of _____
and at any adjournment thereof as follows:

	IN FAVOUR OF	AGAINST	ABSTAIN
Resolution to _____			
Resolution to _____			
Resolution to _____			

(Indicate Instructions to proxy by way of a cross In space provided above).

Unless otherwise instructed, my proxy may vote as he thinks fit.

Signed this _____ day of _____ 20____

SIGNATURE

(NOTE: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a member of the Association).

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

22. QUORUM

- 22.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, 25% present in person or represented by proxy shall constitute a quorum provided that there shall be at least 3 members personally present at all times.
- 22.2 If within fifteen minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman of the board or, in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the board may determine. If a quorum is not present at such adjourned meeting, the members present shall constitute a quorum.

23. ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING

The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment :

- 23.1 No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for thirty days or more in which event notice is to be given in the same manner as for the original meeting);
- 23.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

24. VOTING RIGHTS OF MEMBERS

- 24.1 Members shall be entitled to vote only on matters determined to be of concern to them, or of general concern, as provided for in terms of article 20.3 hereof.
- 24.2 Subject to clause 24.1 above, at every general meeting:
- 24.2.1 each member, in person or by proxy and entitled to vote, shall have one vote for each Erf registered in his name;
- 24.2.2 if an Erf is registered in the name of more than one person, then all such co-owners shall jointly have one vote.
- 24.3 Save as expressly provided for in this MOI, 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 ensuing out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 24.4 Voting at general meetings shall take place by way of show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law.

- 24.5 Resolutions shall be passed by simple majority vote, save with respect to amendments of this MOI, as provided for in article 30 hereof.
- 24.6 If a poll is duly demanded it shall be taken in such manner as the chairman of the meeting may direct either at once or after an interval or adjournment.
- 24.7 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 24.8 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless :
- 24.8.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 24.8.2 the chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 24.9 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.
- 24.10 A declaration made in good faith by the chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 24.11 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a director or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

25. ACCOUNTING RECORDS

- 25.1 The Directors shall cause such accounting records as are prescribed by the Section in the New Companies Act that replaces Section 284 of the Old Companies Act, or any similar Section, if any, to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 25.2 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Directors think fit and shall always be open to inspection by the Directors.
- 25.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by members not being Directors and no member (not being a Director) shall have any right of inspecting any accounting records or documents of the Association except as conferred by the Act or authorised by the Directors.

- 25.4 The Directors shall from time to time, in accordance with the Section in the New Companies Act that replaces Sections 286 and 288 of the Old Companies Act, or any similar Section, if any, cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in those sections.
- 25.5 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than twenty-one days before the date of the meeting, be sent to every member of the Association and the Registrar, provided that this article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.
- 25.6 An auditor shall be appointed in accordance with the Chapter in the New Companies Act that replaces Chapter X of the Old Companies Act, or any similar Chapter, if any.

26. SERVICE OF NOTICES

- 26.1 Notices may be given by the Association to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him.
- 26.2 Notice of every general meeting shall be given :
- 26.2.1 to every member of the Association;
- 26.2.2 to the accounting officer for the time being of the Association.
- No other person shall be entitled to receive a notice of general meetings.
- 26.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 26.4 The signature to any notice given by the Association may be written or printed or partly written and partly printed.
- 26.5 When a given number of day's notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

27. INDEMNITY

- 27.1 All Directors and the auditors shall be indemnified against any liabilities bona fide incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a Court.
- 27.2 Every Director, servant, agent and employee of the Association, and the auditors, 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.

28. GENERAL

28.1 Whenever they consider that the appearance of any land or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the Directors may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member failing within a reasonable time to be specified in such notice, to comply therewith, the Directors may enter upon the land and/or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Association.

The Directors shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the Directors acted unreasonably.

28.2 The Association may enter into agreements with members for the provision of amenities and service to the members and to levy a reasonable charge in respect of the provision thereof.

28.3 No member shall transfer his Erf until the board of Directors under the hand of one of its members has certified that the member has at date of transfer fulfilled all his financial obligations to the Association. No Erf or any interests therein shall be alienated without the consent of the Association. Such consent will not be withheld unless :

28.3.1 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 him;

28.3.2 the proposed transferee has not agreed to become a member of the Association;

28.3.3 such member remains in breach of any of the provisions of these Articles or any rules after notice from the Directors requiring him to remedy such breach.

28.4 The provisions of this MOI shall be binding upon all members and, insofar as they may be applicable to all persons occupying any Erf by, through or under any member, whatever the nature of such occupation.

28.5 No member ceasing to be a member of the Association for any reasons shall (nor shall such member's executors, curators, Directors or liquidators) have any claim upon or interest in or right to the funds or any land of the Association.

28.6 The Association may claim from any member or his estate any levy arrears, and interest or other sums due from him to the Association at the time of his ceasing to be a member.

28.7 Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

29. DISPUTES

- 29.1 Any dispute arising out of or in connection with this MOI, including the cancellation thereof, must be determined in terms of this article, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 29.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in terms of this MOI.
- 29.3 If a party exercises his right in terms of clause 29.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (ten) years experience in their field :
- 29.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
 - 29.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
 - 29.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
 - 29.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
 - 29.3.5 if the dispute relates to any other matter, an appropriate expert in that field.
- 29.4 If the parties are unable to agree either on the person referred to in article 29.3 or on the classification of the dispute within a period of 3 (three) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope.
- 29.5 Any person agreed upon and nominated as aforesaid (“the expert”) shall in all respects act as an expert and not as an arbitrator.
- 29.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 29.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty-one) days or so soon thereafter as possible, after it has been demanded.
- 29.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 29.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be at the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between “party and party” or as between “attorney and client”.
- 29.10 The provisions of this article constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.

29.11 The provisions of this clause shall be deemed to be severable from the remainder thereof and shall remain binding and effective as between the parties notwithstanding that this agreement may otherwise be cancelled or declared of no force and effect for any reason.

30. AMENDMENT OF MEMORANDUM OF INCORPORATION

30.1 The provisions of this MOI may only be amended by special resolution, requiring a 75% majority of all members votes at a special general meeting called specifically for such purpose.

30.2 The notice of such meeting shall, in addition to complying with article 20 hereof, set out in specific terms the proposed amendment of this MOI.