



**Memorandum of Incorporation of Prince's Grant Homeowners  
Association NPC** Registration No. 1994/000721/08

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## INDEX

No.	Description	Page no.
1.	Adoption of this Memorandum of Incorporation	5
2.	Incorporation and nature of the company	5
3.	Definitions	5
4.	Main object	9
5.	Powers of the company	9
6.	Alterations to this Memorandum of Incorporation	9
7.	Membership	10
8.	Termination of membership	10
9.	Sale and transfer of units	11
10.	Co-ownership of units	12
11.	Members rights	12
12.	Rights and the benefits of membership	13
13.	Members' meetings	13
14.	Notice of members' meetings	14
15.	Members' right to requisition a meeting	14
16.	Venue of members' meetings	14
17.	Quorum for members' meetings	14
18.	Agenda at annual general meetings	16
19.	Procedure for proposing resolutions	16
20.	Proxies	16
21.	Electronic participation in members' meetings	18
22.	Member's voting	18
23.	Members' resolutions	19
24.	Round robin resolutions: shareholders	20
25.	Member's right to information	20
26.	Record date for exercise of member's rights	20
27.	Composition of the Board of Directors	21
28.	Term of office	21
29.	Election of directors	21
30.	Co-opting of directors onto board	21

31.	Qualification to act as a director	21
32.	Vacation of office as director	22
33.	Electronic participation in directors' meetings	22
34.	Notice of directors' meetings	22
35.	Director's right to requisition a meeting	22
36.	Quorum for directors' meetings	23
37.	Voting at directors' meetings	23
38.	Round robin resolutions: directors	23
39.	Appointment of chairperson and vice-chairperson	23
40.	Director's remuneration	23
41.	Control of meetings	24
42.	Proceedings at meetings of directors	24
43.	Functions and powers of the Board of Directors	25
44.	Professional advisors	25
45.	Indemnification of directors and officers	25
46.	Variation of decisions	26
47.	Appointment and authority of committees	26
48.	Composition of committees	27
49.	Finance committee	27
50.	Budget	27
51.	Levies	27
52.	Purpose of levies	28
53.	Calculating levies	28
54.	Additional services	30
55.	Payment of levies	30
56.	Interest on levies	30
57.	Increase of levies	30
58.	Special levies	30
59.	Capital expenditure	31
60.	Levy Stabilisation Fund	31
61.	Accounts	32
62.	Application of optional provisions of the Companies Act	32
63.	Building committee	32

64.	Building plans and approved builders	34
65.	Compliance with the building code	34
66.	Powers of the building committee	35
67.	Maintenance of units and common property	36
68.	Building period	36
69.	Building deposit	36
70.	Medium density properties	37
71.	Landscaping and gardening	38
72.	Boundary fences	38
73.	Access by neighbours	38
74.	House rules	39
75.	Compliance with the house rules; objects of the company	41
76.	Legal remedies	41
77.	Common property	41
78.	Use of common property	42
79.	Amenities committee	42
80.	Prince's Grant Golf Club	43
81.	Golf Course Custodian's committee	44
82.	Operating of businesses on the Estate	45
83.	Service of notices	46
84.	Access to the estate	47
85.	Estate agents	47
86.	"For sale" signs	47
87.	Disclaimer	48
88.	Winding up	48
89.	Access ways	49
90.	Access by the company	49
91.	Body corporates	49
92.	Exclusive use	50
93.	Delegation	51
94.	Fidelity insurance	51

## **1 Adoption of this Memorandum of Incorporation**

1.1 The company resolved by a special resolution of the members passed on 22 September 2013 to amend its existing Memorandum and Articles of Incorporation by replacing those documents in their entirety with this Memorandum of Incorporation.

1.2 This Memorandum of Incorporation is a document unique to the company, as contemplated in section 13(1)(a)(ii) of the Companies Act.

## **2 Incorporation and nature of the company**

2.1 The company is a non-profit company as defined in the Companies Act.

2.2 The company is also a "pre-existing company" as defined in paragraph (a)(i) of the definition of "company" in section 1 of the Companies Act. As such, the company continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Companies Act (as provided for in item 2 of Schedule 5 to that Act).

2.3 The company is incorporated in accordance with and governed by –

2.3.1 The unalterable provisions of the Companies Act, subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum of Incorporation; and

2.3.2 The alterable provisions of the Companies Act, subject to any negation, restriction, limitation, qualification, extension or other alteration contemplated in an alterable provision and noted in this Memorandum of Incorporation; and

2.3.3 The provisions of this Memorandum of Incorporation.

## **3 Definitions**

3.1 In this Memorandum of Incorporation -

3.1.1 A reference to a section by number refers to the corresponding section of the Companies Act; and

- 3.1.2 Words that are defined in the Companies Act bear the same meaning in this Memorandum as in that Act.
- 3.2 In this Memorandum of Incorporation, unless the context indicates otherwise,
- 3.2.1 "**auditors**" means the auditors of the company;
- 3.2.2 "**architect**" means an accredited architect or designer approved by the building committee as entitled to design buildings on the Estate as contemplated in paragraph 63.3.4;
- 3.2.3 "**builder**" means an accredited builder approved by the building committee as entitled to construct buildings on the Estate as contemplated in paragraph 63.3.4;
- 3.2.4 "**building code**" means the rules setting out the architectural guidelines and building controls applicable to the Estate;
- 3.2.5 "**building committee**" means the committee appointed in terms of clause 63 to ensure compliance with the building code;
- 3.2.6 "**chairperson**" means the chairperson of the Board of Directors;
- 3.2.7 "**general manager**" means any person appointed by the board of directors as an employee to undertake the management of the Estate and the affairs of the company, and designated as general manager.
- 3.2.8 "**commercial erf**" means a subdivision of the property which allows for commercial usage in terms of the town planning scheme;
- 3.2.9 "**the common property**" means all those areas that fall outside the residential erven, the commercial erven and sectional title schemes;
- 3.2.10 "**the company**" means the Prince's Grant Homeowners Association NPC Registration No. 1994/000721/08;
- 3.2.11 "**dwelling**" means a self-contained, inter-leading group of rooms for a single family, with not more than one kitchen as provided for in the town planning scheme;
- 3.2.12 "**the Estate**" means the Prince's Grant Coastal Golf Estate which includes all the amenities built or to be built on the Estate;
- 3.2.13 "**ex officio director**" means a director who occupies the Board seat by virtue of holding a particular office or position in the company and shall have all the rights and obligations of a director, including

the right and responsibility to vote on matters presented to the Board.

- 3.2.14 **"financial year"** means the financial year of the company which shall run from the first day of April in any year to the last day of March in the subsequent year;
- 3.2.15 **"freehold unit"** means an erf or a registered portion of an erf;
- 3.2.16 **"the levy stabilisation fund"** means the fund established in terms of clause 60;
- 3.2.17 **"medium density property"** means a property which is indicated as medium density in the town planning scheme, regardless of the method of ownership of that property;
- 3.2.18 **"member"** means a member of the company in terms of clause 7;
- 3.2.19 **"Municipality"** means the Kwadukuza Municipality or the Ilembe District Municipality, as the case may be, which provide different services to the Estate;
- 3.2.20 **"the office"** means the registered office of the company;
- 3.2.21 **"the open space"** means those erven zoned as public open space;
- 3.2.22 **"the property"** means all the erven which form part of the Prince's Grant Township / Coastal Golf Estate;
- 3.2.23 **"the Prince's Grant Golf Club"** means the Prince's Grant Golf Club which operates from the golf course on the Estate;
- 3.2.24 **"residential erf"** means a subdivision of the property which allows for residential usage (but excludes a medium density property);
- 3.2.25 **"the roads"** means the roads which have been constructed on the property;
- 3.2.26 **"sectional title unit"** means a dwelling unit the tenure of which is in terms of the Sectional Titles Act No. 95 of 1986, as amended;
- 3.2.27 **"share block"** means a share block in Prince's Grant Property Share Block Limited No. 91/03166/06 or its successor in title;
- 3.2.28 **"town planning scheme"** means the Prince's Grant Town Planning Scheme with scheme map 331/6, as amended;
- 3.2.29 **"unit"** means any commercial erf, residential erf, sectional title unit or share block on the Estate and, in relation to a medium density

property, means each of the number of units proposed for that property in the town planning scheme, regardless of the number of units actually established and irrespective of the number of structures erected on that property;

3.2.30 “**VAT**” means value added tax at the ruling rate as defined in the Value Added Tax Act (No. 89 of 1991); and

3.2.31 “**vice-chairperson**” means the vice-chairperson of the Board of Directors.

3.2.32 Unless the context otherwise requires:

3.2.32.1 Words in the singular number shall include the plural and words in the plural number shall include the singular;

3.2.32.2 Words importing the masculine gender shall include the female gender; and

3.2.32.3 Words importing natural persons, shall include juristic persons, corporate entities and bodies corporate.

3.2.33 Whenever a number of days is prescribed in this Memorandum of Incorporation, the number of days must be calculated –

3.2.33.1 By excluding the first day and including the last day; and

3.2.33.2 So as to include Saturdays, Sundays and public holidays unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next ensuing day which is not a Saturday, Sunday or public holiday.

#### 4 **Main object**

4.1 The main object of the company is to manage, promote, advance and protect the communal interests, safety and welfare of the members of the company as owners of units on the Estate, and anything necessary or incidental to this object.

4.2 The Company—

4.2.1 Must apply all of its assets and income, however derived, to advance its main object; and

4.2.2 Subject to paragraph 4.1, may directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its main object.



## 5 **Powers of the company**

In terms of section 19(1)(b) of the Companies Act a company has all the legal powers and capacity of a natural person except to the extent that a juristic person is incapable of exercising these powers and having these capacities and except to the extent that a company's Memorandum of Incorporation provides otherwise. This company's legal powers and capacity are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1)(b), provided that this company must restrict itself to the main object set out in clause 4.

## 6 **Alterations to this Memorandum of Incorporation**

6.1 This Memorandum of Incorporation may be amended only by a special resolution adopted by the members or in terms of a court order.

6.2 No provision of this Memorandum of Incorporation requires that the amendment of a provision of this Memorandum is subject to any special requirements (i.e. requirements in addition to the requirements for amending a Memorandum as set out in section 16 of the Companies Act). Nor does any provision of this Memorandum of Incorporation prohibit the amendment of a provision of this Memorandum.

6.3 Amendments to this Memorandum of Incorporation may be proposed by –

6.3.1 The board of directors; or

6.3.2 Members entitled to exercise at least 25% of the voting rights on the resolution (see section 16 of the Act).

6.4 The board shall nevertheless have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in section 17(1) of the Companies Act. A notice of such alteration must be published by –

6.4.1 delivering a copy of the notice of alteration to each member by ordinary mail; or

6.4.2 delivering a copy of the notice of alteration to each member by email (provided that a member shall be deemed to have received a copy of the notice if sent to his or her last known email address).

## **7 Membership**

7.1 The members of the company shall be:

7.1.1 Any person who is the registered owner of any unit on the Estate;  
and

7.1.2 Any person who is reflected in the share register of the Prince's Grant Property Share Block Limited as being the registered owner of a share block.

7.2 No person, other than a person referred to in this clause 7 shall be entitled to be a member of the company

## **8 Termination of membership**

8.1 A member remains a member for as long as he or she is the registered owner of a unit on the Estate or is reflected in the share register of the Prince's Grant Property Share Block Limited as being the registered owner of a share block, and may not resign or otherwise terminate membership.

8.2 A member does not have any claim to the funds or other property of the company when he or she ceases to be a member of the company. Nor shall any member's executors, curators, trustees or liquidators have such a claim.

8.3 The company may claim from any member or his estate any arrear levies, special levies, VAT, interest, legal fees or other sums due by him to the company at the time of his ceasing to be a member.

8.4 Levies, special levies, VAT, interest, legal fees and any other sums paid and/or due by a member shall not be repayable by the company to the member upon his ceasing to be a member.

8.5 A member's successor in title to a unit shall be liable to pay the levies, special levies, VAT, interest, legal fees or any other sums attributable to that unit as from the date upon which he becomes a member pursuant to the transfer of that unit.

## **9 Sale and transfer of units**

9.1 A member shall not sell or otherwise agree to alienate a unit on the Estate (or an undivided share in a unit) unless it is a condition of the agreement of sale that:

- 9.1.1 The buyer is obliged, to the satisfaction of the company, as a contract for the benefit of the company, to become a member of the company upon registration of transfer of the unit to him; and
- 9.1.2 Registration of transfer of that unit into the name of the buyer will automatically constitute the buyer as a member of the company.
- 9.2 No member shall transfer a unit of which he is the registered owner unless the company has certified in writing that –
- 9.2.1 All levy contributions and other amounts owing by the member to the company have been paid prior to the transfer or that prior provision has been made to the satisfaction of the directors for payment at registration;
- 9.2.2 The purchaser's contribution to the Levy Stabilisation Fund has been paid or that prior provision has been made to the satisfaction of the directors for payment at registration;
- 9.2.3 The proposed transferee has agreed in writing, to the satisfaction of the company, to become a member of the company; and
- 9.2.4 The purchaser has notified the company in writing of his or her address and contact details as required in clause 83.
- 9.3 A condition of title has been registered against each unit in the Estate to give effect to clause 9.2.
- 9.4 The company shall be entitled to charge an administrative fee for its effort and cost in providing a certificate in terms of this clause. Until amended by the board of directors from time to time, the administrative fee shall be R500 (plus VAT).

## 10 **Co-ownership of units**

- 10.1 Where a unit or share block is owned by more than one registered owner, all the owners of that unit or share block shall together be deemed to be one member of the company.
- 10.2 The co-owners must –
- 10.2.1 Elect one of the co-owners as the contact person for the unit; and

- 10.2.2 Notify the company of the name and address of the contact person.
- 10.3 Any notices served by the company on the contact person shall be deemed to be service upon all the co-owners.
- 10.4 If the co-owners fail to elect a contact person, or to notify the company of the contact person's details, then service of notices by the company may be upon any one of the co-owners and this shall be deemed to be service upon all the co-owners.

## 11 **Member's rights**

- 11.1 The rights and obligations of a member are not transferable, but may be ceded as security for a mortgage loan on that member's unit.
- 11.2 A member shall at all times further the objects and interests of the Company to the best of his ability and shall observe all the rules made by the Company and the directors.

## 12 **Rights and the benefits of membership**

- 12.1 A member who is in default of his obligation to pay any levies, special levies, VAT, interest, legal fees or any other sums due to the company, or who is in breach of any rule of the company or of this Memorandum of Incorporation –
- 12.1.1 Shall not be entitled to attend, speak or vote at any meeting of the company, or to hold office as director; and
- 12.1.2 Shall not be entitled to use the club house, the club house facilities, the dams or any other recreational facilities on the Estate (the member's guests, tenants and family members shall, likewise, be precluded from using these facilities).
- 12.2 Where a member has leased out his unit, the tenant (and the tenant's guests and family members) shall have the right to use of the club house, the club house facilities, the dams and any other recreational facilities on the Estate to the exclusion of the member.

### 13 **Members' meetings**

13.1 The Companies Act provides when members' meetings must be held, but allows a company's Memorandum of Incorporation to provide for additional members' meetings. As contemplated in section 61(2) of the Companies Act, the company is required, in addition to the members' meetings required in terms of the Companies Act, to hold its annual general meeting within 6 months after the end of each financial year.

13.2 Other general meetings shall be called at the discretion of the directors (subject to the provisions of the Companies Act and of this Memorandum of Incorporation) and shall be called extraordinary general meetings.

### 14 **Notice of members' meetings**

The minimum number of days notice which this company is required to give for a members' meeting is as follows:

14.1 An annual general meeting and a meeting called for the passing of a special resolution: 21 clear days notice in writing; and

14.2 Any other extraordinary general meeting: 14 clear days notice in writing.

### 15 **Members right to requisition a meeting**

The board of directors of the company must call a members' meeting if a demand is made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter concerned (see section 61 of the Companies Act). [In order to propose an amendment to this Memorandum of Incorporation, members entitled to exercise at least 25% of the voting rights on the resolution must, in terms of paragraph 6.3, propose the amendment].

### 16 **Venue of members' meetings**

The authority of the company's board of directors to determine the location of any members' meetings, as set out in section 61(9) of the Companies Act, is limited or restricted as follows: members' meetings of this company must be held within the Estate or within a 10 kilometre radius of the Estate.

**17 Quorum for members' meetings**

- 17.1 A members meeting may not begin, and a particular matter shall not begin to be considered at a members meeting, unless a quorum is present. The quorum for a meeting to begin is as follows: sufficient people must be present to exercise at least 10% of all the voting rights.
- 17.2 If within thirty minutes after the appointed time for a meeting to begin, the quorum is not present, the meeting is adjourned, without motion, vote, or further notice, for one week, subject to clause 17.4.
- 17.3 If within thirty minutes after the appointed time for consideration of a particular matter the requirements for that matter to begin to be considered have not been satisfied –
- 17.3.1 If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; and
- 17.3.2 If there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, for one week.
- 17.4 The person intended to chair a meeting that cannot begin because a quorum is not present may extend the thirty minute limit for a reasonable period on the grounds that –
- 17.4.1 Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or
- 17.4.2 One or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders together with those already present would satisfy the quorum requirements.
- 17.5 The company shall not be required to give further notice of a meeting that has been postponed in terms of clauses 17.2 or 17.3, unless –
- 17.5.1 The location of the meeting is different from the location of the adjourned meeting or from the location as announced at the time of the adjournment; or

17.5.2 The starting time of the meeting is different from the starting time of the adjourned meeting or from the starting time as announced at the time of the adjournment.

17.6 If, at the time appointed for an adjourned meeting to resume the quorum requirements are again not met, the members present in person or by proxy will be deemed to constitute a quorum.

17.7 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one member with voting rights entitled to be exercised at the meeting, or on that matter, is present.

## **18 Agenda at annual general meetings**

The following matters shall be dealt with at every annual general meeting:

18.1 The consideration of the chairperson's report (or, should the chairperson so direct, the report of the General Manager);

18.2 The election of directors;

18.3 The consideration of any resolutions proposed for adoption by such meeting (including special resolutions), and the voting upon any such resolutions;

18.4 The consideration of the audited annual financial statements of the company for the financial year of the company preceding the date of such meeting;

18.5 The consideration of the report of the auditors;

18.6 The noting of the levy and budget for the financial year during which such annual general meeting takes place; and

18.7 The appointment of auditors and the fixing of their remuneration.

## **19 Procedure for proposing resolutions**

19.1 The company shall, before each annual general meeting or other general meeting, issue a notice in writing to members indicating that the agenda for the meeting is being prepared and inviting members to submit proposed resolutions, or an adequate description of any matter which they wish to raise for discussion or consideration, to the company within 10 clear days of the notice.

19.2 No member shall propose a resolution for voting on at an annual general meeting or other general meeting, or raise a matter for discussion or consideration, unless written notice of the proposed resolution or matter has been given to the company in accordance with clause 19.1.

## 20 Proxies

20.1 A member may be represented at an annual general meeting or extraordinary general meeting by a proxy who need not be a member of the company.

20.2 The instrument appointing a proxy must be in writing, dated and signed by the member or his duly authorised agent, but need not be in any particular form. A proxy appointment remains valid for a period of one year from the date on which it was signed, unless it is revoked in writing or substituted by a later inconsistent appointment and a copy of the revocation instrument is delivered to the company.

20.3 Where a unit is owned by more than one registered owner, the proxy instrument must be signed by a majority of these owners. Where a unit is owned by a company, the proxy must be signed by a director of the company or by its secretary, and where a unit is owned by an association of persons, the proxy must be signed by a duly authorised representative of the association.

20.4 The instrument appointing a proxy and the power of attorney or other authority [if any] under which it is signed, or a notarially certified copy of these documents, must be deposited or faxed to the company's offices at least 24 hours before the time appointed for the commencement of the meeting concerned (or the adjourned meeting), unless the chairperson directs that a lesser period applies.

20.5 A vote given in terms of an instrument of proxy shall be valid even if the principal has died or has revoked the proxy, provided that the company has not received any intimation in writing of the death or revocation by 24 hours before the time for the meeting to begin.



- 20.6 The right of a member of the company to appoint two or more persons concurrently as proxies, as set out in section 58(3)(a) of the Companies Act, is excluded.
- 20.7 The right of a member of the company to appoint more than one proxy to exercise voting rights attached to different securities, as set out in section 58(3)(a), is excluded.
- 20.8 The authority of a member's proxy to delegate the proxy's powers to another person subject to any restriction contained in the instrument appointing the proxy, as set out in section 58(3)(b) of the Companies Act, is excluded.
- 20.9 The authority of a member's proxy to exercise, or abstain from exercising, any voting right of the member without direction from the member (except to the extent that the instrument appointing the proxy provides otherwise), as set out in section 58(7) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

## **21 Electronic participation in members' meetings**

- 21.1 Any members' meeting may be conducted entirely by electronic communication, or one or more members, or proxies of members may participate by electronic communication in all or part of any members' meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 21.2 Any notice of a members' meeting at which it will be possible for members to participate by way of electronic communication shall inform members of the ability to participate in this way and shall provide the necessary information to enable members or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the member or proxy concerned.

## **22 Member's voting**

- 22.1 Each voting member of the company, present at an annual general meeting or extraordinary general meeting in person or by proxy, shall have one vote for each unit registered in his or her name.

- 22.2 The following restrictions apply to voting:
- 22.2.1 A member who is in arrears with levies or any other sum owed to the company, as at the record date, may not vote, in person or by proxy, at any general meeting; and
- 22.2.2 If a unit is registered in the name of more than one person, then all such co-owners shall jointly have one vote.
- 22.3 Every resolution proposed for adoption by a general meeting, and every amendment of a resolution proposed for adoption by a general meeting, shall be –
- 22.3.1 Provided to the company in writing at least 72 hours before the agenda is printed and distributed; and
- 22.3.2 Seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 22.4 At any meeting of the company a resolution put to the vote shall be decided on a show of hands, unless –
- 22.4.1 The chairperson of the meeting directs otherwise; or
- 22.4.2 A member demands a poll.
- 22.5 If voting is decided on a show of hands, then a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry in the minutes of the meeting recording this fact, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- 22.6 A demand for a poll may be withdrawn.
- 22.7 If voting is to be decided by a poll, then voting shall be by way of a secret poll taken during the course of the meeting or alternatively in such other manner as the chairperson of the meeting may direct.
- 22.8 Voting on the election of a chairperson of a general meeting [if necessary] or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy and entitled to vote.

22.9 The chairperson shall not have a second or casting vote at a general meeting.

## 23 **Members' resolutions**

23.1 For an ordinary resolution to be adopted at a members' meeting of this company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution at the meeting.

23.2 For a special resolution to be adopted at a members' meeting of this company, it must be supported by at least 75% of the voting rights exercised on the resolution at a members' meeting.

## 24 **Round robin resolutions: shareholders**

Section 60 of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, a resolution may be voted on in writing (without a meeting being held) and will be adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders meeting. Any business required to be conducted at the company's annual general meeting may not be conducted in this manner.

## 25 **Member's right to information**

Section 26(1) of the Companies Act gives every person who has a beneficial interest in a company's securities the right of access to the following information and documents: the company's Memorandum of Incorporation; any amendments to the Memorandum of Incorporation; the company's rules; certain records relating to directors; reports to annual meetings; the annual financial statements; notices and minutes of annual meetings and other members' meetings and the members' register. Section 26(3) provides that the Memorandum of Incorporation of a company may establish additional information rights for persons who have a beneficial interest in a company's securities. In the case of this company, every person who has a beneficial interest in this company's securities has the following right to access information in addition to those rights set out in section 26(1) of the Companies Act: the right to view the minutes of the meetings of the board of directors at the office of the General Manager after arranging an appropriate time to do so with the General Manager.

**26 Record date for exercise of members' rights**

If at any time the company's board of directors fails to determine a record date, as contemplated in section 59(3) of the Companies Act, the record date for the relevant matter is as determined in accordance with section 59(3) of the Companies Act, namely –

- 26.1 In the case of a meeting, the latest date by which the company is required to give members notice of that meeting; and
- 26.2 In any other case, the date of the action or event.

**27 Composition of the Board of Directors**

The Board of Directors must comprise of not less than 4 and not more than 8 directors, appointed and elected as follows:

- 27.1 Not more than 5 directors elected by the members;
- 27.2 The golf captain of the Prince's Grant Golf Club, as an *ex officio* director;
- 27.3 The General Manager, as an *ex officio* director.

**28 Term of office**

The elected directors of this company serve for a period of two years, but shall be eligible for re-election for a further period of two years. As a result, the maximum period of time that a director will be entitled to serve the company will be a total of four years, made up of an initial two year period and a further two year period on re-election.

**29 Election of directors**

- 29.1 Where a director is required to be elected, all the names of the candidates will appear on a ballot paper and the members will elect in a single vote, their preferred candidates, according to the number of vacancies.
- 29.2 Each vote may be exercised once and the candidates who attract the most votes will be elected.

**30 Co-opting of directors onto board**

The board of directors may appoint a qualified person to fill any vacancy on the board on a temporary basis until the next annual general meeting, as contemplated in section 68(3) of the Companies Act.

**31 Qualification to act as a director**

A director must be a natural person and at all times, all of the directors of the board must be members, or spouses of members, or co-owners of a unit or shareblock, with the exception of *ex officio* directors.

**32 Vacation of office as director**

A director shall be deemed to have vacated his office if -

32.1 He commits an act of insolvency;

32.2 His estate is sequestered;

32.3 He is convicted for any offence involving dishonesty;

32.4 He becomes of unsound mind or is found to be lunatic;

32.5 He resigns from office in writing;

32.6 He dies;

32.7 He is removed from office in terms of the Companies Act; or

32.8 He is in default of his obligation to pay levies, VAT, interest, legal fees or any other sums due to the company.

**33 Electronic participation in directors' meetings**

The authority of the directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), is not limited or restricted by this Memorandum of Incorporation.

**34 Notice of directors' meetings**

34.1 The board of directors may determine the form in which notice of its meetings is given, as well as the time for giving notice.

34.2 The authority of this company's board of directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5)(a) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

**35 Director's right to requisition a meeting**

The chairperson of the board of directors of the company must call a directors' meeting if a demand is made by two or more directors.

**36 Quorum for directors' meetings**

A directors' meeting may not begin unless a quorum is present. A majority of directors must be present in order to constitute a quorum.

**37 Voting at directors' meetings**

37.1 Each director of a company has one vote on a matter before the board of directors.

37.2 A resolution is approved if it is supported by a majority of the votes cast at a directors' meeting.

37.3 The chairperson of the board of directors has a second or casting vote at directors' meetings in event of a deadlock in voting by the directors.

**38 Round robin resolutions: directors**

Section 74 of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, a decision of the board of directors of a company may be adopted by written consent of a majority of the directors (without a meeting being held) if each director has received notice of the matter to be decided. The authority of this company's board of directors to consider a matter other than at a meeting, as set out in section 74, is not limited or restricted by this Memorandum of Incorporation.

**39 Appointment of chairperson and vice-chairperson**

The directors shall appoint from their number a chairperson and vice-chairperson at the first meeting after each annual general meeting.

**40 Director's remuneration**

40.1 A director shall be entitled to be repaid all reasonable and genuine expenses incurred by him or her in or about the performance of his or her duties as director, chairperson or vice-chairperson.

40.2 The directors shall be entitled to a fee for each meeting attended of R1000, or such other amount as may be stipulated by the members in a general meeting.

**41 Control of meetings**

41.1 The chairperson presides at all meetings of the Board of Directors, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the Board of Directors.

41.2 If at any meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the start of the meeting, then the vice-chairperson shall act as chairperson of that meeting and shall exercise all the powers and duties of the chairperson in relation to that meeting. If the vice-chairperson is also not present within 5 minutes after the time appointed for the start of the meeting, then those directors present shall appoint a chairperson for the meeting, who shall also exercise all the powers and duties of the chairperson in relation to that meeting.

**42 Proceedings at meetings of directors**

42.1 The directors may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Memorandum of Incorporation.

42.2 Meetings of the directors shall be held at least once every quarter Minutes must be taken of every directors meeting, although not necessarily verbatim

minutes. The minutes must be reduced to writing and shall then be certified correct by the chairperson of the next meeting. All minutes of directors' meetings shall, after certification, be placed in a directors' minute book to be kept in accordance with the requirements of the Companies Act. The directors' minute book shall be open for inspection at all reasonable times by a director, the auditors, the General Manager and any member in good standing.

42.3 All competent resolutions recorded in the minutes of any directors' meeting shall be valid and of full force and effect, with effect from the passing of such resolutions, and until varied or rescinded.

42.4 Except to the extent set out in this Memorandum of Incorporation, the proceedings at any directors' meeting shall be conducted in such reasonable manner and form, as the chairperson of the meeting shall decide.

#### 43 **Functions and powers of the Board of Directors**

43.1 The authority of the board of directors to manage and direct the business and affairs of the company, as set out in section 66(1) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

43.2 Without limiting the generality of clause 43.1, the directors may in their discretion, from time to time, for the purposes of the company borrow or raise such sum or sums of money from members of the company or from such other source as the directors may decide.

43.3 If at any time this company has only one director, the authority of that director to exercise any power or perform any function of the board of directors without notice or compliance with any other internal formalities, as set out in that section 57(3), is excluded.

43.4 Nothing prevents the board of directors from purchasing and taking transfer of a unit on the Estate and, other than in the case of common property, disposing of any such unit for the benefit of the company.



#### 44 **Professional advisors**

The directors have the right to engage, on behalf of the company, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employees whatsoever for any reason deemed necessary by the directors and on such terms as the directors shall decide, subject to any of the provisions of this Memorandum of Incorporation.

#### 45 **Indemnification of directors and officers**

45.1 The authority of this company to advance expenses to a director or officer of the company to defend legal proceedings arising out of his service to the company, as set out in section 78(4) of the Companies Act, is limited, restricted or extended only to the following extent: if the director or officer is found to be liable for a breach of common law or statutory duty or is found guilty of a criminal offence, then the director or officer shall reimburse the company for these expenses within 30 days of the finding (regardless of whether or not the director or officer appeals the finding and provided that, if the finding is overturned on appeal, then the company shall reimburse the director or officer for expenses incurred in the initial proceedings and in the appeal).

45.2 The company must indemnify a director or officer, as set out in section 78(5) of the Companies Act, for expenses incurred in defending legal proceedings arising out of his service to the company if the legal proceedings are abandoned or the director or officer is not to be liable [a company may not indemnify a director or officer for wilful misconduct, wilful breach of trust or for liability arising in terms of sections 77(3)(a), (b) and (c) of the Companies Act].

45.3 The company must purchase insurance to protect the company, a director or an officer against any liability or expense for which the company is permitted to indemnify the director or officer, as set out in section 78(7) of the Companies Act.

#### 46 **Variation of decisions**

The Board of Directors shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

**47 Appointment and authority of committees**

The company's board of directors may appoint committees of directors and delegate to any such committee any of the authority of the board, as set out in section 72(1) of the Companies Act.

47.1 The authority of a committee appointed by this company's board of directors to consult with or receive advice from any person, and to exercise the full authority of the board on matters referred to it, as set out in section 72(2)(b) and (c) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

**48 Composition of committees**

The authority of the company's board of directors to include in any committee persons who are not directors, as set out in section 72(2)(a), is not limited or restricted by this Memorandum of Incorporation.

**49 Finance committee**

There shall be established a finance committee, which shall consist of–

49.1 3 persons appointed by the board of directors; and

49.2 The General Manager.

**50 Budget**

50.1 The finance committee must prepare a budget to meet the expenses and the capital expenditure of the company during each financial year. The budget must –

50.1.1 Specify any estimated deficiency which will result from the preceding financial year; and

50.1.2 The Capital budget must specify all items of expenditure including those subjects to clause 59 of the MOI. No unspent capital can be automatically carried forward but must be included as an item in the new year.

50.1.3 Include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

50.2 The budget must be prepared and delivered to the members not less than 21 days before the end of each financial year (or as soon as reasonably possible thereafter). The budget must be accompanied by a notice specifying the levy payable by each member as a contribution to the expenses and reserve fund

50.3 If the finance committee fails for any reason to prepare the budget or to notify members of the levies, then every member shall (until the budget and levy notice has been issued) continue to pay the levy imposed in the previous financial year as an interim measure.

## 51 **Levies**

The finance committee shall, from time to time, but at least annually establish and maintain a levy fund for the purpose of meeting all the expenses which the company has incurred, or which the directors reasonably anticipate the company will incur (which may include a reasonable provision for contingencies) for the ensuing financial year, in the furtherance of the company's objects.

## 52 **Purpose of levies**

52.1 Levies are intended to cover costs incurred by the company in –

52.1.1 Maintaining, repairing and improving the roads, open spaces and services, the perimeter fence, the golf course, the club house, club house facilities and any buildings, structures, erections and other improvements on common property on the Estate;

52.1.2 Paying rates and other charges payable by the company in respect of the erven vested in the company and services provided to the company;

52.1.3 Paying the salaries and wages of employees; and

52.1.4 Paying all other expenses necessarily or reasonably incurred in connection with the management of the company, the Estate, and the company's affairs including any expenses reasonably or necessarily incurred in the attainment of the objects of the company or in the pursuit of its business.

52.2 Levies shall not cover the consumption of water and electricity, sewerage or the maintenance or improvements of the units. These expenses shall be for the account of the member.

### 53 **Calculating levies**

53.1 In calculating the levy, the finance committee must -

53.1.1 Take into account all expenses which the company has incurred, or which it reasonably might be anticipated will be incurred;

53.1.2 Take into account any units which have not yet been provided with all services;

53.1.3 Make an adjustment for medium density properties, which adjustment is in the discretion of the committee; and

53.1.4 Base the calculation on the Estate's residential erven and 9 commercial erven.

53.1.5 Consider a residential and or commercial erf which is subsequently consolidated, as if such consolidation had not occurred and the constituent erven were standing on their own.

53.2 In calculating the levy, the finance committee must as far as reasonably practicable:

53.2.1 Assign those expenses arising directly out of or attributable to a unit itself to the member owning such unit;

53.2.2 Assign those expenses relating to the Estate generally to the owners of all units equally; provided however that the finance committee may in any case where it considers it equitable so to do:

53.2.2.1 Assign to any business unit a greater share of the expenses as it may consider reasonable in the circumstances;

53.2.2.2 Assign to any member a greater or lesser share of the expenses as may be reasonable in the circumstances; and

53.2.2.3 Assign to any member a greater or lesser proportion of the expense of maintaining entertainment and recreation areas and facilities, including those costs associated with the golf course, as it may consider reasonable in the circumstances.

53.3 If, in contravention of the town planning scheme, a unit contains more than one kitchen, and the board is satisfied that the unit is not being used for the

purposes of a single family, then at the board's discretion and in addition to any other remedy which may be available to the board, the owner or owners of the unit shall be liable for double the monthly levy which would otherwise be payable in respect of that unit (the town planning scheme provides that a dwelling means a self-contained, inter-leading group of rooms, for a single family, including not more than one kitchen).

**54 Additional services**

54.1 The Board may, from time to time, resolve to supply additional services to the Estate, including (but not limited to) water and electrical reticulation, waste removal, telephone and Internet services.

54.2 If additional services are provided to the Estate by the company, as contemplated in paragraph 54.1, then the finance committee may (without limiting in any way its power to impose levies) add the cost of providing these services to the levies.

**55 Payment of levies**

55.1 Every levy shall be payable monthly in advance on the first day of each and every month. Levies are exclusive of VAT (ie VAT is to be added).

55.2 Members must pay their levies by stop order or debit order. Failing which, the company shall be entitled to charge an administration fee for each month that payment is made in any other way. The administration fee shall be determined by the Board from time to time and, until varied by the Board, such administration fee shall be an amount equal to 5% of the monthly levy (plus VAT) per month.

**56 Interest on levies**

Interest at 2% per month (or at such other rate as the finance committee may determine from time to time) shall accrue on levies not paid on due date.

**57 Increase of levies**

The finance committee shall be entitled to review the levies from time to time in its discretion.

**58 Special levies**

The finance committee may from time to time –

- 58.1 Make special levies upon the members in respect of any expenses of the company which were not included in the budget or which were underestimated in the budget;
- 58.2 Determine the terms of payment of the special levy; and
- 58.3 Determine that a special levy shall be payable exclusively by a specified class of levy payer (or determine that a special levy be allocated on a differential basis between classes of levy payer).

**59 Capital expenditure**

The finance committee shall not be entitled, without a resolution of members in general meeting, to undertake capital expenditure on any one item which exceeds or is likely to exceed R1 000 000. This amount shall be increased annually in accordance with the CPIX as published from time to time. This increase may not exceed five years without a resolution of members in a general meeting.

**60 Levy Stabilisation Fund**

- 60.1 A Levy Stabilisation Fund has been established for the purpose of generating funds for infrastructural improvements of a capital nature to the Estate. The Levy Stabilisation Fund may not be used for operating expenses.
- 60.2 The Levy Stabilisation Fund shall be managed by the board of directors.
- 60.3 The seller of any unit on the Estate must contribute to the Levy Stabilisation Fund 1% of the purchase price for any unit, including all the immovable structures erected on the unit. Where the sale was concluded with the services of an estate agent who is accredited by the company, the contribution to the Levy Stabilisation Fund shall be deducted from the commission due to the agent.
- 60.4 Contributions to the Levy Stabilisation Fund shall be made on the date of registration of transfer from the funds of the seller. The conveyancer shall ensure that the contribution is made.

60.5 If a unit is transferred by way of a donation or inheritance, then the contribution to the Levy Stabilisation Fund shall be calculated at 1% of the fair market value of the unit, as determined by a valuer appointed by the company.

## 61 **Accounts**

The notice of the annual general meeting shall be accompanied by audited financial statements for the past financial year.

## 62 **Application of optional provisions of the Companies Act (audit etc)**

62.1 This company elects, in terms of section 34(2) of the Companies Act, to comply voluntarily with the enhanced accountability requirements of Chapter 3 of the Companies Act to the following extent: the financial statements of the company shall be audited once in every financial year.

62.2 This Company, in terms of section 34(2) of the companies act will have the financial statements audited once every year.

## 63 **Building committee**

63.1 A building committee has been established for the Estate. The building committee has adopted the building code, which applies to the Estate.

63.2 The building committee comprises –

63.2.1 Two architects appointed by the company;

63.2.2 Two directors of the company appointed by the board; and

63.2.3 The General Manager or his nominee.

63.3 The building committee must -

63.3.1 Consider and approve building plans in accordance with the applicable bylaws and the building code;

63.3.2 Determine the position of each building to be built on the Estate, whether on common property or on a unit (the position of a building

on a unit shall be determined in consultation with the owner, subject to the condition that the committee's discretion shall prevail in the event of any disagreement);

- 63.3.3 Impose height restrictions on buildings;
  - 63.3.4 Approve on an annual basis a list of accredited architects, designers and builders entitled to do work on the Estate (subject to the payment of an annual accreditation fee approved by the finance committee from time to time);
  - 63.3.5 Ensure that all landscaping and gardening on the Estate takes place in accordance with the Estate's landscape philosophy including landscape and gardening standards which are published from time to time;
  - 63.3.6 Ensure that acceptable building standards are maintained throughout the Estate;
  - 63.3.7 Impose such other rules as may be required to give effect to its powers and duties; and
  - 63.3.8 Cause minutes to be recorded of all its decisions and cause them to be submitted to the board of directors for noting and recording purposes.
- 63.4 The building committee must approve the accredited architects, designers and builders with a view to ensuring that buildings on the Estate are built to an acceptable standard. In order to maintain standards and to facilitate administration, the list of accredited service providers shall, in each year, be limited to 15 architects.
- 63.5 The submission fee for building plans shall be as determined by the finance committee from time to time.
- 63.6 The building committee shall be entitled, from time to time, to recommend to the board additional rules or amendments to the building and/or landscaping code in order to ensure that an acceptable quality of building standards and aesthetics is maintained. Any additional rules or amendments shall be considered by the board and may be adopted as is, amended or



rejected. These additional rules or amendments to the building and/or landscaping code will stand until ratified or set aside at the next annual general meeting.

**64 Building plans and approved builders**

64.1 Every building plan for a building on the Estate must be prepared, at the owner's expense, by an architect or designer who is accredited by the building committee and who appears on the list of approved architects and designers referred to in paragraph 63.3.4.

64.2 No building operations may be carried out –

64.2.1 Except in accordance with a plan approved by the building committee;

64.2.2 Except by a builder accredited by the building committee and who appears on the list of approved builders referred to in paragraph 63.3.4; and

64.2.3 Unless all statutory regulations have been complied with.

**65 Compliance with the building code**

65.1 Subject to the provisions of the building code, no member or body corporate in whom any common property is vested may, without the written consent of the building committee:

65.1.1 change the colour of the exterior walls of the unit or building concerned, the colour of the exterior of the doors and window frames thereof, or any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;

65.1.2 replace any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds shutters, awnings or ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon construction of the unit, with such items of the same nature and of similar appearance;

- 65.1.3                    make any additions or extensions to the unit or buildings or erect any further buildings or structures or fences whether of a temporary or permanent nature upon any land vested in him in the township;
- 65.1.4                    remove any fixtures, fittings, doors, windows or demolish any portion of the exterior of any unit or building;
- 65.2                      In the event of the destruction of any unit, and the owner thereof deciding to rebuild such unit, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the company, which shall within 21 days of such submission to it, submit any comments which it may have in connection therewith to the building committee and the local authority.

**66      Powers of the building committee**

- 66.1                      The building committee may serve notice on any member whose unit is unsightly or injurious to the amenities of the surrounding area or the estate generally, to take such steps as may be specified in the notice to eliminate the unsightly or injurious condition.
- 66.2                      If the member fails to take the specified steps within 30 days of written notice, the General Manager shall be empowered to take those steps or cause such steps to be taken and the board may recover the cost from the owner.
- 66.3                      The building committee must determine the routine maintenance requirements-
  - 66.3.1                      Of the exterior of each and every building within the common property on the Estate and instruct the General Manager to attend to such requirements from time to time;
  - 66.3.2                      Of all open spaces and roads on the estate, in accordance with the provisions of the building code; and
  - 66.3.3                      Of all other ground on the estate not covered by buildings whether held by the company or by members, either individually or in undivided shares.

66.4 The General Manager may, when instructed by the building committee, take such steps as may be required by the committee and recover the cost from the members.

67 **Maintenance of units and common property**

67.1 The maintenance of services and the common property shall be controlled by the General Manager on the instructions of the board of directors.

67.2 For purposes of exercising its functions, the building committee, any of its members and the General Manager or his nominee, shall be entitled to access any unit and the surrounds thereof at all reasonable times.

68 **Building period**

68.1 Once a member begins building, building operations must be continuous and the building must be completed within 12 months from the date of commencement of construction.

68.2 If a member does not complete construction within the period referred to in clause 68.1, then the member shall be liable to pay in respect of a freehold property, triple the levy which would otherwise be payable in respect of the property concerned (this penalty shall be known as "**the building period penalty**").

68.3 The building period penalty may be amended from time to time by special resolution of the members.

69 **Building deposit**

69.1 Before beginning to construct a building on a unit, a member must pay a deposit to the company as security for any damage which may be caused to the Estate, including but not limited to any landscaping required to reinstate any portion of the Estate. The deposit may be determined by the board of directors from time to time.

69.2 The Building Deposit is fully refundable subject to inspection on completion of the developed property, provided that no damage has been done by the contractor, his agent or sub-contractor to any common property and/ or surrounding developments during the course of construction.

69.3 The building committee is entitled to access the site for the full duration of the construction period and may call on the member to undertake additional landscaping prior to any portion of the deposit being refunded to the owner.

**70 Medium density properties**

70.1 It is recorded, in order to avoid confusion, that –

70.1.1 Whenever it is necessary to determine the rights and obligations of the owner of a medium density property, these will be determined by reference to the number of units proposed for that property in the town planning scheme, regardless of the number of units actually established and irrespective of the number of structures erected on that property.

70.1.2 The medium density properties, and the number of units proposed for each of those properties, are as follows:

70.1.2.1 The village centre at Erf 2155 consisting of 29 sectional title units; and

70.1.2.2 Erf 335/13 consisting of 5 sectional title units.

70.1.3 The owner of a medium density property is obliged to –

70.1.3.1 Pay a levy;

70.1.3.2 Pay a special levy;

70.1.3.3 Make the contribution towards the Levy Stabilisation Fund referred to in clause 60;

70.1.3.4 Pay the building period penalty referred to in clause 68.2; and

70.1.3.5 Pay a building deposit referred to in clause 69,

in respect of each of the units proposed for that property in the town planning scheme.

70.2 The owner of a medium density property is entitled to one vote at every general meeting of the company in respect of each of the units proposed for that property in the town planning scheme.

**71 Landscaping and gardening**

71.1 The company shall, in the discretion of the Board, undertake all landscaping and gardening activities on any residential erf on the Estate.

71.2 No person may undertake any planting, landscaping or gardening activities on any residential erf, or make any alterations to the existing landscaping or vegetation, except with the written consent of the General Manager, which consent shall specify-

71.2.1 the area in which landscaping or gardening is permitted;

71.2.2 the nature of the landscaping or gardening activities which are permitted; and

71.2.3 the plant materials and types which may be used in that area and the locations in which they may be planted.

71.3 The finance committee shall be entitled to categorise gardens by size and to charge a differential gardening levy for landscaping and gardening carried out in gardens on the Estate.

**72 Boundary fences**

No person may erect a boundary fence around a unit without a plan approved by the building committee.

**73 Access by neighbours**

73.1 All members shall be obliged to allow reasonable access to their neighbours for the purpose of maintaining abutting walls and appurtenances.

73.2 Access shall be subject to prior consent by the company and any rules made by the building committee from time to time.

**74 House rules**

74.1 The board of directors may make house rules, as contemplated in section 15(3) of the Companies Act, on the following topics:

74.1.1 The use by members or their households, their guests, and lessees, of the roads, open spaces and the sporting and other amenities [this power shall include the right to prohibit, restrict or control the use

of the roads and open spaces or any portions thereof as may from time to time be necessary or expedient];

74.1.2 The preservation of the natural environment, vegetation and fauna as appropriate for the Estate which is, in the first instance, a residential estate;

74.1.3 The use of parking areas;

74.1.4 The right to prohibit, restrict or control the keeping of any animals or pets;

74.1.5 The use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;

74.1.6 The control of commercial erven;

74.1.7 The placing of movable or other objects upon the outside of buildings, including the power to remove any such objects;

74.1.8 The keeping of flammable substances;

74.1.9 The conduct of any persons within the Estate for the prevention of nuisance of any nature to any member;

74.1.10 The use of any residential erf on the Estate;

74.1.11 The use of golf carts on the Estate;

74.1.12 The use of the beach and the lagoon; and

74.1.13 The number of visitors permitted to stay overnight per unit.

74.2 The board of directors may make, and amend, the house rules by -

74.2.1 delivering a copy of those rules or any notice of amendment to each member by ordinary mail or email, provided that a member shall be deemed to have received a copy of the rules if sent to his or her last known email address; and

74.2.2 filing a copy of the rules or any notice of amendment with the Companies and Intellectual Property Commission.

74.3 In order to enforce the house rules, the directors may:

- 74.3.1 Take or cause to be taken such steps as they may consider necessary to remedy a breach of a house rule, and debit the cost to the member concerned (which amount shall then be deemed to be a debt owing by the member concerned to the company); and/or
- 74.3.2 Impose a system of fines or other penalties (until ratified or set aside at an annual general meeting, a fine or penalty may not exceed R10 000 (plus VAT)); and
- 74.3.3 Take such other action including legal proceedings, as they may deem fit.
- 74.4 A breach of the house rules by a member's household, or his guests, or lessees, shall be deemed to have been committed by the member himself (but, without prejudice to this principle, the board of directors may in its discretion also take or cause to be taken such steps against the person actually committing the breach).
- 74.5 The board of directors shall appoint a disciplinary committee to hear representations from any member who disputes that he is guilty of a breach of the house rules.
- 74.6 The disciplinary committee shall comprise at least one member of the Board of the company and one other person appointed by the board (who need not necessarily be a member of the company). The board shall appoint the chairperson of the disciplinary committee.
- 74.7 The disciplinary committee 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 chairperson may direct.
- 74.8 It shall be the duty of the General Manager, or such other person or body as may be empowered by the directors, to ensure compliance by the members, their guests, lessees, and all other persons within the Estate, with the house rules and to this end, to issue such notices, impose such fines or do such things as may be necessary or requisite.

**75 Compliance with the house rules; the objects of the company**

75.1 Each member undertakes to comply with the house rules, and to ensure that their households, their guests, and lessees also comply.

75.2 Each member shall, to the best of his ability, further the objects and interests of the company.

**76 Legal remedies**

76.1 The rights given to the company in terms of this Memorandum of Incorporation are in addition to, and without prejudice to, any of the rights which the company may have to proceed against a member, either to recover any arrear levies or other monies or to claim specific performance, damages or any recourse in law.

76.2 A member shall be liable for, and shall pay, all legal costs, including costs on an attorney own client scale, and collection commission, expenses and all other charges incurred by the company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by a member to the company or in obtaining compliance with the house rules or any provision of this Memorandum of Incorporation.

76.3 If the member disputes the legal costs incurred by the company, then the parties agree that the company may refer the bill of legal costs prepared by the attorney to the Fee Assessment Committee of the Law Society for consideration and determination, and the decision of the Fee Committee shall be final.

**77 Common property**

77.1 No common property owned by the company may be –

77.1.1 Sold;

77.1.2 Let;

77.1.3 Alienated or otherwise disposed of;

77.1.4 Subdivided;

77.1.5 Transferred;



- 77.1.6 Mortgaged; or
- 77.1.7 Subjected to any rights, whether registered in the Deeds Registry or not (except for servitudes intended to protect the rights of members and ensure that services are maintained and protected for the benefit of members of the company),
- except in circumstances laid down in the Conditions of Establishment of the estate or with the support a special resolution of the members of the company.
- 77.2 Nothing in this Memorandum of Incorporation shall be construed as preventing the company from building upon any erven owned by it any buildings or other improvements which it may be entitled to erect in terms of the town planning scheme, and as may be approved by the municipality.

## 78 **Use of common property**

The company may, in its discretion, permit the members, subject to the provisions of this Memorandum of Incorporation, to use the common property (unless the members resolve otherwise by special resolution). The directors may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part of the common property, subject to reasonable privacy of members being respected at all times.

## 79 **Amenities committee**

- 79.1 At the board's discretion:
- 79.2 There shall be established an amenities committee comprising 2 directors nominated by the board of directors and the General Manager.
- 79.3 The amenities committee shall have control of all sporting, social and recreational facilities and amenities within the Estate, excluding the golf course, and may lay down such fees and rules as it may consider necessary from time to time for the use of any these amenities by members.
- 79.4 The amenities committee may establish or permit the establishment of clubs or associations of members to control and regulate the use of any sporting, social and recreational facilities, and may delegate to the committees of these clubs or associations any or all of its functions, powers and duties in relation to the particular facility or amenity concerned as it may deem fit.

**80 Prince's Grant Golf Club**

- 80.1 Every member of the company must also be a member of the Prince's Grant Golf Club for as long as he or she is the registered owner of a unit on the Estate, and may not resign or otherwise terminate membership of the Golf Club.
- 80.2 As such, a member of the company must comply with the constitution, rules and regulations adopted by the Prince's Grant Golf Club from time to time.
- 80.3 One full membership shall be attached to each unit or share block.
- 80.4 Membership to the Prince's Grant Golf Club will not be exclusive to members of the company.
- 80.5 A golf committee has been established, which shall consist of 5 persons elected by the members of the Golf Club. The members of the golf committee shall elect, from amongst their number –
- 80.5.1 A Golf Captain; and
- 80.5.2 A Lady Captain.
- 80.6 The golf committee shall forward the names of the golf committee members, including the Golf Captain and the Lady Captain to the board for noting.
- 80.7 The duties of the golf committee are set out in the Golf Club Constitution and are limited to:
- 80.7.1 To monitor and ensure that the game of golf be played in accordance with the rules approved by the Royal and Ancient Golf Club of St Andrews and such local rules as may be formulated from time to time and with duties specifically defined under R & A Rule 33 – The Committee
- 80.7.2 Compiling an annual fixtures list;
- 80.7.3 Approving the annual budget of the golf club (prior to presentation to the board of directors of the company for approval);
- 80.7.4 Monitoring golf club income and expenditure on a monthly basis;
- 80.7.5 Promoting the golf course, ensuring discipline on the course and communicate with the members regarding golfing matters;

- 80.7.6 Advising the General Manager and the board of directors regarding the setting of playing fees; and
- 80.7.7 Approving sponsorship and temporary course advertising proposals.
- 80.8 The Committee, through the Captain, shall liaise with the General Manager regarding all golf issues including improvements and changes to the golf course maintenance practices.
- 80.9 The General Manager or his nominee must attend meetings of the golf committee

**81 Golf Course Custodian's committee**

- 81.1 There shall be established a golf course custodian's committee.
- 81.2 The objective of the golf course custodian's committee is to ensure that the integrity of the Estate's golf course is maintained. Without limiting the generality of the foregoing, the custodian's committee shall ensure that -
  - 81.2.1 The course retains and develops the character of a KwaZulu-Natal coastal golf course, which, in time, must be seen to have been hewn out of the natural coastal bush (in considering what constitutes a natural KwaZulu-Natal coastal course, reference should be made to the Durban Country Club's first 5 holes insofar as they existed in 1994);
  - 81.2.2 The 8th, 9th, 10th and 11th holes have a unique links character about them and these aspects are protected and enhanced, where possible;
  - 81.2.3 The golf course maintains a natural feel to it and that man-made features do not detract from the natural setting of the golf course and its surrounds (and, when a man-made feature is built, that feature must be built in a way to complement the golf course and the Estate);
  - 81.2.4 The golf course is maintained and developed with the objective of being one of the top championship golf courses in KwaZulu-Natal;
  - 81.2.5 It strives to continually upgrade and/or improve the golf course, so as to keep pace with advancements in golf course architecture and modern maintenance methods and standards.
- 81.3 The Custodian Committee shall consist of

- 81.3.1 The President of the golf club;
- 81.3.2 The Golf Captain
- 81.3.3 The immediate past Golf Club Captain;
- 81.3.4 A lady member of the golf club nominated by the board of directors of the company; and
- 81.3.5 A nominee of the board of the directors of the company, who need not necessarily be a member of the company but who shall be chosen by the board, after consultation with the golf committee, because of his or her special knowledge of golf courses, golf course architecture or golf course maintenance.
- 81.4 The Custodian's committee shall be entitled to co-opt 2 additional members onto the committee, who need not necessarily be members of the company but who shall have a special knowledge of golf courses, golf course architecture or golf course maintenance.
- 81.5 At all times the majority of the committee shall be members of the company.
- 81.6 No changes to the golf course shall be made by the company or the golf committee without first obtaining the approval of the custodian's committee and the board of the directors of the company.
- 81.7 The custodian's committee shall meet not less than twice per annum and shall submit an annual report to the board of directors for consideration.

## 82 **Operating of businesses on the Estate**

No person may operate a business on any unit on the Estate:

- 82.1 Which is not in accordance with the town planning scheme; and
- 82.2 Without the board of directors of the company having first granted written consent on such conditions and for such period as they may deem fit.
- 82.3 It will be the right of the board at their discretion to revoke this consent.
- 82.4 The board of directors will not unreasonably withhold written consent and will be guided by *inter alia* the considerations as set out in Clause 15 of the Estate Rules.

## 83 Service of notices

83.1 Each member of the Association's *domicilium citandi et executandi* which shall not be a post office box or poste restante and shall be the address for service of all legal processes, notices and other documents, shall be their physical unit address at the Estate. Each member must further provide the following information insofar it exists:

83.1.1 Postal address;

83.1.2 Email address;

83.1.3 Telefax number;

83.1.4 Telephone number; and

83.1.5 Cell phone number.

83.2 A notice may be served by the company upon any member, either personally, by electronic mail or by sending it via the post in a prepaid registered letter, addressed to such a member's *domicilium citandi et executandi*, provided that copies of all notices shall be sent to the mortgagee [if any] of that member's unit.

83.3 A notice will be presumed, unless the contrary is proved, to have been given:

83.3.1 if posted by prepaid registered post, 5 days after the date of posting thereof;

83.3.2 if hand delivered during business hours on a business day, on the day of delivery;

83.3.3 if sent by telefax, on the first business day following the date of sending; and

83.3.4 if sent by electronic mail, on the day of sending.

83.4 It shall be the onus of each member of the Association to notify the board of directors in writing of a change in *domicilium citandi et executandi* which shall not be a post office box or poste restante, within 5 days of the member's change in *domicilium*.

**84 Access to the estate**

The directors shall take such measures as are necessary to ensure that the general public, with the exception of members, their guests, lessees, and members of their families and such other persons as the directors may reasonably permit, are excluded from the estate. No resolution to alter the terms of this clause shall be taken unless simultaneously with the taking of such resolution, a resolution is taken to widen and reconstruct the roads to such specification as may comply with the standard requirements of the Municipality.

**85 Estate agents**

85.1 Only estate agents approved by the company and whose names appear on a list of accredited estate agents published by the company from time to time may sell property on the Estate.

85.2 Estate agents may apply to become approved to sell properties on the Estate, subject to the successful completion of the company's induction course and such other requirements as may be required by the company.

85.3 Every approved estate agent shall be obliged to pay to the company an annual accreditation fee, which fee shall be determined by the finance committee and which fee shall be divided into a fixed annual fee as determined from time to time and an amount equal to 0.25% of the purchase price on any unit sold by that agent.

**86 "For sale" signs**

No "For Sale" signs or "Sold" signs shall be erected on units without the written consent of the company.

**87 Disclaimer**

87.1 The company shall not –

87.1.1 be liable for any injury or death to any person, damage to or loss of any property to whomsoever it may belong, occurring or suffered on the Estate regardless of the cause thereof; or

87.1.2 be responsible for any theft of property occurring on the Estate.

Members shall not, under any circumstances, have any claim or right of action whatsoever against the company for injury, death, damages, loss or otherwise, or be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

- 87.2 The company, its directors, employees and agents shall not be liable to any member or any of the member's lessees, or their respective employees, agents, invitees or customers or any member of the public dealing with the member or any lessee for any injury or death or loss or damage of any description which the member or any such other person aforesaid may suffer or sustain whether directly or indirectly on or about the Estate, regardless of the cause thereof.

## 88 **Winding up**

- 88.1 No resolution for the winding-up or dissolution of the company and the transfer of the company's assets shall be taken unless –

88.1.1 The company has made adequate provision for the rights of members to obtain access to their units; and

88.1.2 The rights of members to exclusive use of any areas have been safeguarded, if necessary, by registration of servitudes, at the cost of the member concerned if the member so requires.

- 88.2 If the company is wound up, deregistered or dissolved, the assets of the company remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution having objects similar to its main object, to be determined by the members of the company at or before the time of its dissolution or, failing such determination, by the court.

## 89 **Access ways**

Notwithstanding that erven and share blocks may be held either individually or in undivided shares by members, members shall be obliged at all times to allow any persons, lawfully on the Estate, access to any unit by means of any formed or paved access way, including driveways, parking areas and pathways.

90 **Access by the company**

Every member shall be obliged to allow the company or its service providers access to any unit at reasonable times for purposes enabling the company to carry out its obligations or exercise its rights in terms of this Memorandum of Incorporation.

91 **Body corporates**

91.1 Notwithstanding that members hold title to their units individually, and notwithstanding that in those cases where the units concerned are held under the Sectional Titles Act, the body corporate as defined in that Act is accorded certain powers and duties, it is recorded that the development of the township is of a homogeneous nature and that the company shall be vested with the overall control of all matters affecting the township. To this end the members agree:-

91.1.1 To do all in their power to procure that the body corporate in each sectional title development, shall delegate its powers and duties to the company;

91.1.2 In the event of any association of members being formed within the township, specifically for owners of certain erven or certain classes of members, the members forming such association hereby agree to do all in their power to procure that the powers and duties of any such association are delegated to this company; and

91.1.3 The company may in turn delegate the powers and duties delegated to it in terms of paragraphs 91.1.1 and 91.1.2 to such other person or company as it may deem fit.

91.2 Subject to the provisions of the town planning scheme and the applicable building regulations, no member or body corporate in whom any common property is vested may, without the written consent of the building committee: -

91.2.1 change the colour of the exterior walls of the unit or building concerned, the colour of the exterior of the doors and window frames thereof, or any fixture or fitting but excluding, any door and window handles, locks, knockers and similar ornaments upon the exterior thereof;

91.2.2 replace any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds, shutters, awnings or



ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon construction of the unit, with such items of the same nature and of similar appearance;

91.2.3 make any additions or extensions to the unit or buildings or erect any further buildings or structures or fences whether of a temporary or permanent nature upon any land vested in him in the township; and

91.2.4 remove any fixtures, fittings, doors, windows or demolish any portion of the exterior of any unit or building.

## 92 Exclusive use

92.1 Notwithstanding that portions or the whole of residential erven may be held in undivided shares by any members, the directors shall have power to allocate for the exclusive use of any single member owning an undivided share in the erf concerned, in respect of each unit or share block held by him -;

92.1.1 areas which shall not in the aggregate exceed fifty square metres for purposes of –

92.1.1.1 a carport and drying yard:

92.1.1.2 a storeroom;

92.1.1.3 staff quarters for a single servant (provided however that the directors may allocate the exclusive use of staff quarters on any erf to any owner of a unit or share block in the Estate, notwithstanding that such quarters are not upon the erf in which such owner owns an undivided share, subject however to any restrictions contained in any deed of servitude or agreement in terms whereof the company is empowered to grant such exclusive use); and

92.1.2 any other area, facility or amenity which the directors in their discretion may deem it reasonable or desirable so to allocate (such areas need not be contiguous to the unit of the member concerned, nor to one another).

92.2 The directors may in allocating exclusive use areas as set out in paragraph 92.1, lay down conditions regarding the maintenance and use of such areas.

92.3 The company may at all times enforce and give effect to all the terms and conditions of any such exclusive use agreements, both as between itself and the member concerned, and as between the member concerned and any other person. The General Manager may at any time remove any person from any area set aside for the exclusive use and enjoyment of any member unless such member advises the General Manager that such person is entitled to be within such area

93 **Delegation**

The powers of the committees established in terms of this Memorandum of Incorporation, and the powers of the board of directors, and the powers of the company generally may be delegated to the General Manager to such extent and upon such conditions as the directors may determine from time to time, and such delegations may from time to time be revoked either in whole or in part or the conditions of such delegations may be changed as the directors may from time to time deem fit.

94 **Fidelity insurance**

The General Manager shall be obliged to take out fidelity insurance, to be paid for by the company and to the satisfaction of the directors for all moneys held by the General Manager on behalf of the company from time to time.