



**MEMORANDUM OF INCORPORATION / CONSTITUTION OF
CHAPMANS PEAK ESTATE HOME OWNERS ASSOCIATION NPC**

REGISTRATION NUMBER: 2024/235945/08

TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS.....	4
2. NATURE OF THE ASSOCIATION.....	8
3. MEMBERSHIP	10
4. MANAGEMENT OF THE ASSOCIATION.....	10
5. MANAGING AGENT.....	10
6. LEVIES	9
7. CONSTRUCTION ACTIVITIES AND SERVITUDES	12
8. INSURANCE	13
9. COMMON PROPERTY AND SERVICES	14
10. RESTRICTION OF TRANSFER	14
11. GENERAL MEETINGS	16
12. NOTICE OF GENERAL MEETINGS	17
13. PROCEEDINGS AT GENERAL MEETINGS	17
14. VOTING AT GENERAL MEETINGS	18
15. PROXIES	19
16. COMPOSITION OF THE BOARD OF DIRECTORS	20
17. ALTERNATE DIRECTORS	21
18. ROTATION OF DIRECTORS	21
19. REMOVAL AND DISQUALIFICATION OF DIRECTORS.....	21
20. PROCEEDINGS OF DIRECTORS	22
21. POWERS OF DIRECTORS.....	23
22. REMUNERATION OF DIRECTORS	24
23. COMMITTEES	24
24. MINUTES.....	25
25. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES	25
26. ACCOUNTING RECORDS.....	25
27. AUDITOR.....	26

28. RESERVES 26

29. NOTICES 26

30. INDEMNIFICATION OF DIRECTORS..... 26

31. GENERAL 27

32. DISPUTES 29

33. AMENDMENT 30

RECORDAL

It is recorded that –

1. The Municipality requires the establishment of an Association as part of its Conditions of Approval for the subdivision of the Property;
2. The Developer has elected to establish the Association as a Non-Profit Company ("**NPC**") in terms of the Companies Act, 2008 ("**Act**");
3. The Memorandum, which is the founding document of the NPC, constitutes the "Constitution" of the Association for the purpose of section 61 of the Municipal Planning By-law, 2015 ("**MPBL**");
4. Any amendments to the Constitution are to be done in terms of the Memorandum, subject to the approval of the Municipality as required in terms of section 61(5) of the MPBL.

Adoption of Memorandum of Incorporation

1. This Memorandum of Incorporation was adopted by the Board of the Association, in accordance with Section 16 (1) of the Act.
2. In this Memorandum of Incorporation -
 - (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008; and
 - (b) words that are defined in the Companies Act, 2008 bear the same meaning on this Memorandum of Incorporation as in that Act, unless defined herein.

In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings -

1. DEFINITIONS

In these Memorandum, unless the context otherwise indicates:

- | | |
|------------------------------------|--|
| 1.1. " Act " | the Companies Act No 71 of 2008, as amended from time to time; |
| 1.2. " A&L Guidelines " | the Architectural and Landscape Guidelines, including the Master Landscaping Plan, approved by the Developer and the Municipality, which are binding on all Members and a copy of which is available on the Website; |
| 1.3. " ARC " | the Architectural Review Committee appointed by the Developer during the Initial Period and thereafter by the Board from time to time, subject to compliance with the A&L Guidelines; |
| 1.4. " Association " | Chapmans Peak Estate Home Owners Association NPC, registration number: 2024/235945/08, a non-profit company registered in terms of the Act and established in compliance with section 61 of the MPBL; |
| 1.5. " Auditors " | the auditors of the Association appointed by the Board |

- from time to time;
- 1.6. **“Board”** the board of Directors of the Association established in terms of clause 16 hereof;
- 1.7. **“the Body Corporate”** any body corporate constituted in terms of the Sectional Titles Act with regard to a Scheme;
- 1.8. **“C&O Manual”** means the Construction and Operational Manual as provided for in this Constitution and the Governing Rules and which is binding on all Members, a copy of which is available on the Website;
- 1.9. **“Chairperson”** the chairperson of the Board;
- 1.10. **“Common Property”** any common property as defined in the Sectional Titles Act unless such common property is subject to an exclusive right of use or, in the opinion of the Directors, is such that from its position should not form part of the Common Property;
- 1.11. **“Communal Property”**
- (i) all property owned by the Association, or to which the Association has acquired rights, whether by servitude or otherwise, including private open spaces, private streets or roads, buildings, infrastructure, Services, and amenities as required from time to time;
 - (ii) any land which may be designated in any manner or in terms of any law or condition or authority for use communally by Members and/or their guests;
 - (iii) any land designated by the Association for the purposes of communal property;
 - (iv) all access gates and entry points on the Property;
- 1.12. **“Conditions of Approval”** the conditions of approval for the subdivision of the Property issued by the Municipality to the Developer in respect of the Development;
- 1.13. **“Constitution”** the Memorandum of the Chapmans Peak Estate Home Owners' Association NPC, set out in this document, and as may be amended, from time to time in terms of the provisions hereof subject to the approval of the City of Cape Town in terms of section 62(4) of the MPBL;
- 1.14. **“Developer”** Amdec Residential Developments Proprietary Limited, (Registration Number 2003/001385/07) or its successors in title;
- 1.15. **“Developer's Directors”** the Directors appointed by the Developer;
- 1.16. **“Development”** the residential and associated infrastructure development to be established on the Property, known as Chapmans

- Peak Estate;
- 1.17. **“Director”** a member of the Board;
- 1.18. **“Dwelling”** the construction of a building on an Erf suitable for occupation and/or use for residential purposes by natural persons,
- 1.19. **“EMF Levy”** the levy payable by Members to the Association to establish and maintain the Environmental Management Fund, as required in terms of the OEMP and such EMF Levy is included in the amount of the Levy;
- 1.20. **“Erf/Erven”** A vacant erf or an erf upon which there is 1 (one) completed Dwelling within the Development and “Erven” shall mean more than one Erf;
- 1.21. **“Financial Year”** the financial year of the Association as determined by the Association from time to time;
- 1.22. **“Governing Rules”** the governing and conduct rules for the Development established by the Developer and as implemented and amended, after the Initial Period, by the Board from time to time, a copy of which is available on the Website;
- 1.23. **“Initial Period”** the period from the registration of the Memorandum until the Developer is no longer the registered Owner of any Erf or portion of the Property; provided that the Initial Period may end at any time prior to the said dates by the Developer giving written notice to the Association that the Initial Period has ended;
- 1.24. **“Land Unit”** An Erf or Erven arising from the subdivision of the Property;
- 1.25. **“Levy”** the monthly levy payable by the Owner to the Association which includes the EMF Levy and excludes the Stabilisation Levy, as outlined in clause 6 below;
- 1.26. **“Managing Agent”** any person appointed by the Developer during the Initial Period and thereafter by the Board to undertake any of the management functions of the Association, as described in clause 5 below;
- 1.27. **“Master Landscaping Plan”** the landscaping and planting list applicable to the Property in general as well as specifically to all Land Units and Sectional Title Units, in respect of the Development and which plan forms part of the A&L Guidelines;
- 1.28. **“Members”** a member of the Association as defined in clause 3 below;
- 1.29. **“Memorandum”** the Memorandum of Incorporation / Constitution (as defined in clause 1.13) of the Association as amended from time to time;

- 1.30. **“Municipality”** the municipality of the City of Cape Town;
- 1.31. **“OEMP”** Operational Environment Management Plan, as required and approved by the Municipality and binding on the Association and all Members, to be enforced by the Association and a copy of which is available on the Website;
- 1.32. **“Owner”** the registered owner of a Sectional Title Unit or a Land Unit;
- 1.33. **“Penalty”** the monthly Penalty imposed by the Association if the construction of a Dwelling or Dwellings on an Erf/Erven is not commenced with and completed by an Owner within the restrictive timelines provided for in the Governing Rules;
- 1.34. **“Property”** the area of Land comprising:
- (i) Erf 704 (a portion of erf 552), Chapmans Peak, in the City of Cape Town, Province of the Western Cape
 - (ii) or any subsequent sub-divisions or consolidations thereof;
- 1.35. **“Residential”** in relation to the land use, shall mean permitted for residential use in terms of the relevant town-planning scheme;
- 1.36. **“Rules”** the Memorandum and/or any other rules, regulations, statutes and by-laws applicable to the Association and the Members, from time to time;
- 1.37. **“Scheme”** an Erf with the maximum number of (2) two completed Dwellings upon which a scheme must be registered under the Sectional Titles Act;
- 1.38. **“Sectional Titles Act”** the Sectional Titles Act, No 95 of 1986, as amended or the Sectional Title Management Act, No. 8 of 2011, as amended (as the case may be);
- 1.39. **“Sectional Title Unit”** a Dwelling which is a sectional title unit (including its exclusive use area), as defined in the Sectional Titles Act;
- 1.40. **“Services”** the infrastructural utilities, amenities, internal engineering services structures or improvements installed or to be installed on the Property by the Developer, the Association or the Municipality, from time to time and specifically in accordance with the Conditions of Approval;
- 1.41. **“Statutes”** the Act and any and every other statute or ordinance from time to time in force concerning companies and/or necessarily affecting the Development or the Association;

- 1.42. **“Stabilisation Levy”** the stabilisation levy payable by Members to the Association, as set out in clause 6 below;
- 1.43. **“Website”** the website at www.chapmanspeakestate.co.za;
- 1.44. words importing the masculine gender includes females;
- 1.45. words importing persons shall include body corporates;
- 1.46. words in the singular include the plural and words in the plural include the singular;
- 1.47. when a provision of the Act or any Statute is referred to, the reference is to such a provision as amended by statute;
- 1.48. references to Members represented by proxy shall include Members represented by an agent appointed under a general or special power of attorney and reference to Members present or acting in person shall include corporations represented or acting in the manner prescribed by the Statutes; and
- 1.49. where any term is defined within the context of any particular clause in the Memorandum, the term so defined, unless it is clear from the clause in question that such term has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Memorandum, notwithstanding that that term has not been defined in this clause 1 above.
- 1.50. Any reference to ‘business day(s)’ shall refer to weekdays excluding a Saturday, Sunday or an official public holiday in South Africa.
- 1.51. Any reference to ‘day(s)’ or ‘complete calendar day(s)’ shall refer to any day of the week. When any number of days is prescribed in this document, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

2. **NATURE OF THE ASSOCIATION**

- 2.1. The Association is a non-profit company as defined in terms of the Act. The provisions of the Act applying to non-profit companies will apply to the Association, unless it appears different from the context hereof.
- 2.2. The Developer intends to subdivide the Property into numerous Residential Erven to form the Development.
- 2.3. The Association shall be made up of all persons who own Land Units or Sectional Title Units within the Development, as more fully set out in clause 3 below.
- 2.4. As a Residential Development comprising multiple Owners across the Development, the Association has been formed to:
- 2.4.1. safeguard the Developer’s vision to ensure the establishment of a safe and secure residential development of the utmost quality and standard;
- 2.4.2. act, promote and manage the collective mutual interests of all its Members through efficient administration, management and effective co-operative governance measures;

- 2.4.3. to establish, for administrative and operational expenses, a fund sufficient in the opinion of the Board for the repair upkeep, control, management and administration of the Communal Property, including provision for maintenance of all roads, security and services infrastructure, for the payment of rates and taxes and other charges a competent authority may prescribe and for the payment of any insurance premiums or other insurance costs, the payment of any suppliers or contractors of the Association, and for the discharge of any duty or the fulfilment of any other obligation of the Association;
- 2.4.4. to establish, for capital and any unforeseen operational expenses, a stabilisation fund sufficient in the opinion of the Board to discharge such obligations as and when they arise;
- 2.4.5. to establish an Environmental Management Fund, in compliance with the provisions of the OEMP, to allow the Association to fulfil its obligations to ensure that all alien and other invasive vegetation is cleared as much as possible from all natural systems on the Development and to ensure that all streams, rivers and wetlands on the Development are protected and maintained;
- 2.4.6. enter into an agreement or arrangement with any supplier, contractor and service provider in relation to the administration and management of the Association;
- 2.4.7. institute, control and pay for measures relating to the security of the Members and the Development;
- 2.4.8. own the Communal Property and internal engineering services arising out of the subdivision of the Property;
- 2.4.9. maintain, control, administer, insure (where necessary) and manage the Communal Property, the Services and any other services and amenities arising out of the subdivision of the Property and as required as well as buildings on land under the control of or vesting in the Association and for the benefit of all Members;
- 2.4.10. acquire and grant servitudes;
- 2.4.11. adopt, implement and enforce the approved OEMP and Governing Rules;
- 2.4.12. control the aesthetic appearance of the buildings and property within the Development, including any improvements thereon;
- 2.4.13. promote the environmental awareness and responsibility amongst Members;
- 2.4.14. control and ensure compliance with the Master Landscaping Plan including the landscaping on Communal Property;
- 2.4.15. enforce compliance with the provisions of this Memorandum, the Act, the Statutes, the A&L Guidelines, the OEMP, the Governing Rules, the Conditions of Approval, the C&O Manual and any other rules or regulations imposed by the Developer or the Association, from time to time; and
- 2.4.16. impose penalties or fines against Members, as deemed fit by the Board, who are not compliant with this Memorandum, the A&L Guidelines, the OEMP, the C&O Manual and/or the Governing Rules.

- 2.5. The Association shall be deemed to have come into existence on the date of the transfer of the first Land Unit arising from the subdivision of the Property or part thereof.
- 2.6. The Association is a juristic person and as such:
- 2.6.1. its assets, liabilities, rights and obligations shall vest in the Association independently of its Members;
 - 2.6.2. the Association shall have perpetual succession and shall be capable of suing and of being sued;
 - 2.6.3. all legal proceedings shall be brought by or against the Association, in the name of the Association, and the Board may authorize any person to act on behalf of the Association and to sign all such documents and take all such steps as may be necessary in connection with any such legal proceedings; and
 - 2.6.4. its Members shall, by reason of their membership, be jointly liable for the expenditure incurred in connection with the Association.
- 2.7. The Association shall have the power to do all such acts as are necessary to accomplish the fulfilment of the afore going objects, including, but not restricted, to powers specifically contained in this Memorandum.
- 2.8. In the event of there being a Body Corporate established in terms of a Scheme, and should such Body Corporate formulate its own rules relating to its members, if such rules are in conflict with the Rules and Constitution of this Association, then the Rules and Constitution of this Association shall prevail.

3. **MEMBERSHIP**

- 3.1. The following persons shall be Members of the Association:
- 3.1.1. the Developer in its capacity as such, whether it is the owner of a Land Unit or a Sectional Title Unit, or not, from the date of establishment of the Association until the expiry of the Initial Period as stated in clause 1.23; and
 - 3.1.2. any person who is an Owner.
- 3.2. The Association shall keep at its registered office a Register of Members of the Association, as provided for in Section 25 of the Act. The Register of Members shall be open to inspection as provided for in Section 26(2) of the Act.
- 3.3. Save for the Developer, the rights of a Member shall be personal, shall not be transferable, and shall terminate when a person ceases to be the Owner.

4. **MANAGEMENT OF THE ASSOCIATION**

The business of the Association shall be managed by the Board, who may exercise all the powers of the Association as are not required by the Act or by the Rules to be exercised by the Association in a general meeting. The Board shall exercise such powers subject to the provisions of the Act and this Memorandum and will be entitled to appoint a Managing Agent, per clause 5 below.

5. **MANAGING AGENT**

- 5.1. During the Initial Period, the Developer will be entitled to appoint any person and/or organization as the managing agent for the Development. After the Initial Period, the Board, in its sole discretion, will be entitled from time to time to appoint a Managing Agent.

- 5.2. The Managing Agent will be appointed to control, manage and administer the affairs of the Association and the Property and to exercise such powers and duties as may be entrusted by the Developer or the Board to the Managing Agent, including the power to collect Levies. Such appointment shall be on such terms and conditions as the Developer or the Board may require.
- 5.3. The Managing Agent shall be the secretary of the Board and the Association.

6. LEVIES

- 6.1. The Board shall charge Levies to the Members for the purpose of meeting all expenses which the Association has incurred, or which the Board reasonably anticipates the Association will incur, in the fulfilment of its duties and the furtherance of the objects and ancillary objects of the Association.
- 6.2. It is specifically recorded that the Association will incur all the general expenses relating to the Communal Property, including but not limited to the expenses relating to the administration, maintenance, landscaping, general development, security, and cleaning thereof.
- 6.3. Every Member who is an Owner is liable for the payment of a monthly Levy to the Association. The Association will recover its general expenses and the EMF Levy, subject to clause 6.4 below, by charging a monthly Levy against the Members (who will be jointly liable) and such monthly Levy will be calculated by dividing the aforesaid expenses of the Association by the number of Land Units and Sectional Title Units, equally.
- 6.4. In addition to the monthly Levy set out in clause 6.3 above, Members, save for the Developer, will be liable for the payment of a Stabilisation Levy to the Association, which Levy will:
- 6.4.1 be imposed upon Members for the purpose of accumulating a capital reserve fund for the Association which will primarily be used to meet the capital expenditure requirements, upgrades to infrastructure or unforeseen expenses of the Association or any other such similar requirements as determined by the Board from time to time;
- 6.4.2 be calculated at 1% (one percent) of the Sales Price payable by the Member as a once-off, lump sum payment to the Association on the resale and transfer of the Land Unit or Sectional Title Unit to a subsequent purchaser. (For the purposes of this clause, “**Sales Price**” means the gross sales price (including VAT and commission, if applicable) at which the Member has managed to resell the Land Unit or Sectional Title Unit to a subsequent purchaser, as evidenced by an agreement of sale);
- 6.4.3 be paid to the Association on transfer of the Land Unit or Sectional Title Unit, based on a guarantee or undertaking provided by the conveyancers appointed by the Member, to the satisfaction of the Association; and
- 6.4.4 be binding on all successive Owners, as Members, and any transfer of any Land Unit or Sectional Title Unit will trigger the payment of the Stabilisation Levy to the Association. A Member remains responsible for including in any agreement of sale for the transfer of a Land Unit or Sectional Title Unit, a clause pertaining to the requirement of Members to pay the Stabilisation Levy. This condition is to be included in the title deed for each Land Unit and Sectional Title Unit, imposed by the Developer in favour of the Association.

- 6.5. Any amount due by a Member in respect of a Levy and/or Penalty shall be payable by it to the Association monthly in advance on the first day of each month, save for the Stabilisation Levy. The obligation of a Member to pay a Levy and/or Penalty shall, without prejudice to the Association's right to recover arrear Levies and/or Penalties, cease upon it ceasing to be a Member. A Member's successor in title to a Land Unit or Sectional Title Unit shall be liable, as from the date upon which it becomes a Member pursuant to the transfer of that Land Unit or Sectional Title Unit into its name, to pay the Levy attributable to that Land Unit or Sectional Title Unit. No Member shall be entitled to transfer its Land Unit or Sectional Title Unit until the Association has certified in writing that the Member has as at the date of transfer fulfilled all its financial obligations to the Association as well as any other obligations or requirements pursuant to the Association and the Member must be compliant, at all times, with the provisions of this Memorandum and any other rules or regulations imposed by the Association from time to time.
- 6.6. In determining the liability of Members for the payment of Levies and/or Penalties, the Board's decision in calculating, assigning and/or allocating the Levy and/or Penalty shall, in the absence of manifest error, be final and binding on all Members of the Association and their successors in title or assigns.
- 6.7. Interest shall be payable on arrear Levies and/or Penalties at such a rate as may from time to time be determined by the Board.
- 6.8. A Member shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and any other charges incurred by the Association in obtaining the recovery of arrear Levies and/or Penalties or any other arrear amounts due and owing by such Member to the Association.
- 6.9. The Developer shall not be required to make payment of the Stabilisation Levy in respect of a Land Unit or Sectional Title Unit or any portion of the Property registered in the name of the Developer or transferred to any third party or any other entity controlled by it or its shareholders and no Stabilisation Levy will be payable in respect of any subsequent resale and transfer by any such entity or shareholder concerned to a third party.
- 6.10. The Developer shall not be required to fund any shortfall which may arise between the income received and the expenses incurred by the Association, as set out in clause 6.3, 6.4 or 6.5 above.
- 6.11. Notwithstanding clause 6, the Developer has undertaken to cover the costs and expenses of the Association for the calendar year ending 31 December 2025.

7. CONSTRUCTION ACTIVITIES AND SERVITUDES

- 7.1. No Member shall commence with construction, landscaping or building activities on any Erf without first having its plans submitted and approved by the ARC in the first instance and then, once approved by the ARC, to the Municipality for approval.
- 7.2. It is the responsibility of the Member to ensure that all building and landscape plans are prepared by a registered professional architect and professional landscape architect, in the prescribed format and in accordance with the A&L Guidelines and C&O Manual.
- 7.3. Every Member must always ensure that: prior to, during construction and on completion of a Dwelling or Dwellings, they comply with the requirements set out in this Memorandum, the A&L Guidelines, the Governing Rules, the C&O Manual, the OEMP, the Conditions of Approval, the Statutes and the MPBL.

- 7.4. The Association will remain bound by the obligations and responsibilities stipulated in the Conditions of Approval, the OEMP and the A&L Guidelines.
- 7.5. The Association will provide Members with written consent to commence with the building of a Dwelling or Dwellings as well as a completion certificate upon the completion of a Dwelling or Dwellings, in accordance with the A&L Guidelines and the C&O Manual.
- 7.6. No Member or Body Corporate, save for the Developer, may apply to the Municipality and/or any other authority with jurisdiction to change the zoning of any Erf or Unit and/or any part of the Property. All such applications shall be made exclusively by the Developer, during the Initial Period and thereafter by the Board, whether out of own volition or pursuant to a request by a Member or Body Corporate.
- 7.7. The Developer may register any servitudes, subdivide any portion of the Property, rezone the Property or construct any Buildings, additions or alterations on the Property as are required by the Conditions of Approval or the Municipality acting in accordance with the Rules and/or Statutes, where required.
- 7.8. No Member will make any alterations or improvements to any buildings on his Erf or deviate from the A&L Guidelines in any respect, without the prior approval of the ARC and the Board (who shall not approve any plans without first obtaining the approval of the ARC and, where necessary, the Municipality).
- 7.9. All costs relating to the approval of a plan by the ARC, the Board or the Municipality (as the case may be) will be for the account of the applicant, in accordance with the A&L Guidelines and the C&O Manual.
- 7.10. The Developer will register any servitudes subject to or in favour of the Association as required by the Conditions of Approval, the Municipality or the MPBL.
- 7.11. The Association, alternatively those persons in whose favour the said servitudes have been registered, will at all times have the unfettered right of reasonable access to the servitude areas as identified, and furthermore will be entitled to deposit temporarily on land adjoining the servitude, such material as may be excavated by it during the course of the construction, maintenance, repair or removal of services and/or rights protected by the said servitudes, as it in its discretion may deem necessary.
- 7.12. A Member is permitted to construct a second Dwelling, which must include the opening of a sectional title register, and only if permitted by the ARC and the Municipality, in compliance with the Conditions of Approval, the A&L Guidelines and C&O Manual and subject to the restriction that no Member may construct more than 2 (two) Dwellings per Erf and each such Dwelling must be approximately the same size in extent.
- 7.13. A Member who does not comply with the restrictive timelines for construction of a Dwelling or Dwellings, as set out in the Governing Rules, will be liable for the payment of the Penalty.
- 7.14. A Member who is in breach of any provision of the Constitution, A&L Guidelines, Governing Rules or C&O Manual will be liable for the payment of a fine or penalty, as described in the Governing Rules and it will always remain the responsibility of the Association to ensure the proper enforcement of any rules laid down by the Developer and/or the Association, from time to time.

8. **INSURANCE**

- 8.1. At the first meeting of the Board or as soon thereafter as possible, and annually thereafter, the Board shall take steps to insure all the buildings and Services on the Communal

Property and all improvements to the Communal Property within the Development with a registered insurance provider to the full replacement value thereof.

- 8.2. It will remain the responsibility of each Member, or Body Corporate as the case may be, to ensure that his Land Unit or Sectional Title Unit and any required building activities on such Land Unit or Sectional Title Unit are insured with a registered insurance provider and neither the Developer nor the Board nor the Association will assume any risk or responsibility in respect thereof.
- 8.3. It will remain the responsibility of the Body Corporate, or the Owner of a Sectional Title Unit where no Body Corporate is established, to insure all buildings on the Common Property and all improvements thereon with a registered insurance provider to the full replacement value thereof.

9. COMMON PROPERTY, COMMUNAL PROPERTY AND SERVICES

9.1. Common Property

- 9.1.1 The Common Property in the case of a Scheme shall vest in the Owners of the Sectional Title Units in such Scheme, in undivided shares as provided for in the Sectional Titles Act. Owners registering Schemes are obliged to ensure that as much as possible of the Common Property is allocated as exclusive use areas within the Scheme to avoid disputes between such Owners.

9.2. Communal Property and Services

- 9.2.1 The Association will take title to the Communal Property which Communal Property will be registered in the name of or transferred to the Association pursuant to this Memorandum and subject to the provisions of the Rules and the Conditions of Approval.
- 9.2.2 The Association shall be obliged to insure, maintain, repair, landscape (where necessary) and keep in good order and repair the Communal Property and shall be obliged, notwithstanding the functions of the Municipality, to maintain the Services and provide additional necessary services and/or amenities on the Communal Property, in accordance with the Conditions of Approval.
- 9.2.3 The Association shall be obliged to maintain, repair and keep in good order the fire trail to be constructed along the inside of the western edge of the Property which shall be able to accommodate off-road fire vehicles to the satisfaction of the Director: Fire Services.
- 9.2.4 For the purposes of 9.2 above, the Association shall be entitled to employ the services of independent contractors.

10. RESTRICTION OF TRANSFER

- 10.1. No Member shall alienate or transfer a Land Unit or a Sectional Title Unit of which it is a registered Owner unless:
- 10.1.1. it is a condition of the deed of alienation that:
- 10.1.1.1. the entity to whom such Land Unit or Sectional Title Unit is to be transferred (the "transferee") has bound itself to become a Member of the Association upon transfer of such Land Unit or Sectional Title Unit to it;

- 10.1.1.2. the registration of such Land Unit or Sectional Title Unit to the transferee shall ipso facto constitute the transferee as a Member of the Association; and
 - 10.1.1.3. upon becoming a Member the transferee shall be bound by this Memorandum, the A&L Guidelines, the OEMP, the C&O Manual and the Governing Rules (if any).
- 10.1.2. the following condition is contained in the title deed of each Land Unit and Sectional Title Unit:
- “SUBJECT to the following condition imposed by the Transferor, at the instance of the City of Cape Town, in terms of section 29 of the Land Use Planning Ordinance number 15 of 1985 when approving the subdivision of erf 704 (a portion of erf 552) Chapmans Peak:*
- The transfer of the Property may not be registered without the prior written consent of the Association of which the within transferee or his successors in title shall become a member, which consent may not be unreasonably withheld.”*
- 10.1.3. the Association, under the hand of the Managing Agent or a Director has certified in writing that the Member has fulfilled all its financial obligations to the Association in respect of the period up to and including the date specified in such notice;
 - 10.1.4. the Association, under the hand of the Managing Agent or Director has certified in writing that the Member has fulfilled all of its obligations as required under the provisions of this Memorandum and the Governing Rules;
 - 10.1.5. the transfer takes place prior to or on that specified date; and
 - 10.1.6. the transferee has agreed in writing to the conditions described in clause 10.1.1 and such written agreement has been lodged with the Association.
- 10.2. The Association may withhold its consent to the transfer of a Land Unit or Sectional Title Unit if the Member is in breach of the Constitution, Governing Rules, A&L Guidelines, OEMP or C&O Manual and only once the Member has remedied such breach, to the satisfaction of the Board, will the Association grant consent to the transfer of the Land Unit or Sectional Title Unit.
- 10.3. For the avoidance of doubt, the Association shall be entitled to refuse to consent to the transfer of a Land Unit or Sectional Title Unit if the Member has not complied with the conditions in clause 10.1 above.
- 10.4. The Association may claim from any Member or its estate any arrears of Levy or interest, any Penalty or fine or other amount due by it to the Association at the time of its ceasing to be a Member.
- 10.5. Unless as otherwise stated herein, no Member may improve any Land Unit or Sectional Title Unit without first having its plans approved by the Board, subject to the A&L Guidelines, the C&O Manual and the Governing Rules.
- 10.6. Members may only use, or permit the use of, a Land Unit or Sectional Title Unit for the purpose of short-term rentals, whether privately or as part of a rental pool, subject to the following:

- 10.6.1 the use of a platform such as AirBnB, or similar, is prohibited;
 - 10.6.2 all short-term rentals shall be for a minimum period of 7 (seven) days;
 - 10.6.3 Members must make use of rental agents who are accredited and vetted by the Developer, during the Initial Period and thereafter, the Association, unless the Developer or the Association (as the case may be) has consented in writing to the Member conducting the duties of the rental agent;
 - 10.6.4 all guests and/or tenants are to be accompanied onto the estate upon arrival by the accredited agent or the Member as an introduction to the Land Unit or Sectional Title Unit; and
 - 10.6.5 a short-term, market-related rental fee, limited to a maximum charge of 5% (five percent) of the total gross rental income generated by each and every short-term rental is payable in advance by the Member to the Association, such fee to be paid directly by the rental agent or the Member to the Association at least 1 (one) day prior to arrival of the guest/tenant. Such market related fee is to cover the Association's additional security and administration costs in relation to the admission and registration of the short-term rental,
- 10.7. In addition to the consent of the Association, a Member may not proceed to alienate or transfer a Land Unit or Sectional Title Unit without the prior written consent of the Developer, which consent is subject to the following:
- 10.7.1 a Member is restricted from selling a vacant Erf or Erven to any subsequent purchaser until such Member has completed the building of a Dwelling or Dwellings, as per the restrictive timelines set out in the Governing Rules.
- 10.8 The abovementioned restrictive condition in favour of the Developer will be registered against the title deed of all Land Units and Sectional Title Units and will only be capable of removal two years after termination of the Initial Period, with the written consent of the Developer.

11. GENERAL MEETINGS

- 11.1. The Association is not required to hold any general meetings of members other than those specifically required by the Act.
- 11.2. The Board may, whenever it thinks fit, convene a general meeting. A general meeting may further be convened on a requisition by Members in terms of Section 61 of the Act.
- 11.3. The Board shall further cause a general meeting of Members to be convened at least once in each calendar year, to be known as the annual general meeting of the Association.
- 11.4. The annual general meeting shall be held:
 - 11.4.1. at such time and place as the Board shall decide from time to time;
 - 11.4.2. not more than 6 (six) months after the end of every ensuing Financial Year of the Association; and
 - 11.4.3. within 15 (fifteen) months after the date of the last annual general meeting preceding such annual general meeting of the Association, provided that there shall be an annual general meeting of the Association at least once a calendar year.

- 11.5 The Developer, in terms of the Conditions of Approval, must call the first annual general meeting of the Members which shall take place within 60 (sixty) days of the transfer of 60% (sixty percent) of the Land Units from the Developer to third party purchasers or within 2 (years) from the first transfer of a Land Unit from the Developer to a third-party purchaser, whichever is the first to occur.
- 11.6 Members of the Association shall, at the first annual general meeting of the Association, elect the Directors.
- 11.7 The Developer, in terms of the Conditions of Approval, must within 60 (sixty) days of the first meeting of the Association, notify the Municipality that the meeting has taken place and provide the Municipality with a copy of the minutes of the meeting.

12. NOTICE OF GENERAL MEETINGS

- 12.1. Subject to the provisions of the Statutes relating to meetings of which special notice is required to be given, an annual general meeting and a general meeting calling for the passing of a special resolution by the Members, shall be called by not less than 15 (fifteen) clear calendar days' notice in writing.
- 12.2. Any other general meeting may be called by 10 (ten) clear calendar days' notice in writing.
- 12.3. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day on which it is given. It 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 permitted by the Rules and/or the Act.
- 12.4. The notice shall be given to all such persons as are, under the Memorandum 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 clause, be deemed to have been duly called if it is so agreed by a majority in number of the Members having a right to attend and vote at the meeting.
- 12.5. The accidental omission to give notice of any meeting to any particular Member shall not invalidate any resolution passed at any such meeting.

13. PROCEEDINGS AT GENERAL MEETINGS

- 13.1. All business that is transacted at a general meeting, and all that is transacted at the annual general meeting, with the exception of the consideration of the audited financial statements, the election of Auditors, approval of the schedule of expected expenses, appointment of Directors and the fixing of the remuneration of the Auditors shall be deemed to be special business.
- 13.2. The Chairperson shall preside at every general meeting. In the absence of the Chairperson, his powers and duties shall devolve upon any other Director nominated by the Board for such purpose, provided that during the initial period, the Chairperson at all times is a representative of the Developer. Any reference in this clause 13 and clause 14 below to "Chairperson" shall be read in the context of this clause 13.2.
- 13.3. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, as well as the noting of the Levies and the various categories of Levies for the financial year during which such annual general meeting takes place and the consideration of any other matter of which due notice has been given.

- 13.4. A Member who intends to bring a motion before a general meeting shall, not less than 7 (seven) days before the day appointed for the said general meeting, serve upon the Association, care of its Managing Agent, at its registered office a notice in writing signed by himself and one other Member containing the proposed resolution. Upon receipt of such notice, the Managing Agent shall, issue as quickly as possible to the Members notice that such resolution will be proposed. Where the notice from a Member is received before the notice of the general meeting is issued, such proposed motion shall be included in the notice of the general meeting.
- 13.5. The Chairperson may, with the consent of any general meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned, the provisions of Section 64(12) of the Act shall mutatis mutandis apply to such adjournment.
- 13.6. If within 30 (thirty) minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place or to the next business day, if that day be a public holiday. If at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for the meeting then, subject to the Statutes, the Members or Member present shall be a quorum.
- 13.7. No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. Save as herein otherwise provided, the quorum at a meeting of Members shall be:
- 13.7.1. during the Initial Period, the Developer or its nominee and any of the Members, personally present and entitled to vote; and
- 13.7.2. after the Initial Period, 30% of the Members personally present and entitled to vote.
- 13.8. At the first annual general meeting of the Members, the Board must be elected in accordance with the provisions of clause 16 below.

14. **VOTING AT GENERAL MEETINGS**

- 14.1. At any meeting of the Association:
- 14.1.1. The following Members have the following voting rights, whether voting takes place by poll or by a show of hands, subject to clause 14.1.2 below:
- 14.1.1.1 A Member who is an Owner of a Land Unit will have one vote; and
- 14.1.1.2 A Member who is an Owner of a Sectional Title Unit will have one vote.
- 14.1.2. During the Initial Period, the Developer shall, for the purposes of voting on any proposed resolution of the Association, have one vote for every Land Unit or Sectional Title Unit that it owns, plus the Developer will be deemed to have the number of votes as are held, in aggregate, by all of the other Members present in person or by proxy at the relevant meeting, whether voting takes place by poll or by show of hands.

- 14.2. At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll has (before or on the declaration of the result of the show of hands), been demanded by at least 3 (three) Members entitled to vote and present in person or by proxy. Unless a poll is demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or lost shall, in the absence of manifest error, be conclusive of the outcome of the vote concerned and an entry to that effect in the minute book of the Association shall be conclusive evidence of such fact, without the need for and/or proof of the number of votes recorded in favour of or against such resolution.
- 14.3. If a poll is duly demanded it shall be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the issue voted on at the general meeting at which the poll was demanded. Scrutineers shall be elected to declare the result of the poll and their decision, which shall be given by the Chairperson, shall be deemed to be the resolution of the meeting at which the poll is demanded.
- 14.4. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson shall not be entitled to a second or casting vote.
- 14.5. A poll demanded on the issue of the election of the Chairperson of a general meeting (see clause 13.2) or on a question of adjournment, shall be taken forthwith. A poll demanded on any other issue should be taken at such time as the Chairperson directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the issue upon which the poll has been demanded.
- 14.6. A poll demanded may be withdrawn, at any time before voting has commenced, by the Member demanding the Poll.
- 14.7. All business transacted at a general meeting is to be decided by a simple majority except changes, amendments, alterations, substitutions or deletions to the Memorandum, which are decided by a majority of not less than 75% (seventy five percent) of the votes of those Members present, as provided for in Section 65 of the Act, subject to clause 33 below
- 14.8. Except where otherwise stated in this Memorandum, no Member shall be entitled to vote at any general meeting where the Levies payable, in respect of its Land Unit or Sectional Title Unit, are outstanding or in instances where the Member is in breach of the provisions of this Memorandum, notwithstanding a warning issued from the Board for the remedy of such breach.

15. PROXIES

- 15.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association.
- 15.2. 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 Managing Agent at least 24 (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:
- 15.2.1. are to be lodged at a particular place, or
- 15.2.2. are to be lodged a certain number of hours, not exceeding 48 (forty-eight) in all, before the meeting, or
- 15.2.3. may be lodged at any time before or during the meeting.

- 15.3. 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.
- 15.4. A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

16. COMPOSITION OF THE BOARD OF DIRECTORS

- 16.1. The Board of Directors of the Association shall consist of not less than 3 (three) Directors, and a maximum of 5 (five) Directors, appointed in accordance with clause 16.2 below.
- 16.2. The Directors during the Initial Period shall be appointed as follows:
 - 16.2.1. the Developer shall appoint the initial 3 (three) Directors of the Association. The Developer shall at all times be required to have at least 3 (three) Directors appointed to the Board of Directors. The Developer's Director appointments shall be made on written notice to the Association and, on similar written notice, may remove and replace any such Directors; and
 - 16.2.2. each Member who is a registered Owner of a Land Unit or a Sectional Title Unit shall be entitled to nominate a Member to the Board to fill any vacant position, to bring the number of Directors to the maximum number and a nominated Member will be elected to the Board based on a majority vote of the Members at an annual general meeting. The nomination shall be made on written notice to the Association or the Managing Agent at least 10 days prior to the annual general meeting;
- 16.3. Following the Initial Period, all Directors shall be appointed in accordance with clause 16.2.2 above.
- 16.4. Should the number of Directors for any reason be reduced to below 3 (three), the continuing Director(s) may act for the purpose only of increasing the number of Directors in terms of clauses 16.2 to 16.3.
- 16.5. The Board shall have the power at any time, and from time to time, to appoint a Member as a Director, either to fill a casual vacancy or as an addition to the Board, subject to the provisions of 16.1. A Director so appointed shall hold office until the next following annual general meeting of the Association.
- 16.6. The Directors shall appoint one of their number to act as the Chairperson for such term as they think fit, but not for longer than such person's tenure as Director.
- 16.7. During the Initial Period the Chairperson will always be elected by the Developer.
- 16.8. In addition to satisfying the qualification and eligibility requirements set out in Section 69 of the Act, to become and remain a Director, a person need not satisfy any further eligibility requirements or qualifications.
- 16.9. The authority of the Board to manage and direct the business and affairs of the Association, as set out in Section 66(1) of the Act is not limited or restricted by this Memorandum.
- 16.10. A Member shall not be eligible for election to the Board if such Member is in breach of the provisions of this Memorandum, notwithstanding a warning letter issued by the Board to such Member to remedy such breach.

17. ALTERNATE DIRECTORS

- 17.1. Any Director shall have the power to nominate a person to act as an alternate Director in its place during their absence or inability to act as Director, subject to the following:
- 17.1.1. the Developer in its capacity as such, shall have the power to nominate any executive employee of the Developer to act as an alternate Director;
 - 17.1.2. a Director representing an Owner of an Land Unit may only nominate a person who is the Owner or a co-Owner of such Land Unit or a director, trustee or member of the corporate entity which owns the Land Unit; and
 - 17.1.3. a Director representing a Body Corporate of a Scheme may only nominate a person who is a trustee on the same Body Corporate they represent
- 17.2. On such appointment being made, the alternate Director shall, in all respect, be subject to the terms and conditions of the Act and the Rules applicable to the other Directors of the Association. A person may be appointed as alternate to more than one Director. Where a person is alternate to more than one Director or where an alternate Director is a Director, he shall have a separate vote on behalf of each Director he is representing in addition to his own vote, if any.
- 17.3. An alternate Director, whilst acting in the place of the Director who appointed him/her, shall exercise and discharge all the duties and functions of the Director he/she represents. The appointment of an alternate Director shall cease on the happening of any event which, if he/she were a Director, would cause him/her to cease to hold office in terms of this Memorandum or if the Director who appointed him/her ceases to be a Director, or gives notice to the Managing Agent that the alternate Director so nominated shall cease to do so.

18. ROTATION OF DIRECTORS

Each Director shall retire from office at the annual general meeting subsequent to that at which he/she was elected, at which meeting each Director, other than the Director/s appointed by the Developer, shall be deemed to have retired from office as such but will be eligible for re-election to the Board at such meeting.

19. REMOVAL AND DISQUALIFICATION OF DIRECTORS

- 19.1. A Director shall cease to hold office as such if:
- 19.1.1. he/she resigns office by notice in writing to the Association;
 - 19.1.2. he/she ceases to be a Director by virtue of any of the provisions of the Statutes or becomes prohibited from being a Director by reason of an order made under the Statutes;
 - 19.1.3. he/she is removed by an ordinary resolution of the Association as provided for in the Statutes and/or the Rules;
 - 19.1.4. he/she is absent without the prior or subsequent official leave of the Board from 2 (two) consecutive meetings, notice of which has been given to the Director concerned;
 - 19.1.5. he/she is disqualified and ineligible to act as a director in terms of Section 69 of the Act.

- 19.1.6. his/her estate is sequestrated or he/she files a petition for the surrender of his/her estate or an application for an administration order, or if he/she commits an act of insolvency as defined in the insolvency law for the time being in force, or he/she makes any arrangement or composition with his/her creditors generally;
- 19.1.7. he/she is found to be a lunatic or becomes of unsound mind;
- 19.1.8. he/she is directly or indirectly interested in any contract with the Association and fails to declare to the Board the nature of such interest. During the Initial Period this provision does not apply to the Directors appointed by the Developer;
- 19.1.9. without the consent of the Board holds an office of profit with the Association;
- 19.1.10. a notice removing him/her from office is signed by Members, having a right to attend and vote at a meeting of Members, who hold more than 75% (seventy five percent) of the total voting rights of all the Members who are at that time entitled so to attend and vote and is delivered to the Managing Agent; or
- 19.1.11. he/she is otherwise removed in accordance with any provisions of this Memorandum.

20. PROCEEDINGS OF DIRECTORS

- 20.1. The Board may meet, adjourn and otherwise regulate its meetings as it shall think fit provided that it shall meet at least two times a year.
- 20.2. A meeting of the Board shall be convened at any reasonable time upon request in writing by a Director and such meeting shall be held within 7 (seven) days of the date of request. Notice of a meeting of the Board shall be given in writing to all Directors a reasonable period of time before such a meeting.
- 20.3. Unless otherwise resolved by the Board, all its meetings shall be held at the offices of the Association.
- 20.4. At the first meeting of the Board and thereafter following each annual general meeting, the Directors shall elect from amongst their number a Chairperson. A vacancy in any of such offices before the term of office has expired may be filled by the Board from amongst its numbers and such appointment shall be valid until the following annual general meeting, provided that the Chairperson shall always be a representative of the Developer during the Initial Period.
- 20.5. In addition to such other powers and duties as may be delegated to him/her by the Board from time to time, the Chairperson shall:
 - 20.5.1. preside and maintain order at all meetings of the Board, provided that if, on the date and place appointed for a meeting, the Chairperson is not present within 30 (thirty) minutes after the time appointed for the commencement of that meeting, then the Directors present shall elect one of their number to act as Chairperson for that meeting, provided that the Chairperson shall always be a representative of the Developer during the Initial Period;
 - 20.5.2. appoint the time and place of each meeting of the Board and, subject to this Memorandum, may convene the Board for the despatch of business, or adjourn or otherwise regulate the meetings of the Board as he/she may deem fit;

- 20.5.3. ensure that each meeting of the Board is duly convened and constituted and that the provisions of this Memorandum and any rules made by the Board for the conduct of its meetings are adhered to and that the proper procedure is duly followed; and
- 20.5.4. be entitled to delegate any of his/her powers and duties to any other Director as he may deem desirable or necessary and may add to, vary or revoke and such delegation of powers or duties as he may deem fit.
- 20.6. In the event of the Chairperson being absent or otherwise unable to perform his/her duties in terms hereof, any other Director appointed by the Board for such purpose, shall exercise the powers and perform the functions of the Chairperson for so long as the Chairperson remains absent or unable to perform his/her duties and for this purpose such other Director shall be deemed to have all such powers and functions of the Chairperson as the Chairperson himself might have, provided that the Chairperson shall always be a representative of the Developer during the Initial Period.
- 20.7. The quorum for a meeting of the Board shall be 3 (three) Directors present and entitled to vote, provided that at least 2 (two) of the Directors during the Initial Period shall be the Developer's Directors. The Board shall transact no business unless a quorum of Directors is present at the time when the meeting proceeds to business.
- 20.8. Each Director present at a meeting of the Board shall be entitled to vote and shall each have 1 (one) vote.
- 20.9. Questions arising at a meeting of the Board shall be decided by a simple majority of the votes cast. In the case of an equality of votes the Chairperson of the meeting shall have a second (or casting) vote.
- 20.10. Subject to the Statutes, a resolution in writing signed by the Directors (or their appointed alternate) and not being less than are sufficient to form a quorum shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. The resolution may consist of several counterparts, each signed by one or more Directors or their alternates in terms of this clause.

21. **POWERS OF DIRECTORS**

- 21.1. Subject to the express provisions of this Memorandum, the Board 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 Managing Agents, may exercise all 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 Statutes or this Memorandum 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.
- 21.2. Save as specifically provided in this Memorandum, 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, managing agents 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.
- 21.3. The Directors shall further have the authority:
- 21.3.1. to require that any construction of any sort on the Property shall be supervised to ensure that the provisions of this Memorandum, the OEMP, the A&L

Guidelines, the Governing Rules, the C&O Manual and the Rules are complied with and that all such construction is performed in a proper and workmanlike manner;

- 21.3.2. to, after the Initial Period, amend Governing Rules from time to time in respect of the Property, and ensure that such Governing Rules are complied with at all times by all Members;
 - 21.3.3. to impose warnings, penalties or fines against Members who are found to be in breach of the provisions of this Memorandum, the OEMP, the A&L Guidelines, the C&O Manual, the Governing Rules and/or any resolution or rule passed by the Board from time to time;
 - 21.3.4. to ensure that the OEMP and Master Landscaping Plan (as part of the A&L Guidelines) are implemented, adopted and complied with by the Association in respect of its obligations and the Members in respect of their obligations;
 - 21.3.5. to require that any further development within the Development form part of the Association and to establish, as they may deem fit and reasonable in the circumstances, the procedures for incorporating any such development into the Association; and
 - 21.3.6. to make arrangements for the transfer of Erven or Common Property in the event that the Association ceases to function.
- 21.4. The Board shall have the right to vary, cancel or modify its decisions and resolutions from time to time.

22. REMUNERATION OF DIRECTORS

- 22.1. Directors shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as Directors.
- 22.2. Directors shall be entitled to remuneration in respect of the performance of their duties as determined by the Association in a general meeting.

23. COMMITTEES

- 23.1. The Board shall be entitled to appoint committees consisting of such number of directors and such outsiders, including the Managing Agent, as it deems fit and to delegate to such committees such of its functions, powers and duties as it deems fit, with further power to vary or revoke such appointments and delegations as the Board may from time to time deem necessary.
- 23.2. Subject to the approval of the Board, each such committee shall have the right to co-opt such person(s) as it may think fit to be a member(s) of such committee.
- 23.3. The Board may resolve that the Association shall pay any Director who serves on any committee or who devotes special attention to the business of the Association, or otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, such remuneration as they may determine.
- 23.4. The Board shall appoint an ARC which must consist of the following:
 - 23.4.1. a registered architect;
 - 23.4.2. a professional landscape architect;

and may consist of the following;

23.4.3. a registered land surveyor;

23.4.4. a registered town planner.

23.5. Members of the ARC shall not be required to be Members of the Association.

23.6. The ARC must ensure that the building and landscaping plans submitted to it by Members in respect of their Erven comply with the Conditions of Approval, the A&L Guidelines and the C&O Manual.

24. MINUTES

24.1. Minutes shall be kept of all resolutions and proceedings of general meetings of the Association, meetings of the Board and any committees.

24.2. The minutes shall, without undue delay after the meeting has closed, be reduced to writing by the Managing Agent and certified correct by the Chairperson of that meeting. All minutes of meetings shall, after certification, be placed in the appropriate minute book to be kept in accordance with the provisions of the Statutes relating to the keeping of minutes of meetings. The minute books shall be open for inspection at all reasonable times by any Director, the Auditors and the Members.

25. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES

All acts done in good faith by the Board or of a committee of the Board, or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed or was qualified or had continued to be a Director or was entitled to vote, as the case may be.

26. ACCOUNTING RECORDS

26.1. The Financial Year of the Association shall be from the first day of March to the last day of February in the following year.

26.2. The Association shall keep 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 Association including:

26.2.1. records showing the assets and liabilities of the Association;

26.2.2. a register of fixed assets showing the respective dates of acquisition and cost thereof, depreciation, if any, the respective dates of any disposals and the considerations received in respect thereof; and

26.2.3. records containing entries from day to day in sufficient detail of all cash received and paid out of the matters in respect of which receipts and payments take place.

26.3. The books of account 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 the inspection of the Directors during normal business hours.

26.4. 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 accounts and books of the

Association or any of them shall be open to the inspection of Members, not being Directors, and no Member (not being a Director) shall have the right of inspecting any account or document of the Association except as conferred by Statute or authorised by the Directors or by the Association in general meeting.

26.5. The Directors shall in respect of every Financial Year of the Association cause to be made out annual financial statements in accordance with Section 30 of the Act and shall lay them before the annual general meeting of the Association in respect of that year.

26.6. A copy of the annual financial statements which are to be laid before the Association in an annual general meeting, shall, not less than 21 (twenty one) days before the date of the meeting, be sent to every Member of the Association; provided that this clause shall not require a copy of those documents to be sent to any person, the address of whom the Association is not aware.

27. **AUDITOR**

An auditor shall be appointed in accordance with the Act.

28. **RESERVES**

The Directors may set aside out of the profits of the Association and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the Directors be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Association, for repairing, improving or maintaining any property of the Association, for meeting losses on realisation of or writing down investments either individually or in the aggregate, or for any other purpose to which profits of the Association may appropriately be applied. Pending such application such sums may either be employed in the business of the Association or be invested. The Directors may divide the reserve into such special reserves as they think fit and re-allocate the amount of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Directors may also carry forward any profits without placing them to reserve.

29. **NOTICES**

29.1. Any notice by the Association to any Member shall be regarded as validly given if it is either delivered personally to the Member or sent by courier to him at his/her registered address. Provided that notices other than for which the method of giving notice is prescribed by law may be given by e-mail or such other electronic form by such a method approved by the Association in general meeting.

29.2. A Member shall be bound by every notice given in terms of this clause 29. The Association shall not be bound to enter any person in the register of Members until that person gives the Association an address for entry on the register.

29.3. Any notice, if given by courier, shall be deemed to have been served on the date of delivery. If sent by e-mail during business hours, shall be deemed to have been delivered on the date of transmission, and if sent outside of business hours then the following business day.

29.4. When a given number of days ' notice or notice extending over any period is required to be given, the day of service shall not be counted in such number of days or period.

30. **INDEMNIFICATION OF DIRECTORS**

- 30.1. The authority of the Association's Board of directors to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in Section 78(3) of the Act shall not be limited or restricted by this Memorandum.
- 30.2. The authority of the Association's Board of directors to indemnify a director in respect of liability, as set out in Section 78(5) of the Act shall not be limited or restricted by this Memorandum of Incorporation.
- 30.3. The authority of the Association's Board of directors to purchase insurance to protect the Association, or a director, as set out in Section 78(6) of the Act shall not be limited or restricted by this Memorandum of Incorporation.

31. GENERAL

- 31.1. Whenever they consider that the appearance of any part of the Property and/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 relevant part of the Property or Building/s 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.
- 31.2. 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.
- 31.3. The Association may enter into agreements with Members for the provision of amenities and services to the Members and to Levy a reasonable charge in respect of the provision thereof.
- 31.4. No Member ceasing to be a Member of the Association for any reason 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 Property of the Association.
- 31.5. 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.
- 31.6. Any person using any of the services, Property or facilities of the Association does so entirely at his own risk.
- 31.7. While every care will be taken by the Association to perform its functions to the best of its ability and to promote the interests of all Members and/or Occupiers at the Development, neither the Developer (its successors in title or assigns), its Directors/ Trustees, its owners or their appointees/representatives nor the owners, agents of the Association or its management shall be held liable for any loss (consequential or otherwise), damage, injury and/or death, cost, interest and expense which the Association may hereafter be liable for, pay, incur or sustain in connection with any action, proceedings, or claim being instituted against it by any party whomsoever, directly or indirectly arising from or related to the carrying out of the functions of the Association or the Development.
- 31.8. It is expressly agreed that the Association in its sole discretion may resolve any action, proceedings or claims instituted against it, without consultation with any other party which may be affected.

- 31.9. In the event of any Members and/or Occupiers, their guests, family or invitees (defaulter) failing to adhere to any regulation and such failure leading to any action being instituted against the Members of the Association or their employees or agents, then and in that event such defaulter shall indemnify and hold harmless and keep indemnified the Association against all loss (consequential or otherwise), damage, injury and/or death, cost, interest and expense which the Association may hereafter be liable for, pay, incur or sustain in connection with any action, proceedings, or claim being instituted against it by any party whatsoever, directly or indirectly arising from or related to the carrying out of the functions of the Association or the Development.
- 31.10. If the Association ceases to function the Municipality may give the Association a binding instruction to hold a meeting to reconstitute itself or dissolve itself subject to the amendment of the conditions of approval relating to the requirement to establish the Association and the removal of the relevant conditions in the title deeds of the Land Units, as more fully set out in clause 31.12 below.
- 31.11. If the Association fails to meet any obligations in this Constitution respectively and the Municipality believes that the community is adversely affected by the failure, the Municipality may take appropriate action to rectify the failure, as follows:
- 31.11.1. the Municipality may recover any expenditure in respect of the action contemplated above from the Association or its Members, who are jointly liable; and
- 31.11.2. the amount of any expenditure so recovered is considered to be expenditure incurred in connection with the Association for the purposes of recovering expenditure incurred in connection with the Association from its Members.
- 31.12. If the Association ceases to function effectively or to carry out its obligations, the Municipality may give the Association a binding instruction to:
- 31.12.1. hold a meeting and to reconstitute itself; or
- 31.12.2. dissolve itself, subject to the amendment of the Conditions of Approval relating to an obligation to establish an owners' association and the removal of relevant provisions in the title deed; and
- 31.12.3. in determining whether to act in terms of the above, the Municipality must have regard to:
- 31.12.3.1. the purpose of the Association;
- 31.12.3.2. who will take over the maintenance of internal engineering services and other obligations which the Association is responsible for, if at all;
- 31.12.3.3. the costs of upgrading the internal engineering services and other infrastructure if the Municipality is to take over the infrastructure;
- 31.12.3.4. the impact of the dissolution of the Association on its Members and the community; and
- 31.12.3.5. any written representations from the Association and its Members.
- 31.13. If the Association is dissolved, the Members must jointly pay the costs of:

- 31.13.1 the transfer to the Municipality of the Association's property which contains the internal engineering services and private open spaces; and
 - 31.13.2 the upgrading of the internal engineering services to the standards of the Municipality.
- 31.14 In the event that the Association has ceased to function and an Owner wishes to transfer a Land Unit in that event, the Owner must obtain the consent of at least 60% (sixty percent) of the Members of the Association, which consent is deemed to be the consent of the Association.
- 31.15 The Municipality is exempt from liability for any damage which may be caused by its certification of the Constitution of the Association or any amendments hereof or by the loss of a Constitution lodged with the Municipality.

32. DISPUTES

- 32.1. Any dispute arising out of or in connection with this Agreement or the Rules and any regulations passed by the Association from time to time, , including the cancellation thereof, must be determined in terms of this clause 32, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 32.2. If a dispute arises, the party who wishes to have the dispute determined must notify the Managing Agent and any other involved 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 clause.
- 32.3. If a party exercises its right in terms of clause 32.2 to refer the dispute for determination, such dispute shall be referred to the following persons who shall in each case have a minimum of 15 (fifteen) years of experience in their field:
- 32.3.1. if the dispute is primarily an accounting matter, a practising chartered accountant;
 - 32.3.2. if the dispute is primarily a legal matter, a practising attorney or advocate;
 - 32.3.3. 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;
 - 32.3.4. if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer; and
 - 32.3.5. if the dispute is primarily one relating to the aesthetics of a building on a Land Unit, a practising architect.
- 32.4. If the parties are unable to agree either on the person referred to in clause 32.3 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 Cape Law Society.
- 32.5. Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
- 32.6. The proceedings shall be held at the registered office of the Association 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.

- 32.7. This Memorandum, the A&L Guidelines, the OEMP and any further Governing Rules, manuals, operations or documents established by the Developer or the Board (as the case may be) will be available at the offices of the Association for inspection by Members and/or their agents during normal business hours.
- 32.8. 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.
- 32.9. 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.
- 32.10. The costs of and incidental to any such proceedings, including the fees of the expert, shall be in 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."
- 32.11. The provisions of this clause 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.

33. **AMENDMENT**

- 33.1. This Memorandum / Constitution may be amended from time to time as follows:
- 33.1.1. During the Initial Period, by the Developer in its sole discretion, without reference to the Association;
- 33.1.2. Save for during the Initial Period, by the Members by a majority of not less than 75% (seventy five percent) of the votes of those Members present at a general meeting called for that purpose; and
- 33.1.3. The Municipality must provide its prior written consent to any amendments, repeals or substitutions of this Memorandum / Constitution which have the effect of altering or amending, in any way, the Conditions of Approval or amending the statutory conditions required under section 62 of the MPBL.
- 33.2. In the event of an amendment or alternation of this Memorandum requiring the consent of the Municipality set out in clause 33.1.3 above, the amended Memorandum shall only take effect when certified by the Municipality in terms of section 62 (2) of the MPBL.
- 33.3. The Constitution of the Association and any amendments thereto must be lodged with the Municipality and the latest copy duly lodged with the Municipality which the Municipality has certified in terms of subsection (2) and (4) of section 61 of the MPBL is presumed to contain the operative provisions of the Constitution.