

**Constitution of Westbrook Estate Homeowners
Association**

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 1973

**Memorandum of Association
of a Company Not Having a Share Capital**

[Section 54(1) Regulation 17(1) and 17(3)]

REGISTRATION NO OF COMPANY

2003/023652/08

1 NAME

- a. The name of the Association is - **WESTBROOK ESTATE HOMEOWNERS ASSOCIATION.**
- b. The name of the Company in the other official language of the Republic is – **not applicable.**
- c. The shortened form of the name of the Association is – **not applicable.**

2 MAIN PURPOSE DESCRIBING MAIN BUSINESS

The main business of the Association is the promotion of the communal interests of the persons owning property in the development known as **WESTBROOK ESTATE** and the administration of the common areas thereof.

3 OBJECTS

The objects of the Association are to -

Promote the communal interests of the persons holding property in **WESTBROOK ESTATE** and the common areas thereof.

4 **ANCILLARY OBJECTS EXCLUDED**

All ancillary objects referred to in Section 33(1) of the Act are excluded from the unlimited ancillary objects of the Association.

5 **POWERS**

The Association shall, in accordance with the provisions of section 34 of the Act, have plenary powers to enable it to realize its main and ancillary objects. It shall have all the common powers stated in Schedule 2 of the Act, save for the following variations:

- 5.1 **Power (k):** It shall have the power to form and have an interest in any Association or Associations with the same or similar objects for the purpose of requiring the undertaking or all or any of the assets or liabilities of the Association or for any other purpose which may seem, directly or indirectly, calculated to benefit the Association, and to transfer to any such Association or Associations the undertaking or all or any of the assets or liabilities of the Association.
- 5.2 **Power (l):** It shall have the power to amalgamate with other Associations with the same or similar objects.
- 5.3 **Power(m):** It shall have the power to take part in the management, supervision and control of the business or operations of any other Association or business with the same or similar objects and to enter into partnerships with the same or similar objects.
- 5.4 **Power (n):** It shall have the power to remunerate any person or persons in cash for services rendered in its formation or in the development of its business.

- 5.5 **Power (o):** It shall have the power to make donations except to its members and/or directors.
- 5.6 **Power (r):** It shall have the power to pay gratuities and pensions and establish pension schemes and other incentive schemes in respect of its officers and employees.
- 5.7 **Power (s):** It shall not have this power.

6 **CONDITIONS**

- 6.1 The income and property of the Association wheresoever derived shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise howsoever, to members of the Association or to its holding Association or subsidiary: Provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any member thereof in return for any services actually rendered to the Association.
- 6.2 Upon its winding-up, deregistration or dissolution, the assets of the Association remaining after satisfaction of all its liabilities shall be given or transferred to some other association or institutions having objects similar to its main object, to determined by the members of the Association at or before the time of its dissolution or, failing such determination, by the Court.

7 **GUARANTEE**

- 7.1 The liability of members is limited to the amount referred to in Paragraph hereunder.
- 7.2 Each member undertakes to contribute to the assets of the Association in the event of it being wound-up either while he is a member or within

one year afterwards, for the payment of the debts and liabilities of the Association contracted before he ceased to be a member, and of costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributories amongst themselves, an amount of ONE RAND (R1.00).

REPUBLIC OF SOUTH AFRICA

THE COMPANIES ACT, 1973

(hereinafter referred to as “the Act”)

**ARTICLES OF ASSOCIATION
OF A COMPANY NOT HAVING A SHARE CAPITAL**

[Section 59, 60; Regulation 18]

REGISTRATION NO. OF COMPANY

2003/023652/08

Name of the Company: **WESTBROOK ESTATE HOMEOWNERS
ASSOCIATION**

(A SECTION 21 COMPANY)

Financial Year End: 28 February

PRELIMINARY

The standard Articles of Association as contained in table “A” or “B” of Schedule 1 to the Companies Act, 1973, shall not be applicable to this Association and the Articles of Association of this Association shall be set out hereunder.

1 INTERPRETATION

1.1 In these Articles, unless the context shall clearly otherwise indicate:

- 1.1.1 “the Act” means the Companies Act, No.61 of 1973, as amended from time to time;
- 1.1.2 “these Articles” means the Articles of Association as originally framed or as altered from time to time by Special Resolution;
- 1.1.3 “the Board” means the Board of Directors of the Association for the time being;
- 1.1.4 “the Association” means this Association;
- 1.1.5 “Duly Certified” in relation to copies, means a copy certified by an appropriate Public Officer or Notary Public; or such other form of certification as the Directors may from time in their sole discretion accept;
- 1.1.6 “month” means calendar month;
- 1.1.7 “the Office” means the registered office of the Association;
- 1.1.8 “Secretary” means any person appointed from time to time to perform the duties of the Secretary of the Association.
- 1.1.9 “Alienate” means alienate any Erf or part thereof and includes by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, irrespective of whether such alienation shall have a corresponding meaning;
- 1.1.10 “Association” means WESTBROOK ESTATE HOMEOWNERS ASSOCIATION
- 1.1.11 “Developer” means BUBESI INVESTMENTS 53 (PTY) LTD
- 1.1.12 “Development period” means the period from the establishment of the Association until all the Erven within the development have been sold by the Developer: alternatively, when the Developer notifies the

Association that it waives the rights herein conferred upon it during Development Period;

1.1.13 “Erf” means a stand in Noordwyk Ext 28, Noordwyk Ext 64, Noordwyk Ext 63 or Noordwyk Ext 62 in the Development;

1.1.14 “Facilities” means any facility of whatsoever nature which may be provided in the Development;

1.1.15 “Financial Year” of the Association which shall run from the 1st day of March in any year until the last day of February in a subsequent year;

1.1.16 “Levy” means the levy referred to in Article 8;

1.1.17 “Services” means such utilities and amenities as may be provided by the Association for the Development and residents in the development;

1.1.18 “Development” means the cluster house development situate at Noordwyk Ext 28, 64, 63 and 62;

1.2 Words and expressions contained in these Articles shall bear the same meaning mutatis mutandis as are assigned to them by the Act, as amended from time to time.

1.3 Expressions with reference to writing shall be construed as including reference to printing, lithography, photographs and other modes of representing or reproducing words in visible form.

1.4 Words importing the singular shall include the plural, words importing the masculine, feminine or neuter shall include the others of such genders, and words importing persons shall include bodies corporate, and vice versa in each instance.

- 1.5 Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed; not be unreasonably withheld; and shall be given prior to the member taking action.
- 1.6 The onus of proof in regard to receipt of any notice given or payment made by a member shall be upon the giver of the notice or the maker of the payment;
- 1.7 In the event of a member consisting of more than one (1) person, they shall be jointly and severally liable in solidum for all their obligations in terms of these Articles;
- 1.8 In the event of any provision/s of the Articles being unenforceable for any reason whatsoever, then such provision/s shall be deemed to be separate and severable, without it in any way affecting the validity of the remaining provisions.

2 MEMBERSHIP

- 2.1 The members of the Association shall be the persons who are in terms of the Deeds Registries Act reflected in the records of the Deeds Office concerned as the registered owners of any Erf in the Development and such other persons or organizations as may from time to time be invited by the Board to become members in terms of its Powers as contained in the Memorandum of Association, and who have agreed in writing to be bound by the terms of the Memorandum and Articles of Association of the Association.
- 2.2 It is specifically recorded that the Board shall be under no obligation to admit any person or organization to membership upon application, or to indulge or justify the reasons for its decisions with reference to membership.

2.3 Where any Erf is owned by more than one (1) person, all registered owners of that Erf shall together be deemed to be one (1) member of the Association and have the rights and obligations of one (1) member of the Association, subject to the provisions of Article 13.1

2.4 Notwithstanding the aforesaid, seven nominees of the Developer shall be the first members, subject to the condition that as other persons become the registered owners of Erven in the Development the aforesaid nominees but one (1) shall *ipso facto* be deemed to have resigned until all such nominees have been replaced by the first six registered owners of Erven other than the remaining nominee of the Developer in the Development.

3 **NON-TRANSFERABILITY OF MEMBERSHIP**

3.1 Membership of the Association shall not be transferable.

3.2 When a member ceases to be a registered owner of any Erf in the Development, he shall *ipso facto* cease to be a member of the Association, subject to the provisions of Article 7 and Article 41

3.3 The nominee of the Developer shall be entitled to cede all his rights in terms of these Articles and the transferee shall be entitled to exercise all such rights.

3.4 The nominee of the Developer may at any time abandon in whole or in part any rights conferred upon it in terms of these Articles.

3.5 The nominee of the Developer shall, when it is no longer the owner of any Erf in the Development, cease to be a member of the Association (in his capacity as such).

4 NUMBER OF MEMBERS

Save as provided in Article 2.2 the number of members from time to time shall not be limited, but as required by the Act, shall at no time be less than seven (7).

5 RIGHTS AND OBLIGATIONS OF MEMBERS

5.1 Subject to the rights of membership as prescribed by statute and by these Articles, membership shall confer upon each individual member the following rights;

5.1.1 the right to determine the number of directors of the Association and to nominate and elect directors of the Association from time to time; and

5.1.2 the right to receive copies of the annual financial statements of the Association; and

5.1.3 the right to receive notice of, attend, speak and vote at general meetings of the Association.

5.2 Anything to the contrary herein contained or implied notwithstanding, cessation of membership shall in no way release a member from any obligation undertaken by him prior the cessation of membership as a result of either:

5.2.1 the provisions of Clause 7.1 of the Memorandum of Association of the Association; or

5.2.2 any further or ancillary guarantee, commitment or obligation, which such member may have undertaken.

6 CESSATION OF INVITED MEMBERSHIP

Invited Membership of the Association shall cease:

- 6.1 upon receipt by the Association at the Office of the Association of notice in writing to this effect from the member concerned;
- 6.2 upon the issue of a final order of sequestration or liquidation of the member concerned;
- 6.3 upon the death of the member, or upon the member declared insane or incapable of managing his affairs; or
- 6.4 upon the passing of a special resolution to this effect by a duly convened general meeting of the Association, at which a quorum is present, provided that the notice convening the meeting shall specify the proposal to withdraw membership from the member concerned.

7 ALIENATION

- 7.1 A member shall not alienate an Erf unless it is a condition of the Agreement of Alienation that:
 - 7.1.1 the proposed transferee has bound himself to become and remain a member of the Association for the duration of his ownership of the Erf, and a clearance certificate has been issued by the Association to the effect that his obligations in terms of these Articles of Association have been complied with; and
 - 7.1.2 the registration of transfer of the Erf into the name of the transferee shall ipso facto constitute the transferee as member of the association.
- 7.2 The provisions of clause 7.1 shall apply mutatis mutandis to any alienation of an undivided share in an Erf.
- 7.3 These Articles shall also bind any person occupying an Erf and no member shall let or otherwise part with the occupation of his Erf whether

temporarily or otherwise unless the proposed occupier has agreed to be bound by these Articles.

- 7.4 “that alienation shall also include a Tenant who shall be required to be registered as a resident prior to occupation of such property and shall be required to provide deposits for services as provided in the Estate being Water, Post Box rental and access cards registered to such user.”
(Resolution AGM. 2007)

8 SUBSCRIPTIONS

- 8.1 The annual subscriptions of the Association shall be for such amounts as the Board of Directors may from time to time decide. In addition a special levy to meet any special, unusual or other expenses may be imposed from time to time by a general meeting on the recommendation of the Board of Directors.
- 8.2 The annual subscription as decided by the Directors shall be payable in equal monthly installments, due in advance on the first day of each and every month of each financial year.
- 8.3 The Directors shall, not less than thirty (30) days prior to each financial year, or as soon thereafter as reasonably possible, prepare and serve upon every member at the address chosen by him a budget being estimate in reasonable details of the amount which shall be required by the Association to meet the expenses during the following financial year, and shall specify separately such estimate deficiency, if any as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 8.4 In the event of the Directors for any reason whatsoever, failing to prepare and serve the estimate referred to in Article 8.3. above timeously, every member shall until service of such estimate as

aforesaid continue to pay the subscription previously imposed and shall after such service pay such subscription as may be specified in the notice referred to in the Article 8.3.

- 8.5 The Directors shall be empowered in addition to such other rights as the Association may have in law as against its members to determine the rate of interest from time to time chargeable upon arrear subscriptions and service fees, provided that such rate of interest shall not exceed the rate laid down in terms of the Usuary Act No.73 of 1968, as amended.
- 8.6 Any amount due by a member by way of subscription, service fees penalties or fines shall be a debt due by him to the Association. A member's successor in title to an Erf shall be liable as from the date upon which he becomes a member pursuant to the transfer of the Erf, to pay the debt due and interest thereon attributable to that Erf.
- 8.7 The Directors may enter into an agreement or agreements with the Developer for the provision of a capital sum and or equipment to the Association and or services in lieu of levies.
- 8.8 Notwithstanding the provisions of this clause, the Developer is not obliged to pay any levies.
- 8.9 "that any Member or Tenant shall notify the Association of the date he intends to vacate the property or alienate possession thereof, and shall apply for refund of any surplus levy or deposits paid during their occupation or Membership towards any services so provided shall be considered providing all keys, access cards and amounts due have been settled. Should no application for refund be received within one year of the date of alienation of the property all amounts and deposits shall be forfeited to the Association and such Tenant or Member shall have no further claim thereon. (*Resolution AGM. 2007*)

9 REGISTER OF MEMBERS

The Association shall maintain at its Office a register of members of the Association as provided in Section 105 of the Act and such Register shall be open for inspection, as provided in Section 113 of the Act.

10 GENERAL MEETINGS

10.1 An annual general meeting shall be held once in every year at such time and place as may be prescribed by the Association in general meeting, or by the Directors, subject always to the provisions of the Act; provided that no more than fifteen (15) months shall elapse between the date of one annual general meeting and that of the next, and that an annual general meeting shall be held within six (6) months of the expiration of the financial year of the Association.

10.2 Annual general meetings and other general meetings shall be held at such time and place as the Directors shall appoint, or at such time and place as is determined if the meetings are convened under Sections 179(4), 181, 182 and 183 of the Act.

11 NOTICE OF GENERAL MEETINGS

11.1 An annual general meeting and a meeting called for the passing of a Special Resolution shall be called by not less than twenty one (21) days notice in writing and a general meeting of the Association, other than an annual general meeting or a meeting for the passing of a special resolution, shall be called by at least fourteen (14) clear day's notice in writing.

11.2 The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in a manner hereinafter mentioned or in such other manner, if any, as may

be prescribed by the Association in general meeting, to such persons as are under these Articles, entitled to receive such notices from the Association, provided that a meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these Articles, be deemed to have been duly called if it is so agreed by a majority of the members having a right to attend and vote at the meeting who hold not less than 95% (ninety five per cent) of the total voting rights of all the Members.

12 PROCEEDINGS AT GENERAL MEETINGS

- 12.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors, and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be regarded as special business.
- 12.2 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, three (3) members personally present who are entitled to vote at the general meeting shall constitute a quorum, but where the number of members exceeds three (3), 50% (fifty per cent) of the members personally present at such meeting plus one (1) additional member shall constitute a quorum.
- 12.3 If, within half an hour after the time appointed for a meeting a quorum of members is not present, the meeting if convened upon requisition of members, shall be dissolved; in any other case it shall stand adjourned to such date as the chairman of the meeting may decide provided that it shall be within twenty-one (21) days of the original meeting; and if at such adjourned meeting a quorum is still not present within half an hour after the time appointed for such meeting, the members present shall be a quorum.

12.4 Where a meeting has been adjourned as aforesaid, the secretary shall, as soon as possible, notify all the members of the Association, in accordance with the provisions of the Act, of the following matters:

12.4.1 the date, time and place to which the meeting has been adjourned; and

12.4.2 the matter before the meeting when it was adjourned; and

12.4.3 the ground for the adjournment.

12.5 The chairman of the Board of Directors shall preside as chairman at every general meeting of the Association. If there is no chairman, or if at any meeting the chairman is not present within fifteen (15) minutes after the time appointed for holding the meeting, or is unwilling to act as chairman, the vice-chairman shall act, and if such person is also unwilling or absent, the members present shall choose one of their number to be chairman.

12.6 The chairman may, with the consent of any 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 meeting from which the adjournment took place.

13 VOTES OF MEMBERS

13.1 At all general meetings of the Association every member present in person or represented by proxy shall be entitled to one (1) vote, which may be exercised either on a show of hands or on a poll.

13.1.1 If an Erf is registered in the name of more than one person, then all such co-owners shall jointly have one (1) vote;

- 13.1.2 Save as expressly provided for in these presents, no person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be deemed due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to vote on a question, either personally or by proxy at any general meeting.
- 13.2 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll (before or on the declaration of the result of the show of hands) is demanded by the chairman or the members so qualified as referred to hereunder, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried unanimously or by a particular majority or been defeated, and an entry to the effect in the book containing the Minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 13.3 The demand for a poll shall be made by not less than two (2) members present at the meeting and having the right to vote at such meeting and the demand for a poll may be withdrawn.
- 13.4 If a poll is demanded, it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting of which the poll was demanded.
- 13.5 A poll demanded on the election of a chairman or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

13.6 The nominee of the Developer shall have two hundred (200) votes until such time as all portions of Erven in the Development have been registered in the name of the transferees thereof.

14 SIGNED RESOLUTIONS – MEMBERS

Unless a meeting is required to be held in compliance with the Act, a resolution signed by or on behalf of all members of the Association shall be as valid and effectual as if passed at a duly convened general meeting of the Association.

15 PROXIES

15.1 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorized in writing. A proxy need not to be a member of the Association. The holder of a general or special power of attorney incorporating the necessary powers contemplated hereunder, shall be entitled to attend and vote at any meetings on behalf of the member granting such power.

15.2 The Association shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy, including the power of attorney or other authority, if any, under which it is signed or a duly certified copy thereof, shall have been deposited at the Office not less than forty-eight (48) hours before the time appointed for such meeting or any adjournment thereof.

15.3 The instrument appointing a proxy shall be in the following form, or in such form as may be acceptable to the Board:

“I, _____ of _____

being a member of **WESTBROOK ESTATE HOMEOWNERS ASSOCIATION**, hereby appoint _____

of _____

failing him or her _____ of _____

or failing him or her _____

of _____

as my proxy to attend, vote, and speak for me and on my behalf at the _____

Meeting of the Association to be held on the _____ day of _____

_____20__ and any adjournment thereof as follows:

Resolution

In favour

Against

Abstain from voting

Resolution to _____

Resolution to _____

Resolution to _____

(Indicate instructions to proxy by way of a cross in the space provided above).

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

Signed this _____ day of _____
20__.

_____ (Signature)

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

16 APPOINTMENT OF DIRECTORS

- 16.1 There shall at no time be less than seven (7) directors of the Association.
- 16.2 Subject, if applicable, to the provisions of Article 16.1 above, the directors or remaining directors, as the case may be, shall be nominated, substituted and removed, as the case may be, by resolution of the Association in general meeting and no person shall be capable of being appointed as a director unless the provisions of Section 211 of the Act have been complied with.
- 16.3 Where the number of directors falls below the requisite minimum number, the continuing director/s may act only to increase the number of directors to the required minimum or to summon a general meeting for that purpose.

16.4 The board of directors shall, during the Development period, consist of not less than four (4) nominees of the Developer, which nominees may be non-owners and non-members of the Association. Any other directors to be appointed to office shall be elected by the members in general meeting, The Developer being entitled in voting on the election of such directors, to exercise the voting rights conferred upon it by Article 13.6. The first directors shall on registration of the Association, be appointed by the Developer.

17 CO-OPTION OF DIRECTORS

The directors may, by unanimous decision, at any time co-opt any other member as a director, provided that every appointment made in terms of this Article shall be subject to confirmation at the next general meeting of the Association.

18 DIRECTORS REMUNERATION AND REIMBURSEMENT

18.1 The directors shall:

18.1.1 be entitled to receive reasonable remuneration for actual professional services rendered to the Association, as may be determined by the Association in general meeting, with due regard to their duties and responsibilities; and

18.1.2 be entitled to reimbursement of all authorized and approved travelling, subsistence and other expenses incurred by them in the execution of their duties in or about the business of the Association.

18.2 Notwithstanding the provisions of Article 18.1, any director, whether or not in addition to his duties as a director of the Association, who is also in the employ of the association in the latter capacity, may not receive remuneration for services rendered to the Association in his capacity as

a director or employee, other than an amount which is reasonable in the circumstances.

19 ROTATIONAL RETIREMENT

- 19.1 Save for the directors appointed in terms of Article 16.3 all directors shall retire by rotation.
- 19.2 At every annual general meeting, commencing with the second such meeting to be held subsequent to the incorporation of the Association, one-third of such directors (or if their number not a multiple of three, then the nearest to one-third), shall retire from office but shall be eligible for re-election.
- 19.3 The directors to retire as aforesaid shall be those longest in office since their last election, but as between persons who become directors on the same day, those to retire shall, unless they otherwise agree amongst themselves, be determined by lot.

20 REMOVAL OF DIRECTORS

Without derogating from the provisions of Section 220 of the Act, and of Article 21 hereunder, the directors nominated or appointed as aforesaid may from time to time be removed and substituted in accordance with the following provision:

In the case of appointees in terms of Article 16.3 by resolution of the Association in general meeting, conducted in accordance with the requirements of the Act.

21 DISQUALIFICATION AND RESIGNATION OF DIRECTORS

The office of director shall be vacated if a director:

- 21.1 ceases to be a director or becomes prohibited from being a director by virtue of any provisions of the Act; or
- 21.2 resigns his office by notice in writing to the Association; or
- 21.3 contravenes the provisions of Article 23 below; or
- 21.4 is absent from three (3) consecutive meetings of the Board without obtaining prior leave of absence, unless the Board in a particular instance shall otherwise determine; or
- 21.5 retires or is removed from office in accordance with the provisions of these Articles; or
- 21.6 in the event of his being disentitled to exercise a vote in terms of Article 13.1.2.

22 POWERS OF DIRECTORS

- 22.1 The business of the Association shall be managed by the directors, who shall pay, on behalf of the Association, all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not by the Act, or by these Articles, required to be exercised by the Association in general meeting.
- 22.2 Without in any way derogating from the generality of the foregoing, the directors shall be entitled to exercise on behalf of the Association any of the powers itemized in Clause 5 of the Memorandum of Association of the Association.
- 22.3 A banking account may be opened in the name of the Association and all cheques drawn thereon shall be signed in such manner as the directors may from time to time determine, or as provided in these Articles.

- 22.4 The directors may delegate such of their powers to a Managing Agent as they may determine subject to any restrictions imposed or direction given at any general meeting.
- 22.5 Save as specifically provided for in these presents, the directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional firm or person or other employees whatsoever for any reason deemed necessary by the directors and on such terms as the directors shall decide.
- 22.6 The Directors shall further have power:
- 22.6.1 to require that any construction of any sort within the Development shall be supervised to ensure that the provisions of these presents and the rules are complied with, and that all such construction is performed in a proper and workmanlike manner; and
- 22.6.2 to issue an architectural and environmental design and maintenance manual in respect of the Development.
- 22.7 The Board shall have the right to vary, cancel or modify its decisions and resolutions from time to time.
- 22.8 Except for any buildings, outbuildings, structures, additions, or alterations to be erected by the Developer, all plans for buildings, outbuildings, structures, additions and alterations shall be approved by the directors, or in the event of there being an architectural review committee, the directors shall first submit such plans to the architectural review committee. The directors shall not approve any such plan unless the architectural committee has approved such plan.

23 DIRECTORS' INTERESTS

- 23.1 No Director shall have an interest in, or benefit from, any contract, which the directors may conclude, on behalf of the Association, with any person, Association, organization or association of persons, which has not been disclosed by that Director.
- 23.2 Any contract concluded by any Director of the Association in contravention of Article 23.1 above shall be null and void and shall not bind the Association.
- 23.3 Every Director shall, at the annual general meeting of the Association, make disclosure of all other companies and businesses in which he has an interest.

24 PROCEEDINGS OF DIRECTORS

- 24.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit.
- 24.2 The chairman may, and the secretary on the requisition of any two or more directors shall, at any time summon a meeting of the Directors.

25 QUORUM OF DIRECTORS

At all meetings of Directors the quorum necessary for the transaction of business shall be 50% (fifty per cent) of the Directors then in office plus one (1) director.

26 VOTING – DIRECTORS

- 26.1 Each Director present or represented at a meeting shall be entitled to exercise one (1) vote. Where a person is alternate to more than one Director, or where an alternate is also a Director in his personal capacity,

he shall have a separate vote on behalf of each Director whom he is representing in addition to his own vote as Director, if applicable.

- 26.2 Questions arising at any meeting shall be decided by a majority of votes, save where otherwise stated in these Articles.

27 ELECTION OF THE CHAIRMAN

Subject as aforesaid, the Association may in general meeting from time to time elect a chairman and vice-chairman, as the case may be, to preside at meetings of the directors and unless otherwise determined by such general meeting, they shall hold office for a period of two (2) years, but if no such chairman or vice-chairman be elected, or if at any meeting the chairman be not present within thirty (30) minutes after the time appointed for holding the same, the Directors present shall choose someone of their number to be chairman of such meeting.

28 SIGNED RESOLUTIONS – DIRECTORS

Subject to the Act, a resolution in writing signed by any number of the Directors being not 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 documents, each signed by one or more Directors in terms of this Article.

29 MINUTES AND MINUTE BOOK

The Directors shall, in accordance with section 204 of the Act, cause minutes to be kept in books provided for the purpose:

- 29.1 of all appointments of Directors and officers;
- 29.2 of the names of the Directors present at each meeting of Directors, and of any committee appointed by the Directors;

29.3 of all resolutions and proceedings at all meetings of the Association and the Directors, and of committees appointed by the Directors, and every Director or committee member present at such meeting shall sign his name in a book to be kept for that purpose, and shall cause such minutes to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting

30 INSPECTION OF MINUTES

The minutes kept of every meeting of the Association under Section 204 of the Act may be inspected and copied as provided in Section 113 of the Act.

31 DELEGATION – COMMITTEES

31.1 The Directors may delegate any of their powers to committees consisting of such one or more of their number as they deem fit; and such other members as determined. Any such committee of the Board so formed shall, in the exercise of the powers delegated to it, conform to any regulation that may be imposed on it by the Board. All decisions and resolutions taken by any such committee shall, prior to their implementation, be approved by the Board at the next meeting of the Board of Directors.

31.2 The Directors shall have further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

31.3 A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not present within thirty (30) minutes after the time appointed for the holding the same, the members present may choose one of their number to be chairman of the meeting.

- 31.4 A committee may meet and adjourn as deemed proper. Questions arising at any meeting shall be determined by a majority of votes of the members present.
- 31.5 Should the Directors appoint an architectural review committee, it shall consist of;
- 31.5.1 a practicing professional architect duly qualified to practise as such on his own account in the Republic of South Africa;
- 31.5.2 a minimum of one (1) director;
- 31.5.3 such other members as the Directors may determine.
- 31.6 Members appointed to any committee shall not necessarily be required to be members of the Association.

32 DEFECTS IN THE APPOINTMENT OF DIRECTORS

All acts done by any meeting of the Directors or of a committee appointed by the Directors, or by any person acting as a Director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of such Director or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

33 ALTERNATE DIRECTORS

- 33.1 A Director shall be entitled to nominate any other person to act as alternate Director in his place during his absence or inability to act as such. If such appointment is made, the alternate director shall in all respects be subject to the terms, qualifications and conditions existing with regard to the other Directors of the Association.

33.2 The appointment of an alternate Director shall be revoked, and the alternate Director shall cease to hold office, whenever the Director who nominated him ceases to be a Director, or should the Director or the alternate himself give notice to the Secretary that such alternate has ceased to represent the Director concerned; or should the Board of Directors so decide.

34 **SECRETARY**

The Directors may from time to time, by resolution, appoint a person to be secretary of the Association.

35 **RESERVE FUND**

The Directors may establish any reserve fund or funds for the purpose of meeting contingencies or for the furtherance of any of the objects of the Association, and such fund or funds may be invested as the Directors deem fit.

36 **BORROWING POWERS**

The borrowing powers shall be unlimited, and they shall be entitled to borrow money and to mortgage or bind the undertaking and property of the Association or any part thereof.

37 **ACCOUNTS AND AUDIT**

37.1 Auditors shall be appointed (and if necessary removed and replaced) and their duties regulated in accordance with the Act; provided that the auditor shall not be a Director of the Association.

37.2 Without derogating from the provisions of Article 37.1 above, the Directors shall cause such accounting records to be kept as are

prescribed by Section 284 of the Act, in order to fairly present the state of affairs and business of the Association and to explain the transactions and financial position of its trade or business.

37.3 The accounting records shall be kept at the Office of the Association and shall always be open to the inspection of the Directors.

37.4 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 accounting records 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 any right to inspect accounting records or documents of the Association except as conferred by the Act or authorized by the Directors or by the Association in general meeting.

38 ANNUAL FINANCIAL STATEMENTS

38.1 The Directors shall from time to time, in accordance with the Section 286 and 288 of the Act, cause to be prepared and laid before the Association in general meeting such annual financial statement as are referred to in those sections.

38.2 A copy of the financial statement which are to be laid before the Association in annual general meeting, shall not less than twenty-one (21) days before the date of the meeting be sent to every member of the Association and to the Registrar; provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

39 NOTICES

39.1 A notice may be given by the Association to any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered address, or (if he has no registered

address in the republic) at the address, if any, supplied by him to the Association for the giving of notices to him.

39.2 Any notice if given by post shall be deemed to have been served seven (7) days after the letter containing the same is posted and, in proving the giving of the notice sent by post, it shall be sufficient to produce a registered slip indicating that the notice was properly addressed and dispatched.

39.3 Notice of every general meeting shall be given in any manner required by law or authorised by these Articles:

39.3.1 to every member of the Association; and

39.3.2 to the Auditor for the time being of the Association.

39.4 The accidental omission to give any notice of a general meeting to a member or the non-receipt of any such notice by a member shall not invalidate any resolution passed at such meeting.

40 RULES

40.1 Subject to any restriction imposed or direction given at a general meeting of the Association, the Directors may from time to time make house rules in regard to;

40.1.1 The standards and guidelines for architectural design of all buildings and outbuildings, structures of any nature, swimming pools, tennis courts, and all structures erected or to be erected in the Development, and in particular to control the design of the exteriors to ensure an attractive aesthetically pleasing character to all buildings in the Development;

40.1.2 The standards and guidelines for the design of all site works, buildings, structures, installations and projections on the properties in

the Development including aerials, pergolas, side walls, swimming pools, tennis courts, awnings, Jacuzzis, carports, paved pathways and landscaping features and works;

40.1.3 The preservation of the environment including the right to control vegetation and the right to prohibit and / or control the erection of fences, whether upon or within the boundaries of any property;

40.1.4 The right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;

40.1.5 The conduct of any persons within the Development for the prevention of nuisance of any nature to any member;

40.1.6 The preservation of the natural environment, vegetation and fauna in the Development;

40.1.7 For the furtherance and promotion of any of the objectives of the Association and / or for the better management of the affairs of the Association and / or for the advancement of the interests of members and / or residents in the Development;

40.1.8 For the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within the Development;

40.2 For the enforcement of any rules made by the Directors in terms hereof, the Directors may;

40.2.1 Give notice to the member concerned requiring him to remedy such breach within such period as the Directors may determine;

40.2.2 Take or cause to be taken, such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned,

which amount shall be deemed to be a debt owing by the member concerned to the Association; and / or

- 40.2.3 Impose a system of fines or other penalties. The amounts of such fines shall be reviewed and confirmed at each annual general meeting of the Association; and / or
- 40.2.4 Take such action including proceedings in Court, as they may deem fit.
- 40.3 In the event of the Directors instituting any legal proceedings against any member or resident within the Development for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client.
- 40.4 In the event of any breach of the rules by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the Breach as they in their discretion may deem fit.
- 40.5 In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of three Directors appointed by the chairman for the purpose shall adjudicate upon the issue at such time and such manner and according to such procedure (provided that natural justice shall be observed) as the chairman may direct.
- 40.6 Any fine imposed upon any member shall be deemed to be a debt due by the member to the Association and shall be recoverable by ordinary civil process.

- 40.7 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Association enforce the provisions of any rules of civil application or action of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they deem fit.
- 40.8 The Association may in general meeting itself make any rules which the Directors may make and may in general meeting vary or modify any rules made by it or by the directors from time to time.
- 40.9 Whenever they consider that the appearance of any land or building vested in a member or members is such as to be detrimental to the surrounding area or the Development generally, the Directors may serve notice on such member or members to take such steps as may be specified in the notice to eliminate such unsightly or injurious conditions. In the event of the member or members failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the Association. The Directors shall be obliged, in giving such notice, to act reasonably.
- 40.10 No person shall within the Development commence with the construction of any building or structure, or any additions or alterations thereto, or any works of whatsoever nature as defined in Article 40.1.1 and 40.1.2 unless he has submitted to the Directors for examination and approval or refusal such plans for such building, structure, alteration or addition as the directors may require. The Directors shall have power in approving any plan to lay down such reasonable conditions as they may deem fit.
- 40.11 The Association may require any member to maintain the sidewalk adjacent to his property, and in the event of such member failing so to

maintain such sidewalk to the satisfaction of the Association, the Association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge the member concerned. In the event of the Association requiring any member to maintain the sidewalk as aforesaid, the Directors shall in determining the levy payable by such member take into account the saving to the Association resulting from the member himself maintaining such sidewalk.

40.12 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:

40.12.1 to permit the installation of any equipment in the units for the purpose of such services as may be determined by the Association from time to time;

40.12.2 to make payment of the charges raised by the Association in respect of such services; and

40.12.3 to abide by such terms and conditions of the provisions of such services as may be laid down by the Association from time to time.

40.13 Where the boundary of any members Erf also constitutes the boundary of the Development, such member shall be obliged to permit the Association to erect upon such member's property immediately adjacent to such boundary, such walling or other fencing as the Developer and/or the Association may determine. Such member shall not be entitled to interfere in any manner whatsoever with any such walling or fencing, and shall permit the Association from time to time access to such member's property in order to inspect such walling or fencing and to effect such repairs as may be necessary from time to time. In the event of any such member wishing to erect his own walling or fencing, he shall be obliged

to erect such walling or fencing referred to above and subject to such conditions as the Association may lay down to permit the Association access to the boundary walling or fencing concerned.

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

40.15 No person shall have any claim against the Association as a result of fire or any substance, liquid or gas escaping from the property of the Association and causing damage to any person or property of any member providing however that the Association shall take such reasonable steps in its power to prevent or minimize such damage.

41 GENERAL

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

41.1.1 such member is indebted to the Association in any way in respect of levies or other amounts, which the Association may in terms of these presents, be entitled to claim from him;

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

41.1.3 such member remains in breach of any of the provisions of these presents or any Rules after notice from the Directors requiring him to remedy such breach.

41.2 The Directors in issuing the certificate referred to in Article 41.1 above shall be entitled to charge a reasonable fee therefore to be determined

by the Directors from time to time subject to review by the Association in general meeting.

- 41.3 The provisions of these Articles shall be binding upon all members and, in so far as they may be applicable to all persons occupying any Erf by, through or under any member, whatever the nature of such occupation. No member shall let or otherwise part with occupation of his Erf without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the proposed occupier of the Erf has complied with the provisions of Article 7.1 to 7.3 above.
- 41.4 No member ceasing to be a member of the Association for any reason shall (nor shall such members executors, curators, trustees or liquidators) have any claim upon or interest in or right to the funds or any other property of the Association.
- 41.5 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.

42 DISPUTES

- 42.1 Any dispute, arising out of or in connection with these Articles, including the cancellation thereof, must be determined in terms of this clause, except where an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 42.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute for determination in terms of Article 42.3 hereof;

42.3 If a party exercises his right in terms of Article 42.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years experience in their field;

42.3.1 an advocate practicing as such at any Bar if the parties agree that the dispute in question is a legal one; or

42.3.2 a practicing public accountant and auditor if the parties agree that the dispute in question is an accounting one; or

42.3.3 a quantity surveyor if the parties agree that the dispute relates to the measurements in any way of any building construction or any aspect thereof; or

42.3.4 an engineer if the parties agree that the dispute relates to any defect in any building construction.

42.3.5 If the parties cannot agree:

42.3.5.1 on the person referred to in Article 42.3.1 to 42.3.4 hereof; or

42.3.5.2 whether or not the dispute falls within the framework of Article 42.3.1 to 42.3.4 hereof

within fourteen (14) days after such dispute has arisen and in regard to which any of the parties has notified the other, the matter shall be referred to an advocate practicing at the Johannesburg Bar and nominated by the Chairman of the Johannesburg Bar Council, who shall act as the expert.

Any person agreed upon or nominated as aforesaid ("the Expert") shall in all respects act as an Expert and not as an arbitrator.

- 42.4 Subject to Article 42.6 and 42.11 in regards to costs the Expert shall be bound to follow the general substantive principles of South African law.
- 42.5 The Expert shall be vested with the entire discretion as to the procedure and manner to be followed in arriving at his decision, and in this regard shall not be bound to the principles of South African law regarding procedure and evidence.
- 42.6 The parties shall use their best endeavours to procure that the decision of the Expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
- 42.7 The Expert's decision shall be final and binding on all parties affected in any manner thereby, and shall be carried into effect and may be made an order of any competent court at the instance and cost of any of the parties.
- 42.8 The provisions of this clause:
- 42.8.1 constitutes the irrevocable consent by the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw there from or claim that any such proceedings are not bound by such provisions; and
- 42.8.2 are severable from the rest of these clauses and shall remain in effect even if this agreement is terminated for any reason whatsoever.
- 42.9 The advocate appointed in terms of 42.3.5 hereof, shall be entitled in his discretion to appoint any of the persons referred to in Article 42.3.1 to 42.3.4 or any other person, as the Expert, if he is of the opinion that such person is better qualified to determine the issue. In such event such appointee shall be the Expert for the purposes of this clause.

42.10 The party who exercises his right in terms of Article 42.2 shall establish from the Expert what his estimated fees will be, and the parties shall in equal shares be liable for payment of such fees irrespective of any other award the Expert may make in regard to any other costs, which amount shall be deposited with the Expert prior to the commencement of the proceedings, who shall hold such amount in trust for himself. If any party fails to comply with this obligation, he shall be deemed to be in breach of the provisions of these clauses, which breach is a material one, which goes to the root of the agreement and in regard to which obligation time is of the essence.

43 INDEMNITIES

43.1 Subject to any contrary provision of the Act, every director and other officer of the Association shall be indemnified out of funds of the Association against all authorized and approved costs, expenses and liabilities properly incurred by him in the course of the Association's business.

43.2 No Director, officer or employee of the Association shall be liable for the acts, receipts, neglects or defaults of any other Director, officer or employee or for joining in any receipt or other act of conformity, or for loss or expense happening to the Association through the insufficiency or deficiency of any security in or upon which any of the moneys of the Association shall be invested, or for any loss or damage arising from the liquidation, insolvency or delictual acts of any persons with whom any moneys, securities or effects shall be deposited, or for any loss or damage occasioned by error of judgment or oversight on his part, or for any loss, damage or misfortune whatever which shall happen in the execution of his office, or in relation thereto, unless the same happen through his own wrongful act, negligence, default breach of duty or breach of trust.

44 ACCESS ERVEN

44.1 The following erven shall be transferred to and registered in the name of the Association :

44.1.1 erven 2098, 2099 and 2100 Noordwyk Extension 28;

44.1.2 erven 2146, 2147 and 2148 Noordwyk Extension 62;

44.1.3 erf 2430 Noordwyk Extension 63

44.1.4 erf 2381 Noordwyk Extension 64;

("the Access Erven").

44.2 The Access Erven shall be zoned "Special" in terms of the provisions of the relevant Town Planning Scheme. In addition to the conditions applicable to "Special for Road Purposes" erven in terms of the said scheme, the erven shall be subject to the following conditions:

44.2.1 The Access Erven shall be used for road purposes, access control and buildings ancillary thereto, post boxes and telecommunication purposes.

44.2.2 The Access Erven shall be transferred to this Association.

44.2.3 The Association shall have full responsibility for the functioning and proper maintenance of the Access Erven and the essential services (except for the services taken over by the local authority) contained therein.

44.2.4 The local authority shall not be liable for the malfunction of the surfacing of the access way, the storm water drainage system, and any essential services, with the exception of the water and sewerage system.

- 44.2.5 A servitude of right of way and for municipal purposes shall be registered in favour of and to the satisfaction of the local authority over the Access Erven simultaneously with the registration of the erven in the name of the Association.
- 44.3 Each and every owner of a residential erf in the Development shall have free access over the Access Erven to afford them access to a public road.
- 44.4 The local authority's engineering service departments and its emergency services are guaranteed 24 hour access to the Access Erven to maintain the local authority's installations and provide services to the residents in the Development.
- 44.5 The Access Erven shall not be alienated or transferred to any person except the Association without the consent of the local authority first having been obtained;
- 44.6 The Access Erven shall not be rezoned without the consent of the local authority.

45 PRIVATE OPEN SPACES

- 45.1 Erven 2101 and 2102 ("the Private Open Space Erven") shall be zoned "Private Open Space" in terms of the provisions of the relevant Town Planning Scheme and
- 45.1.1 Erven 2381, 2146, 2147 and 2148 ("the road portion") in terms of the provisions of the relevant Town Planning Scheme. (*Resolution AGM 2007*)
- 45.2 In additions to the conditions applicable to "Private Open Space" erven in terms of the said scheme, the erven shall be subject to the following conditions:

- 45.2.1 the Private Open Space Erven shall, prior to or simultaneously with registration of the first erf in the Development, be transferred to this Association;
- 45.2.2 the Association shall have full responsibility for the proper maintenance of the Private Open Space Erven;
- 45.2.3 each and every owner of a residential erf in the Development shall have free entrance to the Private Open Space Erven; and
- 45.2.4 the local authority shall have unrestricted access to the Open Space and Access Erven at all times
- 45.3 servitude right of access over stand 2369 in favour of the Association with Borehole and Machinery thereon. (*Resolution AGM 2007*)

46 **PERMITTED ALTERATIONS**

Subject to the provisions of Clause 6 of the Memorandum of Association, the Company may alter the provisions of its Memorandum and Articles of Association by special resolution and with the written consent of the local authority.

47 **DEREGISTRATION**

The Company shall not apply for de-registration at the Registrar of Companies without the consent of the City of Johannesburg Metropolitan Municipality first having been obtained.

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