

WATERFALL COUNTRY ESTATE HOME OWNERS ASSOCIATION NPC



CONDUCT RULES

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1. INTRODUCTION AND PURPOSE

- 1.1. These Rules are made by the Board in terms of, and subject to, the MOI. It prescribes both rights and responsibilities applicable to Members for the purposes of governing conduct in or about the Estate and fostering a culture of accountability and self-regulation in the interests of promoting a harmonious relationship between the various stakeholders. For the avoidance of doubt, these Rules supersede and replace all previous versions of the conduct rules concerning the Estate.
- 1.2. Members are responsible for the conduct of their Visitors and any breach of these Rules by a Resident (not being a Member) or a Visitor, will be attributed to the relevant Member or Operating Lessee (as the case may be), who will be held responsible for such breach. This notwithstanding, the Board and/or the Management Team (as the case may be), shall be entitled to derogate from the strict observance of these Rules, provided the derogation is necessary for a legitimate purpose and in the best interests of the Estate.
- 1.3. These Rules may be enforced by the Board and/or the Management Team or any other Person duly authorised by the Board, provided that such enforcement is in the best interests of the Estate according to the reasonable determination of the Board. Any infringement of these Rules may result in the Operating Lessee and/or the Member deemed to have committed such breach, being penalised with financial penalties (including penalty levies) or such other sanction or legal action as may be deemed appropriate and reasonable by the Board and/or the Management Team, as is more fully provided for in the MOI or these Rules.
- 1.4. Any interference with the authorised activities of the Board and/or the Management Team (including the enforcement of these Rules and the MOI) or any threats made and/or damage to the property or person of any Director, Operating Lessee, the Board, the CEO, the Management Team and/or any Association Invitees will not be tolerated and may result in legal action and/or the imposition of other appropriate sanctions determined at the sole and absolute discretion of the Board.
- 1.5. Without derogating from the generality of this Rule 1, the aforementioned sanctions may include –
 - 1.5.1. a financial penalty being levied against the offending Person, the Operating Lessee and/or the responsible Member;

- 1.5.2. the removal of the offending Person from the Estate or part thereof (to the extent legally permissible);
 - 1.5.3. the denial of access to the Estate or any part thereof by the offending Visitors (to the extent legally permissible);
 - 1.5.4. the revocation, suspension or other limitation of any rights or privileges granted to such Person under these Rules and/or the MOI (to the extent legally permissible); and/or
 - 1.5.5. the institution of legal proceedings (which may also include the institution of legal action by the Estate PropCo due to a breach of an End-User Lease) against the offending Person, Operating Lessee and/or Member, as the case may be.
- 1.6. For the avoidance of doubt, the imposition by the Board of a financial penalty may be done in addition to any other sanction imposed by the Board and/or any other corrective action taken by the Board in response to non-compliance with these Rules.

2. MEMBER RESPONSIBLE

- 2.1. Save to the extent otherwise provided in these Rules or the MOI, the provisions of these Rules and the MOI (including any restrictions and conditions relating to the use of any Stands, Rental Premises and other Common Property) shall be binding on all Members, Operating Lessees and Residents.
- 2.2. All Members, Operating Lessees and Residents shall be responsible for the conduct of their Visitors.
- 2.3. For the avoidance of doubt, the provisions of these Rules and the MOI shall be binding on all Residents, Operating Lessees and Visitors (including any Person gaining access to the Estate in terms of an Access Agreement), as if such Persons are Members of the Association.

3. CONTRAVENTIONS AND ENFORCEMENT

- 3.1. A breach of these Rules and/or the MOI by any Resident (who is not a Member), and/or a Visitor shall, to the extent applicable, be attributed to the Member and/or Operating Lessee concerned; and the Board, CEO, Management Team, and/or the Estate PropCo

(in terms of the End-User Lease) shall be entitled to take such action as they may deem fit against the responsible Member or Operating Lessee.

3.2. In the event of any failure to comply with (or to procure the compliance with) any obligation incumbent upon any and all Members, Operating Lessees, Residents and their Visitors (whether in terms of these Rules, the MOI and/or an Operating Lease, as the case may be) within the period of any notice given to the Member or Operating Lessee concerned demanding such compliance, the Board shall be entitled, but not obliged, to –

3.2.1. do such things and take or cause to be taken such steps as it may consider necessary to procure such compliance with, and/or remedy the breach of, the MOI, these Rules and/or the End-User Lease (as the case may be); and

3.2.2. incur such expenditure as, in the opinion of the Board may be necessary and/or requisite for the purposes of taking any steps contemplated by Rule 3.2.1.

3.3. For these purposes, the Board shall be entitled to delegate its authority to the CEO and Management Team. Accordingly, the authority of the Management Team in terms of these Rules shall be construed as a delegated authority. In the event that such authority is revoked by the Board, then the applicable reference to the Management Team shall be a reference to the Board.

3.4. Notwithstanding the generality of the foregoing, the Board may, in the name of the Association, enforce the provisions of these Rules, the MOI and/or an Operating Lease by an application to a court or tribunal of competent jurisdiction and, for this purpose, may appoint such legal practitioners as they deem fit.

3.5. The Estate PropCo shall be entitled to do such things and take or cause to be taken such steps as it may consider necessary to procure compliance with, and/or remedy a breach of any End-User Lease and further incur such expenditure as, in the opinion of the Estate PropCo, may be necessary and/or requisite to take any such steps.

3.6. Any expenditure thereby incurred by the Estate PropCo and/or the Board acting on behalf of the Association (as the case may be) as contemplated in this Rule 3 –

3.6.1. shall be deemed to be a debt owing by, and recoverable from, the Member or the Operating Lessee concerned, and may be included in the monthly

statement of account issued to such Member or Operating Lessee by the Association (in addition to the levy payable by such Member or Operating Lessee);

3.6.2. may include administrative charges, legal fees, tracing fees, penalties, fines and collection commission; and

3.6.3. shall be recoverable from the Member or Operating Lessee concerned on an attorney and own client scale in full, regardless of whether or not formal legal action is actually instituted.

3.7. In addition to the above, the Board shall be entitled to impose a system of financial penalties (including penalty levies) or other sanctions upon a Member or Operating Lessee that fails (or is deemed to have failed) to strictly adhere to the provisions of these Rules, the MOI and/or Operating Lease (as the case may be), the amounts and nature of which shall be determined by the Board from time to time.

3.8. In all instances where a financial penalty or fine is levied, the amount will be reflected on the monthly statement of account issued to the Member or Operating Lessee concerned and will be deemed to be due and payable together with the applicable levies and other amounts due by such Member or Operating Lessee.

3.9. Subject to the MOI, nothing contained in this Rule 3 shall derogate from the Board's overall authority to deviate from these Rules and/or the MOI in any instance. The Board reserves the right to determine the appropriate penalty levy and/or sanction and action required to rectify a breach of these Rules and/or the MOI.

4. MEMBER REGISTRATION AND COMMUNICATION

4.1. The Board, shall from time to time, be entitled to prescribe the use of any electronic platforms for purposes of access to the Estate and communication between the Management Team, Operating Lessees, Members, Residents, Association Invitees, and Visitors.

4.2. The Members, Residents, the Operating Lessees, the School Lessees, and the Association Invitees shall upload and/or procure the uploading of all such information as may be necessary for the effective use and operation of such platforms for communication, access and ancillary Estate Management Purposes.

- 4.3. Without derogating from the generality of Rule 4.1, Members, Residents, School Lessees, the Operating Lessees, and the Association Invitees –
- 4.3.1. shall be obliged to download the Prescribed Digital Application and register on the Waterfall Portal;
 - 4.3.2. shall provide the Management Team with such Personal Information as may be required for Estate Management Purposes and shall procure same to be done by their respective Visitors;
 - 4.3.3. shall provide such consent as may be required to enable the Processing of their Personal Information for Estate Management Purposes and shall procure that the necessary consent of their Visitors have been obtained; and
 - 4.3.4. may be required to disclose and/or update their information and consent to the use thereof prior to them being registered for access (including the renewal of such registration) to the Estate.

5. OPERATING LESSEES

- 5.1. Certain portions of the Common Property shall be leased to Operating Lessees in terms of an Operating Lease.
- 5.2. No Person shall have any claim of whatsoever nature against the Association, the Board and/or any of the PropCo's pursuant to, or in connection with –
- 5.2.1. the quality of the services rendered, products sold and/or the facilities operated by the Association and/or any Operating Lessee;
 - 5.2.2. the Association not constructing or making available any improvements, facilities and/or amenities contemplated to form part of the Common Property; and/or
 - 5.2.3. any products, services, facilities and/or amenities being unavailable for any reason whatsoever.
- 5.3. None of the Association, the Board and any of the PropCo's, jointly or individually, provide any warranties whatsoever in relation to the Common Property and/or any other portions of the Land, including –
- 5.3.1. its availability;

- 5.3.2. the safety of Persons or their belongings on or about it; and/or
- 5.3.3. the suitability thereof for the purposes contemplated in these Rules, the MOI, the End-User Leases, the Operating Leases, the School Leases (or any other purpose whatsoever).

6. THE MANAGEMENT TEAM AND ASSOCIATION INVITEES

- 6.1. The CEO and Management Team shall report and be responsible only to the Board and not to any other Person. All instructions to the CEO and Management Team shall be issued by the Board through a Director duly nominated by the Board for such purpose, or any other Person to whom the Board may delegate such authority.
- 6.2. Only the Board, the CEO and/or the Management Team shall be entitled to issue instructions to the Association Invitees appointed or engaged by the Association.
- 6.3. No Person, save as may be contemplated in these Rules, shall instruct any Association Invitees to do any work, run errands or to undertake private work during normal working hours, except in the case of an emergency (as may be determined by the CEO and/or the Management Team or such other Person to whom such authority has been delegated).
- 6.4. Association Invitees, the Management Team and the CEO are appointed by the Association and may only be dismissed by and at the sole and absolute discretion of the Board.
- 6.5. Any Person who has a complaint concerning the CEO, the Management Team, any Operating Lessee or Association Invitee (including their employees or contractors), must follow the procedure set out in Rule 20. No Person with any such complaint shall directly engage with, or reprimand, the CEO, the Management Team, any Operating Lessee or Association Invitee (including their employees and contractors).

7. VISITORS

Any Member, Operating Lessee or Resident who receives Visitors shall ensure that such Visitors are aware and understand these Rules, and shall procure their compliance with these Rules and the MOI at all times.

8. LEASING

- 8.1. A Member shall, subject to the provisions of this Rule 8, be entitled to enter into a Lease with any Person in respect of that Member's Stand or Unit, provided that the Member shall use such template Lease agreement as may be prescribed or otherwise agreed to by the Board from time to time and shall submit a copy of said Lease agreement to the Management Team.
- 8.2. The Members shall be entitled to enter into a Lease contemplated in Rule 8.1 above, provided that, unless otherwise agreed to between the Board and the Member concerned –
 - 8.2.1. the Member obtains a police clearance from the South African Police Services for the prospective Tenant (if required to do so by the Management Team in its reasonable discretion);
 - 8.2.2. the Member obtains a credit check conducted through a registered credit bureau for the prospective Tenant;
 - 8.2.3. the Member obtains a valid Identification (a South African barcoded identification book or smart ID) or a valid international passport from the prospective Tenant, including from any other prospective Residents of the Stand concerned;
 - 8.2.4. the Member obtains the consent of the prospective Tenant to share the information contained in the abovementioned documents with the Management Team;
 - 8.2.5. the prospective Tenant will be the Resident in actual occupation of the Stand concerned;
 - 8.2.6. unless the prior written consent of the Management Team has been obtained, no further sub-letting shall be permitted by the Tenant;
 - 8.2.7. the Member must ensure that the Tenant and other occupants (Residents) of the Stand concerned furnish the Management Team with such information as they may require for Estate Management Purposes;

- 8.2.8. the Member must ensure that the occupants of that Member's Stand do not exceed the permitted number of occupants as per the relevant municipal regulations as well as the approved plans for the Stand concerned; and
- 8.2.9. the Member must deliver to the Management Team, a copy of the Lease duly signed by the Member and the Tenant concerned together with an initialled copy of the MOI and these Rules (including any Ancillary Rules, Policies and Procedures).
- 8.3. Notwithstanding the remaining provisions of this Rule 8, the sub-letting of the School Properties shall be governed by the terms and conditions of the School Leases.
- 8.4. No letting or parting with occupation (if permitted) shall in any way release the Operating Lessee, the Member, the School Lessee from any of their obligations in terms of these Rules, the MOI and/or an Operating Lease, School Lease or End-User Lease (as the case may be).
- 8.5. Save for in exceptional circumstances, as may be agreed upon between the Member concerned and the Board in writing, no Short Term Letting Arrangements are permitted anywhere on or about the Estate, including, for the avoidance of doubt, in relation to any residential dwellings, buildings or other structures located on the Estate. For the further avoidance of doubt, the advertising of any Stand and/or Unit on any platform for this purpose shall constitute a violation of this Rule 8.5.

9. FINANCES / LEVIES

- 9.1. All levies (including any penalty levies) due and owing to the Association by Members or Operating Lessees shall be paid monthly in advance, by no later than the first day of each month.
- 9.2. Levies (including penalty levies) not paid promptly on the due date for payment will bear interest at 3 (three) percentage points above the prescribed prime rate of interest.
- 9.3. Members or Operating Lessees shall not be entitled to set-off or withhold payment of levies payable to the Association for any reason (including, without limitation, by reason of any alleged failure by the Association to provide any services).
- 9.4. Levy invoices may include, but not be limited to, penalties for conduct transgressions, damage to infrastructure and any other payments due to the Association.

- 9.5. Members or Operating Lessees whose levy accounts are in arrears, may at the sole discretion of the Board, enter into a repayment arrangement agreed upon by the Board and recorded in a signed acknowledgement of debt.

10. COMMERCIAL ACTIVITIES

- 10.1. Save as otherwise authorised in an Operating Lease, no Person may conduct any commercial activities of any nature whatsoever upon the Estate without the express prior written consent of the Management Team, which consent it may grant or withhold in its sole and absolute discretion. All Stands (and all Units) shall primarily be used for residential purposes.
- 10.2. For the avoidance of doubt, “commercial activities” for the purposes of this Rule 10 shall not extend to Members or Residents working or conducting business activities from their Stand, provided that such business activities are conducted in a manner which is consistent with the *Land Use Rules* prescribed by the City of Johannesburg, namely that:
- 10.2.1. not more than 25% (twenty five percent) of the Member’s or Residents Stand or 50m² (fifty meters squared) (the lessor of) shall be used for non-residential purposes;
- 10.2.2. the principal of the business activity must be a permanent occupant of the Stand in question; and
- 10.2.3. the business activity shall be limited to 2 (two) employees.
- 10.3. For the further avoidance of doubt, the Management Team will not approve any commercial activity inside of the Estate involving the selling or distribution of liquor or potable alcohol or which carries on any form of gaming or lottery, or any form of escort agency, strip show or similar entertainment (save for certain of the Operating Lessees who may be permitted, in terms of their Operating Leases, to sell liquor).
- 10.4. In addition, no filming of any content to be broadcasted publicly (including the filming of television programs, commercials and the like) shall be permitted within the Estate unless specifically sanctioned by the Board.
- 10.5. Furthermore, no auction, jumble sale or any other sale of movable goods or provision of services whatsoever shall be allowed on or about the Estate by any Person, save as

otherwise permitted by these Rules, the MOI, a School Lease, an Operating Lease or an End-User Lease.

11. ACCESS CONTROL AND SECURITY

11.1. Access Control

11.1.1. Members, Residents and Operating Lessees –

11.1.1.1. All Members, Residents and Operating Lessees are required to have their Personal Information, facial biometrics and vehicle details captured on the Members database of records including the Estate's access control system for access control into and out of the Estate. This is the primary mode of ingress and egress. The fail-over access system will be the Prescribed Digital Application.

11.1.1.2. Neither Members, Residents nor Operating Lessees may use their own facial biometrics (or personal access rights) to open the booms or turnstiles for any other Person. For the avoidance of doubt, any Member, Resident or Operating Lessee travelling as a passenger in a vehicle of a Person seeking access to the Estate is precluded from using his/her own facial biometrics for this purpose. The same principle applies to any person seeking access to the Estate from the allocated pedestrian turnstiles. The access rights of Members, Residents and Operating Lessees are not transferable.

11.1.1.3. Members, Residents and Operating Lessees, if entering or exiting the Estate on foot, must use the allocated pedestrian turnstiles and may not walk through the vehicle access lanes, nor walk around the booms.

11.1.2. Visitors (Excluding Employees and Building Contractors) –

11.1.2.1. Visitors will only be granted access to the Estate according to the approved visitor management system installed for access control.

11.1.2.2. All Visitors to the Estate must produce a valid South African driver's license, South African identification book/card or a valid passport

in order to be scanned in and granted access to the Estate. Any Visitor entering the Estate via the invitation system on the Prescribed Digital Application will be obliged to upload copies of valid identification and authentic vehicle details. For the avoidance of doubt, no Visitor will be granted access to the Estate without being possessed of a valid form of identification.

11.1.3. Employees (Employed by Members, Residents or Operating Lessees) –

11.1.3.1. All Members, Residents and Operating Lessees are required to register their employed staff on the facial access control system and confirm the days and times of permitted access. No employees of Members and Residents are permitted to make use of the Visitors access control procedure. For the avoidance of doubt, employees of Members, Residents and Operating Lessees are prohibited from utilising the invitation system on the Prescribed Digital Application for the purposes of enabling personal guests and/or associates to enter the Estate.

11.1.3.2. All employees must be in possession of a valid South African identity book or a valid international passport and work permit (if applicable) and shall be obliged to furnish the Management Team with such additional information, including a police clearance certificate, as may be requested by the Management Team. It is the responsibility of the Member, Resident or Operating Lessee concerned to ensure the accuracy of the information furnished to the Management Team.

11.1.3.3. Members, Residents or Operating Lessees who bring casual employees into the Estate on or in a vehicle must ensure that they are issued with an access code via the invitation system on the Prescribed Digital Application. Any such employees must disembark from the vehicle and enter/exit the Estate via the designated turnstiles.

11.1.4. Building Contractors –

- 11.1.4.1. All building contractors must first register with the Management Team in order to be granted access to the Estate. Subject to the Board's discretion, such access will only be permitted between the hours of 07h00 and 17h30 (Monday to Friday, excluding public holidays). All such contractors are required to obtain a security identity card (which must be retained in their possession) and be registered on the facial access control system.
- 11.1.4.2. All contractors and sub-contractors, including their employees, may only be registered onto the system upon the Management Team being furnished with a valid South African identity book/card or a valid international passport and work permit (if applicable). The relevant contractor must also provide the Management Team with the names of all construction workers and other employees to be engaged in construction activities on the relevant Stand. Only contractors that have been registered and have been issued with an approved identity card may be engaged.
- 11.1.4.3. All contractors, service providers and delivery personnel engaged in respect of construction works or services are strictly prohibited from using the residential access gates of the Estate. Only gates one (Ext. 53, 56, 57 & 58), three (Ext. 39, 40, 41, 42 & 105), seven (Ext. 19, 38 & 43) and the solitary access gate (Ext. 44) may be used by such Persons entering and exiting the Estate, and only between the hours of 07h00 and 17h30 (Monday to Friday, excluding public holidays). For the avoidance of doubt, this Rule 11.1.4.3 shall not apply to courier, delivery or e-hailing services which are unrelated to construction works or similar services on the Estate.
- 11.1.4.4. All contractors must ensure that all of their employees/sub-contractors disembark from their vehicles and use the allocated pedestrian turnstile point for ingress/egress to and from the Estate.

- 11.1.4.5. All contractors must ensure that they renew their facial biometric access every 3 (three) months with the Management Team, failing which their access will be automatically removed.
- 11.1.4.6. All contractors must remain on the Stand at which they have been contracted to work and may not walk or loiter between Stands, or to and from the access gates.
- 11.1.5. Association Invitees –
 - 11.1.5.1. Association Invitees may be granted access via the Association's access control system in order to perform their contracted duties.
 - 11.1.5.2. The permitted hours of access applicable to Association Invitees shall be determined by the Management Team according to the nature of the requisite service delivery.
 - 11.1.5.3. All Association Invitees must furnish the Management Team with the names and valid identity documents of their employees. Only employees registered with the Management Team in accordance with the prescribed procedures will be granted access.
 - 11.1.5.4. All Association Invitees must ensure that their staff disembark from their vehicles and use the allocated pedestrian turnstile point for ingress/egress to and from the estate.
- 11.1.6. Emergency Services, Municipal Services and the Sheriff of the High Court –
 - 11.1.6.1. The Association will grant automatic access to emergency services, including the Fire Department, ambulance and emergency vehicles and to members of the South African Police Services, upon their identification being confirmed. The security personnel will at all times escort these emergency services to and from their destination within the Estate.
 - 11.1.6.2. Access will also be provided to municipal services, including *Eskom*, *Joburg Water*, *Rand Water*, *Pikitup*, the Post Office, the gas utility and optic fibre service providers, as well as the Sheriff of the High Court, once the Management Team has been notified and their

identity and job card status (or mandate in the case of the Sheriff of the High Court) has been verified.

11.2. Facial Access and On-Boarding

- 11.2.1. Members are provided with 6 (six) associate keys, including for themselves. It is the responsibility of the Member concerned to on-board their live-in family members and staff. Valid identification, including the applicable details of vehicles, must be furnished to the Management Team for each associate key in use.
- 11.2.2. In the case of a Tenant, the primary Tenant will be responsible for on-boarding their live-in family and staff. The primary Tenant will only have 4 (four) available associate keys, and the Member is entitled to retain 1 (one) such key.
- 11.2.3. In the event that a Member requires more than 6 (six) associate keys, or a primary Tenant requires more than 4 (four) associate keys, then a written application, requesting additional keys should be submitted to the Management Team for approval, which approval shall not be unreasonably withheld. The Management Team shall be entitled to charge a reasonable administration fee for each additional key issued to either a Member or Tenant as the case may be.
- 11.2.4. For the avoidance of doubt, only live-in family shall be permitted to be on-boarded as associates in accordance with this Rule 11.2.

11.3. Private Security

- 11.3.1. Members and Residents of the Estate are strictly limited to 1 (one) close protection officer/bodyguard per Stand.
- 11.3.2. All close protection officers/bodyguards are strictly prohibited from brandishing firearms, or any weapons on any of the Common Property.
- 11.3.3. All close protection officers/bodyguards are strictly prohibited from using any of the facilities on the Common Property. All such Persons will remain on the Stand to which they are employed, or inside the vehicle which they are driving at all times.

- 11.3.4. All Members and Residents are required to disclose details of any close protection officers/bodyguards in their employ to the Management Team, including valid identification and P.S.I.R.A registration certificates applicable to such Persons.
- 11.3.5. All close protection officers/bodyguards are prohibited from parking their vehicles on any of the Common Property, or immediately outside of or in the general vicinity of any of the access gates of the Estate.
- 11.3.6. All close protection officers/bodyguards shall strictly comply with all direction, procedures and protocols as may be prescribed by the Board and/or the Management Team from time to time.

11.4. Security Personnel and Equipment

- 11.4.1. Any and all verbal/physical abuse directed at any security personnel on the Estate is strictly prohibited.
- 11.4.2. The guard houses and central control room for security personnel are strictly out of bounds to all unauthorised Persons.
- 11.4.3. The cost of repairing or replacing any security equipment damaged by any Person, regardless of intention, shall be borne by the responsible Member or Operating Lessee.
- 11.4.4. All Persons are strictly prohibited from stopping or disrupting security operations on or about the Estate.
- 11.4.5. No Persons may tamper with any security equipment or security technology, including but not limited to, CCTV, lighting, gates, booms, turnstiles, and the perimeter electric fence.
- 11.4.6. In the execution of their duties, a security/reaction officer and/or the community protection officer is entitled to give instructions to any Person which must be obeyed.
- 11.4.7. The central control room is the first point of contact for any emergency, incident or threat. The central control room is available at all times and can be reached on 010 591 4879.

- 11.4.8. The Association shall have the right to install a security system (including CCTV cameras) in or about the Estate, which shall operate on the Common Property, and the Association shall have the right to access footage from the CCTV and the security system. In addition, security officers are permitted to wear body cameras and the Association shall similarly have the right to access the footage from such cameras.
- 11.4.9. For the avoidance of doubt, the Association shall comply with all laws, and in particular, with the POPI Act and PAIA in regard to the installation and use of such security systems and, as such, shall not be entitled to disseminate such footage, save as is absolutely required for the purposes of monitoring and enforcing compliance with these Rules and the MOI or where the Association is lawfully required to do so.
- 11.4.10. Save with the express permission and under the direction of the Board, the use of surveillance technology (such as drones) by any Person is strictly prohibited (whether the purpose is for surveillance or not). Any activities permitted by the Board shall remain subject to any applicable legislative requirements and restrictions.

12. ENVIRONMENTAL AND WASTE MANAGEMENT

12.1. Landscaping and Environmental Management

- 12.1.1. The Estate consists of wetland, riparian and unique grassland habitat. This is home to a host of endemic fauna, avifauna and flora, the maintenance and rehabilitation of which is dependent on the strict adherence, by all Persons, to this Rule 12.
- 12.1.2. Indigenous landscaped areas may be extended onto the sidewalk on the roadside of any given Stand, subject always to the guidelines and/or directions prescribed by the Management Team. The responsible Member or Resident must maintain these sidewalks at all times.
- 12.1.3. The planting of non-indigenous trees, shrubs and plants on the roadside pavement verge is not permitted.
- 12.1.4. No landscaping/planting or any other features may be installed on the Common Property, including any greenbelts and/or wetlands by any Person

other than the Management Team or its appointed contractor. Moreover, under no circumstances shall Members or Residents be permitted to plant any trees, shrubs or other plants outside their Stands on the Estate bordering any greenbelt, wetland, river (riparian) corridors on the Common Property.

- 12.1.5. Members and Residents may not remove, mow or cut any vegetation on the Common Property, including any greenbelt or wetlands. The Management Team is solely responsible for any such maintenance in accordance with the prescribed environmental maintenance plan.
- 12.1.6. All plants, shrubs and trees are to be contained within the fenced garden areas of any Stand (in the case of Members and Residents) and must not encroach on any neighbouring Stand, School Property, Rental Premises or Common Property, including any installations thereon such as the Estate's electric fence and/or boundary walls, and shall be kept trimmed back at all times.
- 12.1.7. Save as may be installed (or directed to be installed) by the Management Team, the installation of wall or pole mounted lights and spotlights facing and shining directly into a greenbelt is strictly prohibited.
- 12.1.8. Save for the Association and authorised Association Invitees, the building of any form of structure, including stairs, pathways and fencing, into and on any part of the Common Property, greenbelts or wetlands is strictly prohibited. In addition, no permanent or temporary recreational structures or equipment may be placed on the greenbelt or wetlands.
- 12.1.9. Save for the Association and authorised Association Invitees, no Person may drive any vehicle on the greenbelts or wetlands on or about the Estate.
- 12.1.10. The use of poison, herbicides or pesticides is strictly prohibited. Only approved and environmentally friendly products may be used by Members, Residents and Operating Lessees, such usage being limited to the confines of their Stands in the Estate.
- 12.1.11. No person may place or create a beehive on the Estate without the express permission and written approval of the Management Team.
- 12.1.12. The Board and/or the Management Team is entitled to prescribe appropriate protocols regarding the following matters –

- 12.1.12.1. conservation activities and/or objectives on or about the Estate;
- 12.1.12.2. the removal or preservation of certain species from the Estate, including such removal prior to the commencement of construction activities on a Construction Stand or elsewhere in the Estate;
- 12.1.12.3. the use of insecticides; and/or
- 12.1.12.4. the removal of beehives.

12.2. Boreholes

- 12.2.1. The Management Team's written approval shall be obtained prior to the sinking of any boreholes on the Estate.
- 12.2.2. To the extent that the approval of the local or other governmental authority is legally required to sink a borehole, the relevant applicant Member shall, in addition to obtaining the necessary approval from the Management Team, submit such application to the relevant authority and obtain the required approval prior to sinking the borehole.
- 12.2.3. The applicant Member, for the purposes of this Rule 12.2, shall provide the Management Team with a copy of the relevant authority's approval and shall ensure that such approval remains in full force and effect, whether by way of renewal or otherwise.

12.3. Waste Management

- 12.3.1. Non-recyclable domestic waste must be placed in the approved 240L (twenty four litre) black wheelie refuse bins obtainable from *Pikitup* or such other supplier/service provider.
- 12.3.2. All recyclable refuse must be disposed of in appropriate closed refuse containers.
- 12.3.3. All refuse must be placed on the pavement verge of the driveway of each Stand in the Estate (in the applicable refuse containers) before 07h00 on the day on which refuse is scheduled to be collected by the relevant service

provider. The Management Team shall prescribe to, and notify the Operating Lessees, of the location at which its containers are to be placed.

- 12.3.4. The Members, Residents and Operating Lessees of the Estate shall maintain their refuse receptacles in a hygienic and dry condition.
- 12.3.5. Before refuse is placed in the applicable refuse containers, all refuse is to be securely wrapped, and, in the case of tins or other containers, completely drained.
- 12.3.6. No Refuse may be dumped on streets or elsewhere on or about the Estate or the Land.
- 12.3.7. The burning of refuse is strictly prohibited on or about the Estate.
- 12.3.8. Members, Residents, Operating Lessees and Association Invitees may not place (or allow to be placed by any of its Visitors) any large cardboard, polystyrene or builders rubble into the refuse bins and shall dispose of such items by alternative means.
- 12.3.9. The disposal of chemicals, hazardous liquids or materials, including but not limited to, solvents, old engine oil, building materials, rubble, household dry or wet waste or garden refuse onto the Common Property is strictly prohibited.
- 12.3.10. In addition to this Rule 12.3, the Management Team shall be entitled to prescribe appropriate recycling policies and protocols to be followed on or about the Estate.

13. CONSTRUCTION, ALTERATIONS, MAINTENANCE AND AESTHETICS

13.1. Plan Approval and Construction

- 13.1.1. No building or other structure may be erected on a Stand unless plans for such building or other structure have been approved by the City of Johannesburg and approved in writing by the Management Team. Any such plans must accord with the Estate's architectural and landscaping rules and any additional aesthetics guidelines or rules which may be implemented by the Board from time to time.

- 13.1.2. Construction on a Vacant Stand shall commence within 12 (twelve) months after the initial registration of an End-User Lease (such period to commence *de novo* in the event of a subsequent registration of an End-User Lease on such Vacant Stand) between the Estate PropCo and the Member concerned. Construction may not commence without the Member concerned having been issued with a commencement certificate by the Management Team.
- 13.1.3. Construction shall be completed within a period of 24 (twenty four) months following the commencement of the construction on the Vacant Stand.
- 13.1.4. Only building contractors who are registered with and approved by the National Home Builders Registration Council may be contracted for the purposes of undertaking any construction on a Vacant Stand.
- 13.1.5. All Members and their appointed building contractor/s shall sign a prescribed contractor's agreement which shall be binding for the duration of the construction period.
- 13.1.6. During the period of construction, contractors may not park any construction vehicles on the Construction Stand (or any other Vacant Stand) overnight.
- 13.1.7. Prior to commencement of construction, the responsible Member shall be required to furnish the Association with a pavement deposit, the sum of which may be determined by the Board from time to time, as security for any damage that may be caused to curbs, roads, pavements and landscaping during the period of construction. Upon completion of construction and provided the Member is in possession of both a City of Johannesburg Occupation Certificate together with a completion certificate issued by the Association, and provided no damage has occurred, this deposit will be refunded to the Member concerned upon request.
- 13.1.8. The Member or his appointed contractor must apply for an electricity connection and account with Eskom prior to any electricity being consumed on a Construction Stand. Illegal electricity connections shall be reported to Eskom and the contractor banned from further operating within the Estate.

- 13.1.9. The Member or his appointed contractor must apply for a water connection and an account with the City of Johannesburg (Joburg Water) prior to any water being consumed on a Construction Stand. Illegal water connections shall be reported to the City of Johannesburg (Joburg Water) and the contractor banned from further operating within the Estate.
- 13.1.10. The completion of construction, for purposes of these Rules, will have been achieved once the Association has issued its completion certificate and the City of Johannesburg has issued the relevant Member with an occupation certificate.
- 13.1.11. Notwithstanding the aforesaid, the Member shall be entitled to take occupation of the Stand upon receipt of an occupation certificate issued by the City of Johannesburg. The Member shall then have a period of 3 (three) months from receipt of the occupation certificate to obtain a completion certificate from the Association.

13.2. Alterations

- 13.2.1. Members who wish to do any sort of building Alterations to their existing Stands are required to submit building plans and obtain written approval in respect thereof from the Management Team. Any and all proposed Alterations shall accord with the Estate's architectural and landscaping rules and any additional aesthetics guidelines or rules which may be implemented by the Board from time to time. To the extent that approval from the City of Johannesburg is required, including instances where the Alterations contemplated will result in an increase of square meterage on the Stand, then such approval must be presented to the Management Team for their approval.
- 13.2.2. The Member concerned shall be obliged to ensure that their appointed contractor registers their construction company with the Management Team and the Member concerned may commence with such Alterations once issued with an alteration commencement certificate. The Member concerned shall be required to complete the Alterations within a reasonable period as prescribed by the Management Team in their reasonable discretion. The

Alterations will be deemed to be complete once the Member concerned is issued with an alteration completion certificate by the Management Team.

13.2.3. Prior to commencement of any Alterations, the responsible Member shall be required to furnish the Association with a pavement deposit, the sum of which may be determined by the Board from time to time, as security for any damage that may be caused to curbs, roads, pavements and landscaping during the period of Alterations.

13.2.4. During any period of alterations, no materials or building rubble may be stored on the Common Property, neighbouring Stands or Vacant Stands. Should any such material not be removed on the direction of the Management Team, the costs incurred by the Association's appointment of a contractor for this purpose will be recoverable by the responsible Member.

13.3. Maintenance and Aesthetics

13.3.1. Each Member, Resident and Operating Lessee shall at all times and at his/her/its own expense, maintain its Stand, or its Rental Premises, as the case may be, in good, clean, hygienic, tidy and habitable order and condition. This obligation shall extend to road verges, gardens, garden fences, walls, screen walls and similar features installed by Members, Residents and Operating Lessees and must be maintained by them in a neat and serviceable order and condition. Similarly, all Units and other buildings and structures erected on a Stand must be maintained (including with regard to paintwork, finishes, cracks and other repairs) by the Resident or Member to the reasonable satisfaction of the Management Team having regard to the high standard of finishes and maintenance applied throughout the Estate. In the event of a Member, Resident or Operating Lessee consistently failing to uphold the Management Team's directions in terms of this Rule 13.3.1, the Board may procure the relevant maintenance itself and recover the cost thereof from the Member concerned.

13.3.2. The Board and/or the Management Team shall be entitled to authorise and procure maintenance, repair and/or construction works as may be necessary on or about the Estate from time to time. Any maintenance or construction works undertaken by or on behalf of the Association on the Estate is likely to

cause a measure of inconvenience, but no Person shall interfere with such works or otherwise be entitled to any claim or action of any nature whatsoever pursuant to, or in connection with, any such inconvenience.

- 13.3.3. Subject to the MOI, the Board shall be entitled to adopt aesthetic guidelines relating to the general appearance of the Estate which aesthetic guidelines are to be adhered to by all Members, Residents and Operating Lessees (including their applicable Visitors).
- 13.3.4. Save for the trading name of an Operating Lessee (with prior written consent from the Management Team) or the name of the Association, no advertising signage or displays shall be permitted to be placed on the Common Property or elsewhere, or be visible on a Stand from the Common Property save with the prior written consent of the Board. Such advertising signage and/or displays shall expressly include boards, flags or banners related to or otherwise concerning estate agents or the private sale by a Member of its Leasehold Title.

14. ESTATE FACILITIES AND AMENITIES

14.1. General

- 14.1.1. The access to and use of any of the Estate Facilities and Amenities shall be governed by these Rules and the MOI, the End-User Leases, the School Leases (if applicable), Access Agreements, the Operating Leases and such other directives as the Board or the Management Team may deem to be reasonable from time to time. This includes all notices and directions displayed by signage throughout the Estate which must be adhered to at all times.
- 14.1.2. The Board shall, for the avoidance of doubt but subject always to the MOI, be entitled to formulate, adopt and implement any Ancillary Rules, Policies and Procedures as it may from time to time deem necessary, *inter alia*, in relation to the access to, and use of, the Estate Facilities and Amenities.
- 14.1.3. All Persons shall access and use the Estate Facilities and Amenities at their own risk.

- 14.1.4. Members, Residents and Operating Lessees shall ensure that their Visitors do not loiter on the Common Property or make use of any facilities intended for the exclusive use of the other Members and Residents.
- 14.1.5. The smoking of tobacco and other substances and the use of any electronic vaping devices, are only permitted in designated smoking areas and must strictly comply with the Tobacco Products Control Act No 83 of 1993 and any restrictions imposed by any other law or regulations.
- 14.1.6. The sale of alcohol is prohibited on the Common Property except for alcohol served by an Operating Lessee or Association Invitee who ordinarily, in the course of its business, serves alcohol. The serving or sale of such alcohol by an Operating Lessee shall be subject to the provisions of all applicable laws and regulations and the Operating Lease concerned.
- 14.1.7. No Person shall be allowed to smoke marijuana on or about the Common Property, a Vacant Stand or a School Property.
- 14.1.8. No Person may use foul, loud or abusive language or physically or sexually abuse or harass any other Person on or about any of the Estate Facilities and Amenities (or elsewhere on the Estate). Any illegal, aggressive and/or inappropriate behaviour in this regard is strictly prohibited.
- 14.1.9. All Persons must report all serious injuries, safety concerns, security incidents or hazards observed by them on the Common Property to the Management Team.
- 14.1.10. No Person shall deposit or throw (or allow to be deposited or thrown) on the Common Property (or elsewhere on the Estate) any rubbish including dirt, cigarette butts, chewing gum, food or food scraps or any litter whatsoever other than in bins provisioned for this purpose. In the event of any function or social gathering on the Common Property, the Member or Resident concerned shall be responsible for the proper cleaning of the venue and all associated facilities used in connection with the function or social gathering.
- 14.1.11. All Persons accessing and/or using any facilities on the Common Property shall at all times wear appropriate attire for the facility concerned and may be

requested to change his or her attire at the reasonable direction of the Management Team.

- 14.1.12. No Person shall be permitted to urinate or defecate on any part of the Common Property other than at the toilet facilities made available by the Association.

14.2. Meeting Rooms

- 14.2.1. The boardroom, meeting rooms, library and “hot desks” (collectively “the meeting rooms”) may only be used by Members, Residents and their respective Visitors, provided that Visitors are accompanied by a Member or Resident (as the case may be) at all times.
- 14.2.2. All meeting rooms must be booked by Members or Residents on the Prescribed Digital Application and only 1 (one) meeting room may be booked per Member or Resident at any given time.
- 14.2.3. Only liquid refreshments supplied by the Operating Lessee are permitted in the meeting rooms. The consumption of food and alcohol is strictly prohibited.
- 14.2.4. All of the tables and equipment located in the meeting rooms are deemed to be fixtures. No person shall be permitted to move any such tables or equipment. The responsibility for any damages to the furniture or equipment located in the meeting rooms shall be borne by the responsible Member.
- 14.2.5. The number of attendees in respect of the meeting rooms is limited as follows:
 - 14.2.5.1. hot desks: a maximum of 1 (one) person;
 - 14.2.5.2. the library: a maximum of 8 (eight) persons;
 - 14.2.5.3. the boardroom: a minimum 9 (nine) persons and a maximum 20 (twenty) persons; and
 - 14.2.5.4. meeting room 1: a minimum 2 (two) persons and a maximum 8 (eight) persons.
- 14.2.6. The boardroom is only available during office hours between 08h00 and 16h00 on weekdays or such extended hours permitted by the Management Team.

- 14.2.7. In this addition to this Rule 14.2, all meeting room usage shall be subject to any additional rules and/or policies as may be introduced by the Management Team from time to time.

14.3. The Restaurant, Riverbend Café and Courtside Restaurant

- 14.3.1. The Restaurant and Riverbend Café are for the exclusive use of the Operating Lessees, subject to the Operating Lease concerned.
- 14.3.2. No private functions shall be permitted on these Rental Premises without the prior written consent of the relevant Operating Lessee and the Board.
- 14.3.3. Only Members and Residents are permitted to make bookings for facilities and/or amenities provided by Operating Lessees and Visitors must be accompanied at all times by the responsible Member or Resident.
- 14.3.4. No parking is permitted at the Riverbend Café and only the designated pathways may be used to access this facility.

14.4. Gym and Swimming Pool

- 14.4.1. The operating hours of the gym and swimming pool between 05h00 and 22h00 (Monday to Sunday), subject to such other times or temporary restrictions as may be determined by the Management Team from time to time.
- 14.4.2. The gym and swimming pool facilities will not be available to any Persons other than Members or Residents.
- 14.4.3. No photographs or videos may be taken inside the gym or swimming pool facility.
- 14.4.4. Children under the age of 14 (fourteen) years old must be supervised by an adult and shall not, regardless of supervision, be permitted access to the weights section of the gym.
- 14.4.5. No animals, other than service dogs, shall be permitted in or around the gym or swimming pool area.
- 14.4.6. Only personal trainers expressly authorised by the Management Team are permitted to provide personal training services in the gym. Any services

rendered by such personal trainers shall be for the account of the Member or Resident concerned. Personal training by any other Person is prohibited (whether or not for consideration).

14.4.7. The indoor swimming pool is a lap training pool and as such –

14.4.7.1. no food, drink or glass (of any sort) will be allowed within the swimming pool safety fence;

14.4.7.2. no leisure floats or rafts are permitted in the swimming pool and the throwing or tossing of any objects (including toys) in or around the swimming pool is strictly prohibited; and

14.4.7.3. the temperature of the swimming pool will not be adjusted above or below appropriate levels for a lap training pool.

14.4.8. No diving, jumping or running along the edge of the swimming pool is permitted. Swimming caps must be worn at all times and infants are required to wear a swimming diaper. Persons with open sores, bandages, diapers or open wounds will not be permitted to use the swimming pool.

14.4.9. The regular and continuous use of the shower facilities located at the gym in the absence of the *bona fide* use of the gym and/or sporting facilities located at the clubhouse is not permitted.

14.4.10. In addition to this Rule 14.4, gym and swimming pool usage shall be subject to any additional rules, policies and protocols as may be introduced by the Management Team from time to time.

14.5. Racquet Courts

14.5.1. The use of the squash, tennis and/or padel courts must be booked through the Prescribed Digital Application. Visitors are permitted to use these facilities subject to them being accompanied by a Member or Resident at all times.

14.5.2. Only Persons wearing appropriate non-marking shoes, will be permitted on the racquet courts.

14.5.3. The operating hours of the racquet courts shall be determined by the sole discretion of the Management Team.

14.6. Play Areas for Children

- 14.6.1. The use of the play areas designated for children (including any equipment in such areas) shall be utilised at the user's own risk. All members and residents, including their Visitors, must abide by any signage located in or around such facilities and such other rules as may be prescribed by the Management Team from time to time.
- 14.6.2. Notwithstanding anything to the contrary, children under the age of 5 (five) must be accompanied by an adult at all times.

14.7. Dams and Rivers

- 14.7.1. Any and all fishing activities in or about dams and rivers on the Estate shall only be permitted at specifically demarcated areas on a strict "catch-and-release" basis. In addition, only barbless fishing hooks may be used for any such fishing activity.
- 14.7.2. No swimming in the dams and rivers (or water features) on or about the Estate shall be permitted.
- 14.7.3. The use of non-motorised boats and yachts is limited to the club house dam only. Any boats or yacht kept within the Estate must be stored inside approved facilities or within a Member or Resident's Stand, provided that they are not visible from any part of the Common Property.

15. **VEHICLES**

15.1. General Vehicle Usage

- 15.1.1. The speed limit within the Estate is 40km/h (forty kilometres per hour) or as otherwise indicated and accordingly restricted by the signage throughout the Estate. The Management Team, from time to time may install equipment such as speed cameras throughout the Estate for the purposes of the Management Team enforcing this limit.
- 15.1.2. The following restrictions are applicable to any vehicle entering the Estate:
 - 15.1.2.1. only fixed axle design vehicles will be allowed;
 - 15.1.2.2. maximum length = 9.1m (nine point one meters);

- 15.1.2.3. maximum Width = 2.6m (two point six meters);
- 15.1.2.4. maximum gross mass = 20,000kg (two thousand kilograms); and
- 15.1.2.5. maximum axle weight = 8,000kg (eight thousand kilograms).
- 15.1.3. Reckless or dangerous driving in the Estate is strictly prohibited.
- 15.1.4. All traffic circles are to be used in a clockwise direction and all four-way intersections must be treated as four-way stop streets.
- 15.1.5. Excessive revving of motor vehicles or motorcycles is prohibited.
- 15.1.6. Save for Association employees and/or other Association Invitees, no vehicles, including quadbikes and motorcycles (but excluding golf carts), may be ridden on footpaths or Vacant Stands.
- 15.1.7. No vehicles may be parked overnight on Vacant Stands, or repaired or maintained in view of the Common Property. The washing of vehicles on any part of the Common Property or Vacant Stands is similarly prohibited.
- 15.1.8. All pedestrians, joggers and cyclists shall have the right of way on the Common Property.
- 15.1.9. The Management Team may cause any vehicle to be clamped, removed or towed away, at the risk and expense of the Member or Resident concerned, if such vehicle is parked, standing or abandoned anywhere on an undesignated portion of the Common Property. In these circumstances, neither the Association, the Board, the Management Team, the CEO or the Estate PropCo, shall be liable for any damage, inconvenience and/or loss incurred by the owner or driver of the vehicle concerned.
- 15.1.10. The Association, including the Board and the Management Team, shall not be responsible for any motor or other vehicle accidents or incidents (as defined in the National Road Traffic Act 93 of 1996) occurring on or about the Estate or elsewhere on the Land. Any damage caused to the Common Property as a consequence of any such accidents or incidents shall be attributed to the responsible Member concerned.

15.2. Golf Carts

- 15.2.1. All golf carts must be registered with the Management Team and be fitted with an adhesive badge identifying the golf cart and the Stand to which it is associated.
- 15.2.2. The speed limit for golf carts is 15km/h (fifteen kilometres per hour) and must be adhered to at all times.
- 15.2.3. No golf carts may be operated by persons below the age of 16 (sixteen) who are not in possession of either a valid learners or drivers licence for a motorcycle or motor vehicle, proof of which must be furnished to the Management Team upon request.
- 15.2.4. The driver and all passengers on any golf cart must at be seated at all times.
- 15.2.5. All golf cart operators shall be required to observe and adhere to any road signage on the estate in accordance with all standard laws and regulation applicable to motor vehicle usage.
- 15.2.6. No golf carts shall be permitted to operate after sunset in the absence of both front and rear lights.
- 15.2.7. All golf carts must be kept clean and in good working order.
- 15.2.8. All golf carts must be operated only in the designated areas of the Estate.
- 15.2.9. The responsible Member associated with any given golf cart shall be responsible for any loss, injury or damage caused to any property or person pursuant to the use of the golf cart in question.
- 15.2.10. Unless otherwise permitted by the Management Team, Members and Residents shall only be permitted to own or otherwise be in possession of two (two) golf carts per Stand.
- 15.2.11. All golf carts are to be stored on the Stand of the Resident or Member concerned (not on any part of the Common Property) and/or any other area made available for the parking of golf carts, as may be designated by the Management Team.
- 15.2.12. The storage of golf carts on roads, pathways or in parking bays designated for Visitors or on any other Common Property (safe for storage of golf carts in

respect of any Operating Lessee in terms of their Operating Lease) is strictly prohibited.

- 15.2.13. In addition to this Rule 15, the Management Team shall be entitled to impose any additional restrictions and/or conditions in relation to the use of golf carts on or about the Estate as it may deem to be appropriate in its sole but reasonable discretion.

16. NOISE AND NUISANCE

16.1. General

- 16.1.1. No Member, Resident or Operating Lessee (including their respective Visitors) shall make, or allow to be made, any excessive noise or undue nuisance at any time on the Estate, which may cause to disturb any of the Members, Residents and/or Operating Lessees. The determination of what may constitute “excessive noise or under nuisance” shall be made in the discretion of the Management Team. In addition to this Rule 16, all applicable noise-related laws and/or by-laws shall be incorporated in these Rules by reference and must be adhered to at all times.
- 16.1.2. Unless otherwise directed by the Management Team, no fireworks may be discharged on or about the Estate or elsewhere on the Land. In any instance where such activities are permitted, all applicable laws and by-laws must be strictly observed.
- 16.1.3. The use of petrol driven lawnmowers (other than by gardening personnel or Association Invitees) is prohibited on Sundays and public holidays. In addition, power driven tools which create an excessive noise may only be used between the hours of 08h00 to 17h30 on weekdays and Saturdays, excluding Sundays and public holidays. This permitted time frame may only be varied at the sole and absolute discretion of the Management Team.
- 16.1.4. Save in the case of an emergency, no Person shall sound (or allow to be sounded) any hooter, siren or similar device.

16.2. Generators

- 16.2.1. Save for use on the Common Property by the Association and/or an Operating Lessee (as determined in terms of an Operating Lease) and/or by registered contractors for use on Construction Stands, no generators are permitted on the Estate without the express written consent of the Management Team, provided that:
 - 16.2.1.1. the generator is concealed and not visible from the any Common Property;
 - 16.2.1.2. the use of any such generator complies with all applicable laws, rules and municipal regulations; and
 - 16.2.1.3. the generator is installed by a qualified Person who must issue a certificate of compliance following such installation.
- 16.2.2. For the avoidance of doubt, the consent referred to in Rule 16.2.1 may be withdrawn by the Management Team should a reasonable suspicion exist that the use of any generator is inconsistent or otherwise non-compliant with all applicable laws, rules and municipal regulations.
- 16.2.3. In addition to the foregoing, alternative power and energy solutions, including solar solutions, must be approved by the Management Team prior to them being installed and utilised.

16.3. Functions and Social Gatherings

- 16.3.1. Members and Residents must inform their direct neighbours of their intention to host a private function or other social gathering at their Stand which is likely to generate noise, loud music and/or traffic congestion.
- 16.3.2. No private functions or other social gatherings are permitted on Vacant Stands.
- 16.3.3. No private functions and other social gatherings are permitted beyond 22h00 on Monday to Thursday, 24h00 on Fridays and Saturdays, and 20h00 on Sundays. These time frames apply equally apply to public holidays, irrespective of the day on which the public holiday may fall.
- 16.3.4. Save for functions and social gatherings arranged by an Operating Lessee or the Association, all functions and social gatherings held on the Common

Property and attended by 15 (fifteen) or more persons shall require the express written approval of the Management Team, which function and/or social gathering must also be booked on the Prescribed Digital Application.

16.3.5. The Member or Resident who is granted approval for any such function or social gathering must be physically present at the function or gathering for its entire duration.

16.3.6. Save for functions and social gatherings arranged by an Operating Lessee or the Association, no Person shall be permitted to charge a fee for the entry into any function or social gathering on the Common Property.

16.4. Children

16.4.1. No Person shall allow any child to make excessive noise in the immediate vicinity of any Stand. All children in the Estate must be requested to keep their noise levels as low as possible and respect other Members, Residents (and their respective Visitors).

16.4.2. The responsible Member or Resident will be responsible for the full cost of treatment or repair of damage to any Person and/or property on the Estate if any child (of whom they are responsible) causes such damage. No children are permitted to play near or around any parked vehicles.

16.4.3. A number of designated play areas for children have been identified throughout the Estate, subject to variations and additions as may be prescribed by the Management Team upon notice to all Members and Residents.

16.5. The Board and/or the Management Team may, in its sole and absolute discretion, take any action against any Member, Resident or Operating Lessee should their noise levels and behaviour be considered unacceptable and in contravention of these Rules, the MOI or any applicable laws and by-laws.

17. FIREARMS AND HAZARDOUS MATERIAL

17.1. Firearms

17.1.1. All Persons on the Estate shall comply with the Firearms Control Act No 60 of 2000 as amended or substituted from time to time.

17.1.2. Save for firearms held by any security officers or consultants appointed or otherwise engaged by the Association or any law enforcement officers such as the South African Police Service, no firearms shall be permitted on any Common Property.

17.2. Dangerous and Hazardous Material

No Person shall be entitled to store, handle or transport any explosives, hazardous or similar material, or any substances requiring a license or a permit, on or about the Estate without the express and prior authorisation of the Management Team.

17.3. Fire Extinguishers and Fire Hydrants

17.3.1. No unauthorised Person shall tamper with, or allow to be tampered with, any fire-fighting equipment situated on the Common Property (or elsewhere on the Land), nor shall they cause or allow to be caused any obstruction of access to any fire hydrant and other equipment by means of a parked vehicle or otherwise.

17.3.2. No fire extinguisher, firehose or similar device on the Common Property (including any Rental Premises) or elsewhere upon the Land shall be used for any purpose other than the emergency purposes for which its use is intended. No such equipment shall be used for the washing of vehicles, the watering of gardens or any other unauthorised purpose whatsoever.

18. ILLEGAL SUBSTANCES AND ACTIVITIES

18.1.1. The transport, manufacturing, sale and/or use of illegal substances on or about the Land is strictly prohibited.

18.1.2. All Members, Residents, School Lessees and Operating Lessees must ensure that their Stands, School Properties or their Rental Premises are not utilised for any illegal activities of whatsoever nature.

19. ANIMALS AND PETS

- 19.1. Subject to this Rule 19 and any applicable laws and by-laws, only Members and Residents of the Estate shall be entitled to keep pets on the Estate, provided such pets are ordinarily domesticated animals. The Management Team reserves the right to limit or otherwise restrict the number of pets on any given Stand.
- 19.2. The housing of poultry, goats, sheep, cows, horses and/or other livestock and/or wild animals not ordinarily considered to be domestic pets is strictly prohibited. Any other animals, including certain breeds of dogs which may be considered dangerous, may also be prohibited at the discretion of the Management Team.
- 19.3. Save as otherwise may be specifically sanctioned by the Board, all pet and animal breeding activities are expressly prohibited. Moreover, the killing and/or slaughtering of any animals (save for exceptional circumstances in accordance with all applicable laws, rules and municipal regulations) is expressly prohibited.
- 19.4. Unless otherwise approved by the Management Team, the releasing of any exotic wildlife or animals (whether or not such animals were previously kept as pets) onto any Common Property or elsewhere on or about the Land is strictly prohibited. Save under the direction of the Management Team, no Person may catch, handle or otherwise interfere with any wildlife on the Estate.
- 19.5. Members and Residents of the Estate are required to keep their pets within their enclosed Stands and may not house any such pets elsewhere on the Estate. Where necessary, suitable fencing or other restraining measures prescribed or approved by the Management Team must be installed for the purposes of containing pets within the boundary of the Stand concerned.
- 19.6. Members and Residents are responsible, at their own cost, for keeping their pets regularly inoculated so as to prevent the spreading of unwanted disease.
- 19.7. All pets (other than birds and reptiles) must wear a collar with a tag indicating the name, telephone number and address of the Member or Resident to whom the pet belongs. The Member or Resident concerned shall bear the cost of obtaining such a tag.
- 19.8. All pets leaving the Stand of a Member or Resident shall only be permitted to do so under the direct control and supervision of the Member or Resident concerned. In these circumstances, the pet/s must be kept on a suitable leash and may under no

circumstances be allowed to swim in any dams or other water features on or about the Estate. All pet waste must be immediately removed and suitably disposed of by the Member or Resident concerned.

- 19.9. No pets which have tendency to create a noise or disturbance (whether through excessive barking or other behaviours) are permitted in the Estate. Members and Residents must ensure that their pets do not attack or harass any Person and no Person may harm, provoke, tease, harass or otherwise incite any pets.
- 19.10. Members and Residents shall be solely liable for any injury, death, damage or undue inconvenience caused by their pets.
- 19.11. The Management Team may, by written notice to the Member or Resident concerned, require a pet to be removed from the Estate in circumstances where the Management Team, in its sole and absolute discretion, has determined that such pet is dangerous.
- 19.12. In addition to this Rule 19, the Management Team may, from time to time, prescribe any reasonable conditions for the keeping and housing of pets.

20. COMPLAINTS

- 20.1. All complaints of whatsoever nature that require the involvement of, or resolution by, the Board, the CEO or the Management Team in terms of the MOI, these Rules or applicable legislation, should be directed to them in writing, using such method of delivery (and prepared in such form), as may be prescribed by the Board, the CEO and/or the Management Team, from time to time.
- 20.2. Any other complaint should be logged as a “snag” on the Prescribed Digital Application or in such other form as may be prescribed by the CEO and the Management Team. Any such complaints shall be addressed by the Management Team in the first instance and, insofar as may be necessary, thereafter the CEO and then the Board.
- 20.3. For the avoidance of doubt, no verbal complaints will be entertained by the Board, the CEO or the Management Team.

21. ENFORCEMENT OF THESE RULES AND THE MOI

- 21.1. Notwithstanding the Management Team being tasked with the enforcement of the Rules and the provisions of the MOI, all Members, Residents, Operating Lessees, Association Invitees and Visitors are to conduct themselves in a courteous and

respectful manner with consideration to the privacy, comfort, safety and enjoyment of each other.

- 21.2. Whilst the Management Team shall use its reasonable endeavours to ensure compliance with these Rules and the MOI, the Management Team shall be entitled to apply its discretion in the enforcement hereof (including in respect of the imposition of penalties, fines and other sanctions or the institution of legal action) with due consideration to, amongst other things, its available resources, finances and capacity and/or any alleged contravention pending an investigation. Ultimately all Persons subject to these Rules must co-operate with one another in order to protect their mutual interests vis-à-vis the Estate.
- 21.3. The involvement of the Management Team for the purposes of enforcing these Rules and/or the MOI should only be sought once the relevant Persons have first attempted to resolve or address a matter amicably amongst themselves, provided it is reasonably possible and appropriate to do so in the circumstances. The Management Team should not intervene in situations capable of first being resolved through good neighbourly conduct and communication between Members and Residents alike.
- 21.4. Although the Management Team and/or the Board reserves the right to utilise or pursue external forums for the purposes of enforcing these Rules and the provisions of the MOI (particularly in instances where internal remedies have been exhausted), the Management Team and/or the Board is not under any obligation to do so, such external forums to include the Community Schemes Ombud Service and/or any court of competent jurisdiction.

22. AMENDMENTS TO THESE RULES

The Board may, subject to the provisions of the MOI, amend, supplement, repeal or otherwise change these, Rules.

23. APPROVALS AND CONSENTS

Save as expressly otherwise stated in these Rules, any consent or approval sought from the Management Team and/or the Board in terms of these Rules, may be withheld in their sole and absolute discretion.

24. BOARD DETERMINATION BINDING

- 24.1. Any determination of the Board relating to, or arising from, these Rules shall be binding on Members, Residents, the School Lessees, the Operating Lessees and Visitors (if applicable) and, where stipulated, the Estate PropCo.
- 24.2. In the event of any dispute arising between a Member, Resident or Operating Lessee and the Association acting through the Directors as to any determination made by the Board and/or the construction, meaning or interpretation of any of the provisions of these Rules and/or the MOI (or as to the rights, obligations or liabilities of the Association), the parties to the dispute shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 (fourteen) days, then such dispute or difference may be referred to the Ombud in terms of the Community Schemes Ombud Service Act 9 of 2011 by any party to the dispute.
- 24.3. Notwithstanding the provisions of Rules 24.1 and 24.2 above, the Board, in the name of the Association, shall not be hindered or delayed in whole or in part in exercising its rights in terms of Rules 1.5, 2 and 3.

SCHEDULE 1: DEFINITIONS AND INTERPRETATION

1. In these Rules, unless inconsistent with or otherwise indicated by the context –
 - 1.1. **"Access Agreement/s"** means the written agreements entered into, or to be entered into between the Association and other associations governing *inter alia* the access and use of certain permitted Estate Facilities and Amenities;
 - 1.2. **"Alterations"** means, in respect of a dwelling or other structure on a Stand in the Estate, any physical change, addition or conversion to the external structure thereof;
 - 1.3. **"Ancillary Rules, Policies and Procedures"** means such additional rules, policies and procedures as the Board may formulate and adopt from time to time in accordance with the provisions of the MOI, to give effect to, support, supplement and/or clarify the MOI and these Rules, which additional rules, policies and procedures will take effect upon the issuing of a written notice to the Members and Residents;
 - 1.4. **"Association"** means the Waterfall Country Estate Members Association NPC, registration number 2009/012918/08;
 - 1.5. **"Association Invitees"** means the Association's employees, contractors, sub-contractors, agents, suppliers, service providers and similar Persons that will gain access to the Estate;
 - 1.6. **"Board"** means the board of Directors of the Association from time to time to whom the Members of the Association delegate their authority to enforce and oversee these Rules. The Board may delegate their authority to enforce the Rules to a CEO and/or Management Team. To the extent that the Association, the Board, the CEO and/or Management Team is referenced in these Rules, such reference may be deemed to refer to the entity or persons to whom that specific authority has been delegated;
 - 1.7. **"CEO"** means the person appointed by the Board to, together with the Management Team, on their behalf, fulfil the day-to-day estate management duties of the Board in relation to the Estate, which duties shall be fulfilled in accordance with the terms of such Person's appointment and within the ambit of the powers delegated to him or her;
 - 1.8. **"Common Property"** means –

- 1.8.1. any portion of the Estate which is intended for the shared use of some or all Members and Residents and Operating Lessees and shall include walking, cycling and running trails, open spaces, road servitudes and parks;
- 1.8.2. the Common Facilities (as such term is defined in the MOI) and the portions of Land on which it is situated; and
- 1.8.3. all Estate Facilities and Amenities including any equipment forming part thereof or used in connection therewith which forms part of the Estate including the clubhouse, kiddies play areas, any restaurants, the gymnasium and/or fitness centre and such additional facilities as the Estate PropCo and/or Board may determine from time to time and which are intended for the shared use of some or all Members, Residents and their respective Visitors;
- 1.9. **"Director"** means the directors appointed to the Board in accordance with the provisions of the MOI;
- 1.10. **"End-User Lease"** means a lease between the Estate PropCo (as lessor) and a Member (as lessee) in respect of a Stand or Unit, whether or not such lease was entered into in the first instance with the Member, as a lessee, or was subsequently assigned to the Home Owner in terms whereof the Home Owner holds the Leasehold Rights in and to the Stand;
- 1.11. **"Estate"** means both Waterfall Country Estate (including Waterfall Crescent, The Villas and The Sheds situated therein) and Waterfall Country Village located on a portion of the Land;
- 1.12. **"Estate Facilities and Amenities"** means the facilities and amenities on the Common Property, including any equipment forming part thereof or used in connection therewith;
- 1.13. **"Estate PropCo"** means Waterfall Country Estate WUQF Proprietary Limited, registration number 2004/013493/07, a company with limited liability duly incorporated according to the laws of the Republic of South Africa and/or its successor(s) in title;
- 1.14. **"Estate Management Purposes"** means the efficient, effective and proper management and administration of the Estate, the Land and/or the remainder of the

Farm Waterfall and the activities thereon, by the Board, the Management Team, the Estate PropCo or any of its nominees (as the case may be);

- 1.15. **"Farm Waterfall"** means the geographic area of Portion 1 of the Farm Waterval No. 5, Registration Division I.R, as described in Deed of Transfer T6167/1934 (as at the date of the registration thereof);
- 1.16. **"Land"** means those portions of the Farm Waterfall No. 5 on which the Estate is located, as is more fully set out in the MOI;
- 1.17. **"Lease"** means an agreement of sub-lease in terms of which any Stand is leased by a Tenant from a Member (as a sub-lessor in terms of such Member's Leasehold Title) and shall specifically exclude any Short Term Letting Arrangement;
- 1.18. **"Leasehold Title"** means the rights and obligations as lessee of a Member in respect of a Stand in terms of an End-User Lease;
- 1.19. **"Local Authority"** means the Local Authority having jurisdiction over the Land;
- 1.20. **"the Management Team"** means the team appointed by the Board and the CEO to assist with the day-to-day running of the Estate;
- 1.21. **"Member"** means a member of the Association, as referred to in the MOI, being every Member, each School Lessee and the Estate PropCo;
- 1.22. **"MOI"** means the Memorandum of Incorporation of the Association;
- 1.23. **"Operating Lease"** means a lease concluded or to be concluded by the Association (as lessor) in respect of any Rental Premises in terms whereof an Operating Lessee shall lease such Rental Premises from the Association;
- 1.24. **"Operating Lessee"** means any Person who leases a Rental Premises from the Association;
- 1.25. **"Person"** means any natural person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.26. **"Personal Information"** has the meaning ascribed thereto in the Protection of Personal Information Act No 4 Of 2013 ("POPI Act") and referred to in the Promotion of Access to Information Act No 2 of 2000 ("PAIA"), including any regulations to such legislation;

- 1.27. **"Prescribed Digital Application"** means such mobile and/or web-based application, platform or similar technology as may be prescribed by the Board for Estate Management Purposes, from time to time;
- 1.28. **"Processing"** has the meaning ascribed thereto in the POPI Act and "Process" and "Processed" shall have the corresponding meaning;
- 1.29. **"PropCos"** means, collectively, the Estate PropCo and the School PropCo;
- 1.30. **"Rental Premises"** means a premises forming part of the Common Property let or to be let to an Operating Lessee;
- 1.31. **"Resident"** means any Person in actual occupation of a Stand who habitually resides on this Stand, including Tenants;
- 1.32. **"Rules"** means these conduct rules and all Ancillary Rules, Policies and Procedures adopted by the Board from time to time, which Ancillary Rules, Policies and Procedures shall be read as if specifically incorporated into these Rules;
- 1.33. **"School Lessee"** means a registered lessee of a School Property under a School Lease (or, with the consent of the School PropCo, its sub-lessee, sub-sub lessee or operator of the School concerned), as may be applicable from time to time;
- 1.34. **"School Lease"** means the lease entered into between the School PropCo and a School Lessee in respect of a School Property;
- 1.35. **"School PropCo"** means the registered owner of the land comprising the School Properties, or its successor(s) in title;
- 1.36. **"School Properties"** means –
- 1.36.1. Jukskei View Extension 37 Township; and
- 1.36.2. Jukskei View Extension 45 Township;
- 1.37. **"Schools"** means the educational institutions and/or facilities operated from the School Properties from time to time;
- 1.38. **"Services"** means the supply of services in on or about the Estate, including water, sewerage, refuse removal, electricity, telecommunications, television cables, security,

maintenance and such other ancillary utilities or services as may be necessary from time to time;

- 1.39. **"Short Term Letting Arrangement"** means any form of arrangement (whether oral or in writing) in terms of which a Member grants any third party the use of the Stand to which its Leasehold Title pertains for a period of less than 30 days;
 - 1.40. **"Stand"** means a residential stand forming part of the Estate (and for the purposes of these Rules, shall be construed as being inclusive of Units);
 - 1.41. **"Tenant"** means any Person who leases a Stand or Unit (or part thereof) from a Member;
 - 1.42. **"Unit"** means any sectional title unit forming part of the Estate, inclusive of any free standing or high density unit situated on the Estate;
 - 1.43. **"Vacant Stand"** means a Stand in respect of which a residential dwelling has yet to be constructed or completed so that it is capable of lawful occupation, but shall for the purposes of these Rules exclude a Stand used for landscaping purposes in relation to an adjacent Stand on which a residential dwelling has been completed; provided that the same Member holds the Leasehold Titles in respect of both Stands; and **"Construction Stand"** shall refer to a Vacant Stand whereon construction has commenced;
 - 1.44. **"Visitor"** means any Person who is invited by a Member, Resident and/or Operating Lessee to the Estate;
 - 1.45. **"Waterfall Portal"** means the web-based community portal, or any other platform utilised by WCMC, the Board, the CEO and the Management Team for purposes of communicating with amongst others, Members and Residents; and
 - 1.46. **"WCMC"** means Waterfall City Management Company Proprietary Limited, registration number 2008/015893/07, a company with limited liability duly incorporated according to the laws of the Republic of South Africa.
2. In these Rules:
- 2.1. The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" or "include" and specific examples, such examples shall not be construed so as to limit the ambit of the provisions concerned.

- 2.2. Headings used in these Rules are for reference purposes only and will not be taken into account in the interpretation of these Rules.
- 2.3. Capitalised terms used but otherwise not defined in these Rules shall bear the meaning ascribed to those terms in the MOI.
- 2.4. Reference to any one gender, whether masculine or feminine, includes the other gender.
- 2.5. A reference to the singular includes the plural and *vice versa*.
- 2.6. These Rules are made in accordance with and supplement the MOI, Operating Leases, School Leases and the End-User Leases, provided that, in the event of a conflict between any of the provisions of –
 - 2.6.1. the MOI and any provision of these Rules, then the provisions of the MOI shall prevail;
 - 2.6.2. the MOI and/or these Rules and any provision of the End-User Lease or a School Lease, then the provisions of the End-User Lease or the School Lease shall prevail (save as a contrary intention may prevail as determined by the Estate PropCo, the Board or a School PropCo);
 - 2.6.3. the MOI and/or these Rules and any provisions of an Operating Lease, then the provisions of the MOI and/or these Rules shall prevail;
 - 2.6.4. the MOI, these Rules, the End-User Lease, a School Lease or an Operating Lease (as the case may be) and any provisions of, or statements made in, any so-called “welcome pack” or similar documentation provided to new Members, Residents, Operating Lessees and the like, then the provisions of the MOI, these Rules, the End-User Lease and/or an Operating Lease (as the case may be) shall prevail; and
 - 2.6.5. more generally, a reasonable interpretation consistent with the object of these Rules shall prevail over an alternative interpretation which is inconsistent with these Rules.

WATERFALL COUNTRY ESTATE HOME OWNERS ASSOCIATION NPC



MEMORANDUM OF INCORPORATION (2025): GUIDANCE NOTE

1. PURPOSE

- 1.1. As a consequence of extensive consultations with several key stakeholders of the Waterfall Country Estate (including the Waterfall Crescent, The Villas, The Sheds and Waterfall Country Village), several amendments have been proposed to the original Memorandum of Incorporation governing the Waterfall Country Estate Home Owners Association NPC.
- 1.2. These proposed amendments are underpinned by, *inter alia*, both practical and legal considerations and seek to regularise the Association's constitutional framework with certain fundamental developments since the inception of the Estate.
- 1.3. A concise summary of these proposed amendments is recorded below.

2. THE ESTATE

- 2.1. In addition, the Estate is now described to include Erf 4156 (of Extension 71), being land which now forms part of the Estate (and is intended to be developed by the Estate PropCo).

3. THE DEVELOPER

- 3.1. The original Memorandum of Incorporation detailed special provisions concerning the "Developer" ("Waterfall Gold Estate Proprietary Limited"), being a "first member" of the Estate. This entity is no longer a key stakeholder and all references thereto have been omitted.
- 3.2. According to the same line of reasoning, all references to consequential terminology such as the "Development Period", "Development Period", "Development Agreement" and "first members" have also been omitted.

4. AMENDMENT, MEETING REQUISITIONS AND QUORUM THRESHOLDS

- 4.1. The threshold for Members to propose an amendment the Memorandum of Incorporation is now 15% of the voting rights that may be exercised on any such resolution (this previously 10%) (**Article 2.3.1.2.1.2**).
- 4.2. Additionally, the threshold for Members to requisition a meeting of the Member has been reduced to 15% of the voting rights entitled to be exercised at the meeting concerned (this was previously 25%) (**Article 4.2.1.2**).

- 4.3. Similarly, the quorum for a meeting to commence for the purposes of the passing of a special resolution has been reduced to 15% of the voting rights entitled to be exercised on the resolution concerned (this was previously 25%) (**Article 4.6.1.1.2**).

5. PROXIES

- 5.1. The proxy provisions have been updated in view of developments in the law – specifically, the failure for a proxy (and accompanying resolution, if applicable) to be deposited at the offices of the Association at least 48 hours prior to a members meeting will not invalidate the proxy concerned (**Articles 3.3.5.2. & 3.3.7**).

6. DIRECTOR REMUNERATION

- 6.1. The blanket prohibition on any direct or indirect remuneration for standing Directors of the Board has been qualified with a proviso which enables an “honorarium” (a nominal payment, without obligation) to be approved by the Board from time to time (**Article 5.3**).

7. LEVY FUND

- 7.1. The 14 day threshold for a letter to be drawn up by the Board and delivered to the chairperson of a meeting of the Members (beforehand, as proof of any Member’s levy arrears) has been revised to 5 days (**Article 8.14**).

8. PROHIBITED ACTIVITIES

- 8.1. The historical prohibited of certain activities (the distribution of liquor etc.) has been updated to align with the corresponding provision in the End-User Lease (**Article 9.5.2.1**).

9. MISCELLANEOUS

- 9.1. A number of definitions have been amended, supplemented and/or replaced in an effort to align the terminology utilised in the Conduct Rules with the Memorandum of Incorporation (for example, the definition of “Manager” has been replaced with “CEO”; and “Company” has been replaced with “Association”).
- 9.2. The reading of certain (outdated) provisions (and terminology) has been amended in line with corresponding revisions in the Companies Act 71 of 2008.

- 9.3. In the interests of uniformity, the formatting and style of the Memorandum of Incorporation is now consistent with the Conduct Rules
- 9.4. Additionally, various grammatical and cross-referencing issues (as identified in the original Memorandum of Incorporation) have been addressed.

[END]



THE COMPANIES ACT, NO. 71 OF 2008

(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

WATERFALL COUNTRY ESTATE HOME OWNERS ASSOCIATION NPC

REGISTRATION NUMBER: 2009/012918/08

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1. ARTICLE 1 – INTERPRETATION

1.1. Definitions

1.1.1. In this Memorandum of Incorporation, unless the context indicates a contrary intention, the followings words and expressions shall have the meaning assigned to them below –

1.1.1.1. **“Act”** means the Companies Act, 71 of 2008, as amended;

1.1.1.2. **“Alienate”**, in relation to Leasehold Rights, means the assignment of an End-User Lease applicable to any given Stand or Unit, to any third party;

1.1.1.3. **“Article”**, by number, means the corresponding provision in this Memorandum;

1.1.1.4. **“Association”** means the Waterfall Country Estate Home Owners Association NPC, with registration number 2009/012918/08;

1.1.1.5. **“Board”** means the Board of Directors of the Association;

1.1.1.6. **“CEO”** means the Person appointed by the Board to, together with the Management Team, on their behalf, fulfil the day-to-day management duties of the Board in relation to the Estate, which duties shall be fulfilled in accordance with the terms of such Person’s appointment and within the ambit of the powers delegated to him or her;

1.1.1.7. **“Chapter”**, by number, means the corresponding Chapter of the Act;

1.1.1.8. **“Common Facilities”** means all of the facilities situated on the Estate and intended for the shared use of all Home Owners (and their invitees), which facilities may include a clubhouse, restaurant(s), gymnasium, fitness centre and such additional facilities as the Association may determine from time to time;

1.1.1.9. **“Communications Infrastructure”** has the meaning ascribed to electronic communications facilities in the Electronic

Communications Act, 36 of 2005, which infrastructure shall include telecommunication structures, systems and/or equipment required for the delivery of electronic communications services whether or not such facilities, equipment, structure or services are licenced or regulated;

- 1.1.1.10. **“Common Properties”** means the Common Facilities together with those Stands or Units and other areas forming part of the Estate comprising of trim trail, road servitudes and parks, all of which are intended for the shared use of Home Owners (and their invitees);
- 1.1.1.11. **“Director”** means a member of the Board of the Association, as contemplated in section 66, or an alternate director of the Association, and includes any Person occupying the position of a Director or alternate Director, by whatever name designated;
- 1.1.1.12. **“End-User Lease”** means a lease between PropCo (as lessor) and a Home Owner (as lessee) in respect of a Stand or Unit, whether or not such lease was entered into in the first instance with the Home Owner, as a lessee, or was subsequently assigned to the Home Owner in terms whereof the Home Owner holds the Leasehold Rights in and to the Stand or Unit;
- 1.1.1.13. **“Estate”** means both Waterfall Country Estate (including Waterfall Crescent, The Villas and the Sheds situated thereon) and Waterfall Country Village, located on a portion of the Land;
- 1.1.1.14. **“Home Owner”** means a Lessee of a Stand or a Unit in terms of an End-User Lease;
- 1.1.1.15. **“Land”** means those portions of the farm Waterval No. 5 on which the Estate is located;
- 1.1.1.16. **“Leasehold Rights”** means the rights of a Home Owner (as a Lessee) in terms of an End-User Lease;
- 1.1.1.17. **“Lessee”** in relation to an End-User Lease, means the Person to whom a Stand or Unit is leased;

- 1.1.1.18. **“Local Authority”** means the local government authority having jurisdiction over the Land;
- 1.1.1.19. **“Management Team”** means the team appointed by the Board and the CEO to assist in the day-to-day management of the Estate;
- 1.1.1.20. **“Member”** means a Member of the Association as referred to in Article 2.5;
- 1.1.1.21. **“Memorandum”** means this Memorandum of Incorporation of the Association;
- 1.1.1.22. **“Office”** means the registered office of the Association;
- 1.1.1.23. **“Person”** means any person, association, close corporation, trust, partnership or other entity, whether or not having separate legal personality;
- 1.1.1.24. **“PropCo”** means Waterfall Country Estate WUQF Proprietary Limited, registration number 2004/013493/07, a private company with limited liability duly incorporated according to the laws of the Republic of South Africa, or its successor as the registered owner of the Land;
- 1.1.1.25. **“Regulation”**, by number, means the corresponding regulation of the regulations published in terms the Act;
- 1.1.1.26. **“Rules”** means the conduct rules and all ancillary rules, policies and procedures adopted by the Board from time to time in terms of Article 2.3;
- 1.1.1.27. **“Section”**, by number, means the corresponding section of the Act;
- 1.1.1.28. **“Services”** means the supply of services in on or about the Estate, including water, sewerage, refuse removal, electricity, telecommunications, television cables, security, maintenance and such other ancillary utilities or services as may be necessary from time to time, such as the cleaning of the Jukskei River;

1.1.1.29. **“Stand”** means a residential Stand (whether or not a Unit has been erected thereon) forming part of the Estate; and

1.1.1.30. **“Unit”** means a residential unit (whether or not free standing).

1.2. Words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act.

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

1.4. The headings above any of the Articles in this Memorandum are intended for reference purposes only and shall not influence the interpretation of the Article concerned.

2. ARTICLE 2 – INCORPORATION AND NATURE OF THE ASSOCIATION

2.1. Incorporation

2.1.1. The Association is incorporated as a non-profit company, as defined in the Act, with the main object to manage, control and render services for the mutual benefit, jointly and severally, of Home Owners in the Estate. For the avoidance of doubt, the Estate shall be construed as consisting of:

2.1.1.1. Jukskei View Ext. 19 (Portion 732 (a Portion of Portion 1) of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);

2.1.1.2. Jukskei View Ext. 37 (a Portion of the Remaining Extent of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);

2.1.1.3. Jukskei View Ext. 38 (Portion 747, a Portion of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);

2.1.1.4. Jukskei View Ext. 39 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);

- 2.1.1.5. Jukskei View Ext. 40 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.6. Jukskei View Ext. 41 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.7. Jukskei View Ext. 42 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.8. Jukskei View Ext. 43 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.9. Jukskei View Ext. 44 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng)
- 2.1.1.10. Jukskei View Ext. 45 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.11. Jukskei View Ext. 53 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.12. Jukskei View Ext. 56 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.13. Jukskei View Ext. 57 (a Portion of the Remaining Extent of Portion 1 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.14. Jukskei View Ext. 58 (Portion 749 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng);
- 2.1.1.15. Erf 4156 (Portions 1 to 50) of Jukskei View Ext. 71;

2.1.1.16. Jukskei View Ext. 105 (Portion 763 of the farm Waterval No. 5, Registration Division IR, Province of Gauteng); and

2.1.1.17. any other township on the farm Waterval No. 5, Registration Division IR, Province of Gauteng, which the Association may incorporate.

2.1.2. The Association is incorporated in accordance with, and governed by –

2.1.2.1. the unalterable provisions of the Act applicable to non-profit companies;

2.1.2.2. the alterable provisions of the Act applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

2.1.2.3. the provisions of this Memorandum.

2.2. **Objects and Powers of the Association**

2.2.1. The objects of the Association, as set out in Article 2.1.1, and (except to the extent necessarily implied by the stated objects) the purposes and the powers of the Association are not subject to any restriction, limitation or qualification, as contemplated in Section 19(1)(b)(ii).

2.2.2. The Association is not subject to any restrictive conditions, as contemplated in Section 15(2)(b), nor is it prohibited from amending any particular provision of this Memorandum, as contemplated in Section 15(2)(c).

2.2.3. The Association —

2.2.3.1. must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum; and

2.2.3.2. subject to Article 2.2.3.1, may —

2.2.3.2.1. acquire and hold securities issued by a profit Association; or

- 2.2.3.2.2. directly or indirectly, alone or with any other Person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 2.2.4. The Association must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any Person who is or was an incorporator of the Association, or who is a Member or Director, or Person appointing a Director, of the Association, except –
 - 2.2.4.1. as reasonable —
 - 2.2.4.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Association; or
 - 2.2.4.1.2. payment of, or reimbursement for, expenses incurred to advance a stated object of the Association;
 - 2.2.4.2. as a payment of an amount due and payable by the Association in terms of a *bona fide* agreement entered into with the Association;
 - 2.2.4.3. as a payment in respect of any rights of that Person, to the extent that such rights are administered by the Association in order to advance a stated object of the Association; or
 - 2.2.4.4. in respect of any legal obligation binding on the Association.
- 2.2.5. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Association –
 - 2.2.5.1. no past or present Member or Director of the Association, or any Person appointing a director of the Association, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied; and
 - 2.2.5.2. the entire net value of the Association must be distributed to one or more non-profit companies, registered external non-profit

companies carrying on activities within the Republic, voluntary companies or non-profit trusts having objects similar to the Association's main object, as may be determined –

2.2.5.2.1. in terms of this Memorandum;

2.2.5.2.2. by its Members at (or immediately before) the time of its dissolution; or

2.2.5.2.3. by a competent court, if this Memorandum, or the Members fail, to make such a determination.

2.2.6. The Association may not –

2.2.6.1. amalgamate or merge with, or convert to, a profit company; or

2.2.6.2. dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Association,

without the prior written consent of PropCo.

2.2.7. Any proposal to —

2.2.7.1. dispose of all or the greater part of the Association's assets or undertakings; or

2.2.7.2. amalgamate or merge with another non-profit company,

is subject to the prior written consent of PropCo and must be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with Sections 112 and 113, respectively.

2.2.8. Sections 115 and 116, read with the variations necessitated by the context, shall apply to the approval of a proposal contemplated in Article 2.2.7.

2.2.9. The Association may grant loans only to one or more non-profit companies, registered external non-profit companies (carrying on activities within the Republic), voluntary companies or non-profit trusts having objects similar to the Association's main object.

- 2.2.10. The Association may only invest funds with a registered financial institution (as described in section 1 of the Financial Institutions Act of 1984, as amended) or in a security listed on a licensed stock exchange (as defined in the Stock Exchange Control Act, No 1 of 1985, as amended).
- 2.2.11. The Association may enter into indemnities, guarantees and suretyships only with one or more non-profit companies, registered external non-profit companies (carrying on activities within the Republic), voluntary companies or non-profit trusts having objects similar to the Association's main object.
- 2.2.12. The Association may –
 - 2.2.12.1. make donations, provided however that no donations shall be made to present or former incorporators, Members or Directors; and
 - 2.2.12.2. pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees.

2.3. **This Memorandum and Rules of the Association**

- 2.3.1. This Memorandum may only be altered or amended –
 - 2.3.1.1. in compliance with a court order in the manner contemplated in section 16(4);
 - 2.3.1.2. at any other time if a special resolution to amend it –
 - 2.3.1.2.1. is proposed by –
 - 2.3.1.2.1.1. the Board of the Association; or
 - 2.3.1.2.1.2. Members entitled to exercise at least 15% (fifteen percent) of the voting rights that may be exercised on such a resolution; and
 - 2.3.1.2.2. is adopted at a Members meeting, or in accordance with Section 60;

2.3.1.2.3. by the Board of the Association, or an individual authorised by the Board, in accordance with Section 17, to alter the Association's Rules, or its Memorandum, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by –

2.3.1.2.3.1. publishing a notice of the alteration, in any manner required or permitted by this Memorandum or the Rules of the Association; and

2.3.1.2.3.2. filing a notice of the alteration; or

2.3.1.3. in implementing a business rescue plan pursuant to Section 152(6)(b).

2.3.2. Association Rules

2.3.2.1. Subject to Article 2.3.2.2, the Board may make, amend or repeal any necessary or incidental Rules relating to the governance of the Association in respect of matters that are not addressed in the Act or this Memorandum, by –

2.3.2.1.1. publishing a copy of those Rules, in any manner required or permitted by this Memorandum or the Rules of the Association; and

2.3.2.1.2. filing a copy of those Rules.

2.3.2.2. A Rule contemplated in Article 2.3.2.1 –

2.3.2.2.1. must be consistent with the Act and this Memorandum. Any such Rule which is inconsistent with the Act or this Memorandum shall be void to the extent of the inconsistency;

2.3.2.2.2. takes effect on a date that is the later of –

- 2.3.2.2.2.1. 10 (ten) business days after the Rule is filed in terms of Article 2.3.2.1.2; or
 - 2.3.2.2.2.2. the date, if any, specified in the Rule itself; and
 - 2.3.2.2.3. is binding —
 - 2.3.2.2.3.1. on an interim basis from the time it takes effect until it is put to a vote at the next general Members' meeting; and
 - 2.3.2.2.3.2. on a permanent basis, but only if it has been ratified by an ordinary resolution at the meeting contemplated in Article 2.3.2.2.3.1.
 - 2.3.2.3. If a Rule that has been filed in terms of Article 2.3.2.1.2, is subsequently —
 - 2.3.2.3.1. ratified as contemplated in Article 2.3.2.2.3.2, the Association must file a notice of ratification within 5 (five) business days in the prescribed manner and form; or
 - 2.3.2.3.2. not ratified when put to a vote —
 - 2.3.2.3.2.1. the Association must file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form; and
 - 2.3.2.3.2.2. the Board may not make a substantially similar Rule within the ensuing 12 (twelve) months, unless it has been approved in advance by an ordinary resolution of the Members.
 - 2.3.2.4. Any failure to ratify the Rules of the Association does not affect the validity of anything done in terms of those Rules during the

period that such Rules had an interim effect, as provided in Article 2.3.2.2.3.1.

2.3.2.5. The Board must publish any Rules made in terms of Articles 2.3.2 and 2.3.2.7 by delivering a copy of those Rules to each Member using any of the delivery methods contemplated in Regulation 7.

2.3.2.6. The Association must publish a notice of any alteration of the Memorandum or the Rules, made in terms of article 2.3.1.2.3, by delivering a copy of those alterations or Rules to each Member using any of the delivery methods contemplated in Regulation 7.

2.3.2.7. Subject to Articles 2.3.2.2 and 2.3.2.3, the Directors shall have the power to make Rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Estate, for the purposes of giving proper effect to the provisions of this Memorandum and for any other purpose, which powers shall include the right to impose reasonable financial penalties to be paid by those Members who fail to comply with the provisions of this Memorandum or the Rules.

2.3.2.8. In no way detracting from the generality of the foregoing, but remaining subject to Articles 2.3.2.2 and 2.3.2.3, the Directors may from time to time make Rules, applicable within the Estate, specifically in regard to –

2.3.2.8.1. the preservation of the natural environment;

2.3.2.8.2. vegetation and flora and fauna in the Estate;

2.3.2.8.3. the placing of movable objects upon or outside the buildings included in the Estate, including the power to remove any such objects;

2.3.2.8.4. the storing of flammable and other harmful substances;

- 2.3.2.8.5. the conduct of any Persons within the Estate and the prevention of nuisance of any nature to any Home Owner;
- 2.3.2.8.6. the use of Stands and Units within the Estate;
- 2.3.2.8.7. the use of roads, pathways and other Common Facilities including appropriate traffic calming measures;
- 2.3.2.8.8. the imposition of fines and other penalties to be paid by Members;
- 2.3.2.8.9. the management, administration, control and use of the Common Facilities;
- 2.3.2.8.10. restrictions with regard to the construction of Units or any other building or fixture on a Stand (including exterior decorations) and the architectural design, construction, quality and building materials of any such Unit, building or fixture;
- 2.3.2.8.11. the maintenance of all buildings, outbuildings and structures;
- 2.3.2.8.12. conditions with regard to the use and/or supply of electricity, water and sewerage reticulation on or about the Estate;
- 2.3.2.8.13. conditions and restrictions with regard to the landscaping of Stands, Units and/or Common Properties;
- 2.3.2.8.14. the keeping of pets;
- 2.3.2.8.15. the use by Home Owners of buildings and other structures, and the upkeep, aesthetics and maintenance of such buildings and other structures; and

- 2.3.2.8.16. generally in respect of any other matter which the Board from time to time may consider appropriate.
- 2.3.2.9. The Board may take, or cause to be taken, such steps as it may consider necessary to remedy the breach of any Rules by any Member, and debit the costs of doing so to the Member concerned, which amount shall be deemed to be a debt owing by the Member to the Association. In addition, the Directors may impose a system of fines or other penalties. The quantum of any such fines and/or penalties shall be determined by the Board from time to time.
- 2.3.2.10. In the event of any breach of the Rules by any Person, other than the Home Owner, such breach shall be deemed to have been committed by the Member concerned and the Board shall be entitled to take such action as it may deem fit against the responsible Member.
- 2.3.2.11. Notwithstanding the foregoing, the Directors may, in the name of the Association, enforce the provisions of any Rules by an application in a court of competent jurisdiction and, for this purpose, the Directors may appoint such legal practitioners as they deem fit.
- 2.3.2.12. Any Rules made by the Board shall be reasonable and in the interest of the Association and the Estate.
- 2.3.2.13. The Rules made by the Directors from time to time, in terms of the powers granted to them, shall be binding on all Members.
- 2.3.2.14. Without detracting from the generality of any other provision of this Memorandum, in the event of the Association and/or PropCo incurring any legal costs as a result of any breach of this Memorandum, the Rules and/or the End-User Lease by any Member, the Association shall be entitled to recover such costs irrespective of whether or not legal action is actually instituted against the offending Member.

- 2.3.2.15. Any Rules made by the Board may not be amended in any way without the prior written consent of PropCo.

2.4. **Optional Provisions of the Act**

- 2.4.1. In terms of Section 84(1)(c)(ii), the Association voluntarily elects to appoint an auditor for the purposes of auditing its annual financial statements. The appointment, remuneration and duties of the auditor shall be determined by the Board.
- 2.4.2. The Association may voluntary elect to appoint a company secretary.
- 2.4.3. The Association does not voluntarily elect to comply with the balance of the provisions set out in Chapter 3 of the Act.

2.5. **Members of the Association**

- 2.5.1. The Association shall maintain at its Office, a register of all of the Members of the Association, as provided by Section 24(4)(a). The register of Members shall be open to inspection, as provided by Section 26.

2.5.2. **Membership**

- 2.5.2.1. Membership of the Association shall be obligatory for all Home Owners.
- 2.5.2.2. Upon a Person becoming a Home Owner, that Person shall automatically be and become a Member and shall remain a Member until that Person ceases to be a Home Owner.
- 2.5.2.3. A Home Owner may, by written notice to the Association, nominate any occupant of a Stand or Unit for the purposes of representing that Home Owner in all matters relating to the Association.
- 2.5.2.4. If a Home Owner comprises of more than 1 (one) Person, such Persons shall nominate one of them to be the Member for purposes of this Memorandum, provided that the joint owners shall be bound by this Memorandum as if they were Members. The nomination contemplated by this Article 2.5.2.4 must be

made in writing to the Association within 7 (seven) days of such Persons becoming a joint Home Owner.

2.5.2.5. A Member may not resign as a Member of the Association until such time that Member ceases be a Home Owner.

2.5.3. Admission of Members

The right to determine admission of any Person as a Member shall vest with the Board, provided however that the Board shall not refuse any application for a Person to become a Member in circumstances where such Person is required to be and/or who automatically becomes a Member in terms of this Memorandum.

2.5.4. Rights of Members

2.5.4.1. Subject to the rights of membership prescribed by the Act, Members shall be conferred the following rights –

2.5.4.1.1. the right to inspect and/or receive copies of the annual financial statements of the Association;

2.5.4.1.2. the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with, and subject to, the provisions of this Memorandum; and

2.5.4.1.3. the right to receive notices of, attend and speak at all general meetings of the Association, whether ordinary or extra-ordinary, in accordance with the provisions of this Memorandum.

2.5.4.2. For the avoidance of doubt, no Member shall, by reason of being a Member of the Association, be entitled to, share in, or receive any profit of the Association.

2.5.5. Cessation of Membership

2.5.5.1. Membership of the Association shall cease –

2.5.5.1.1. upon a Member ceasing to qualify for membership in accordance with Article 2.5.2.2;

2.5.5.1.2. upon the issue of a final order of sequestration or liquidation or upon the deregistration of the Member concerned; and

2.5.5.1.3. upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.

2.5.5.2. If a Member ceases to be a Member in terms of Articles 2.5.5.1.2 or 2.5.5.1.3, the trustee or liquidator or other legal representative (as the case may be) of such Member shall, for all purposes, be recognised and be bound as the Member for the purposes of this Memorandum.

2.5.6. Certificates

Subject to the provisions of the Act, certificates of membership may be issued under the authority of the Board in such manner and form as the Directors may determine from time to time.

3. ARTICLE 3 – RIGHTS OF MEMBERS

3.1. **Members' Authority to Act**

If, at any time, every Member of the Association is also a director of the Association, as contemplated in Section 57(4), the authority of the Members' to act without notice or compliance with any other internal formalities, is not limited or restricted by this Memorandum.

3.2. **Members' Right to Information**

3.2.1. In accordance with Section 26(1), a Member has the right to inspect and copy, without any charge (or upon payment of no more than the prescribed maximum charge), the information contained in the following records of the Association:

- 3.2.1.1. this Memorandum and any amendments to it, and any Rules made by the Association;
 - 3.2.1.2. the records in respect of the Association's Directors;
 - 3.2.1.3. the reports to annual meetings and the Association's annual financial statements;
 - 3.2.1.4. the notices and minutes of annual meetings; and
 - 3.2.1.5. the Members' register of the Association.
- 3.2.2. A Person not contemplated in Article 3.2.1 may have the right to inspect or copy the Members' register, or the Association's register of Directors, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.

3.3. **Proxies**

- 3.3.1. The right of a Member to appoint Persons concurrently as proxies, as set out in Section 58(3)(a), is not limited, restricted or varied by this Memorandum.
- 3.3.2. The authority of a Member's proxy to delegate that proxy's powers to another Person, as set out in Section 58(3)(b), is not limited or restricted by this Memorandum.
- 3.3.3. The requirement that a Member must deliver to the Association a copy of the instrument appointing a proxy before that proxy may exercise the Members' rights at a Members meeting, as set out in Section 58(3)(c), is not varied by this Memorandum.
- 3.3.4. The authority of a Member's proxy to decide, without direction from that Member, whether to exercise or abstain from exercising any voting right of that Member, as set out in Section 58(7), is not limited or restricted by this Memorandum.
- 3.3.5. The instrument appointing a proxy shall be –
 - 3.3.5.1. under the hand of the appointing Member in such form as may be prescribed by Board; and

3.3.5.2. deposited at the Office of the Association not less than 48 (forty eight) hours prior to the meeting concerned. For the avoidance of doubt, this time limit is encouraged for administrative purposes and non-compliance herewith shall not invalidate the instrument of proxy.

3.3.6. A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, unless no intimation in writing of the death or revocation has been received at the Office or by the Chairperson of the meeting before the relevant vote is given.

3.3.7. If a Member is a close corporation, company, trust or other juristic Person, such Member shall be required to lodge a resolution authorising a particular natural Person to represent the Member generally and to exercise the Member's vote on its behalf. The resolution contemplated by this Article 3.3.7 must be deposited at the Office of the Association at least 48 (forty eight) hours prior to the meeting concerned. For the avoidance of doubt, this time limit is encouraged for administrative purposes and non-compliance herewith shall not invalidate the resolution concerned.

3.4. **Record Dates for the Exercise of Members' Rights**

3.4.1. In the event of the Board not determining a record date for any action or event, the record date for the relevant action or event shall be —

3.4.1.1. in the case of a meeting, the latest date by which the Association is required to give Members notice of that meeting; or

3.4.1.2. in any other case, the date of the action or event, unless any Rules of the Association provide otherwise.

4. **ARTICLE 4 – MEMBERS' MEETINGS**

4.1. **Requirement to Hold Meetings**

4.1.1. The Association may be required to hold Members' meetings over and above those meetings specifically required by the Act.

4.1.2. The Association must convene an annual general meeting of its Members once in every calendar year, such meeting to be convened within 6 (six) months after the end of the Association's financial year, but no more than 15 (fifteen) months after the date of the previous annual general meeting, unless such extended time is permitted by the Companies Tribunal on good cause.

4.1.3. An annual general meeting convened in terms of Article 4.1.2 must, at a minimum, make provision for the following business to be transacted:

4.1.3.1. the presentation of—

4.1.3.1.1. a report by the Directors; and

4.1.3.1.2. the Association's audited annual financial statements (or annual financial statements independently compiled and reported on by an independent accounting professional) for the immediately preceding financial year.

4.1.3.2. a determination of the number of Directors to serve on the Board;

4.1.3.3. the election of Directors (when such decision is required in accordance with this Memorandum);

4.1.3.4. the appointment of either an auditor or an independent accounting professional for the immediately ensuing financial year; and

4.1.3.5. any other matter raised by the Members themselves.

4.2. **Members' Rights to Requisition a Meeting**

4.2.1. Subject to Article 4.1.2, the Board or such other Person specified in this Memorandum or any Rules of the Association, must call a Members' meeting if it is requisitioned by PropCo or in circumstances where one or more written and signed demands for such a meeting are delivered to the Association, and —

4.2.1.1. each such demand describes the specific purpose for which the meeting is proposed; and

4.2.1.2. in aggregate, the demands (for substantially the same purpose) are made and signed by the holders of at least 15% (fifteen percent) of the voting right entitled to be exercised in relation to the matter proposed to be considered at the meeting, calculated as of the earliest time specified in any of these demands.

4.2.2. The Association, or any Member of the Association, may apply to a court for an order setting aside a demand made in terms of Article 4.2.1 on the basis that any such ground is frivolous, serves no purpose other than a reconsideration of a decided matter, or is otherwise vexatious.

4.2.3. At any time before the commencement of a Members' meeting contemplated by Article 4.2.1 –

4.2.3.1. a Member who submitted a demand for that meeting may withdraw that demand; and

4.2.3.2. the Association must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call the meeting.

4.3. **Location of Members' Meetings**

The Board may determine the location of any Members' meeting provided however, if such meeting is not held at the Association's Office, then it must be held in the Republic at such place where the Board deems it will be convenient for the Members.

4.4. **Notice of Members' Meetings**

4.4.1. The minimum number of days for the Association to deliver a notice of a Members' meeting to the Members, as required by Section 62, is 15 (fifteen) business days prior to the scheduled date of the meeting.

4.4.2. A copy of the audited annual financial statements (or the annual financial statements compiled and reported on by an independent accounting

professional) must be sent to each Member together with the notice of the annual general meeting.

4.4.3. A notice may be delivered to the Members according to any one of the methods of delivery contemplated in Regulation 7 and shall specifically include the delivery of notices via any web-based community portal (or any other similar platform) utilised by the Association from time to time for the purposes of communicating with Members.

4.4.4. A notice may also be given by the Association to PropCo by sending it by post (by pre-paid letter) addressed to PropCo at the following address, or such other address as PropCo may notify the Association of in writing –

Waterfall House

Woodmead North Office Park

Maxwell Drive

Woodmead

Sandton

2157

4.4.5. The notice of every general meeting shall be given, in any authorised manner, to –

4.4.5.1. every Member of the Association. If a Member has not supplied the Association with an address within the Republic for the service of notices, then it shall be considered sufficient for the Association to serve notice at the address of the Stand being subject to the Leasehold Rights of the Member concerned; and

4.4.5.2. to the auditor for the time being of the Association.

4.4.6. No other Person shall be entitled to receive notice of general meetings.

4.4.7. The failure to give notice to any Member, other than PropCo, or the failure of any Member, other than PropCo, to receive a notice shall not vitiate any proceedings of the Association.

4.5. **Electronic Participation in Members' Meetings**

The authority of the Association to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 63, is not limited or restricted by this Memorandum.

4.6. **Quorum for Members' Meetings**

4.6.1. **Quorum**

4.6.1.1. Subject to Article 4.6.1.4, a quorum –

4.6.1.1.1. for a general meeting shall be 3 (three) Members entitled to vote, personally present, and if a Member is a body corporate, such Member being duly represented; and

4.6.1.1.2. for a general meeting called for the passing of a special resolution, Members holding between them, in aggregate, not less than 15% (fifteen percent) of the voting rights in the Association, present in person or by proxy, and entitled to vote.

4.6.1.2. If no quorum is present within half-an-hour after the time appointed for the meeting, the meeting, if convened upon the requisition of Members, shall be dissolved; and in any other case, the meeting shall stand adjourned to a date not earlier than 7 (seven) days, and not later than 21 (twenty one) days, after the date of the meeting. If at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present, in person or by proxy, shall constitute a quorum.

4.6.1.3. If a meeting has been adjourned in accordance with Article 4.6.1.2, the Association may, not later than 3 (three) days after the adjournment, notify the Members of the meeting, stating –

4.6.1.3.1. the date, time and place for the adjourned meeting;

4.6.1.3.2. the matter(s) to be decided at the adjourned meeting; and

4.6.1.3.3. the grounds of the adjournment.

4.6.1.4. Notwithstanding anything to the contrary in this Article 4.6.1, there shall be no quorum at any general meeting of the Members (whether ordinary or special) unless PropCo is represented at such meeting, whether in person or by proxy.

4.6.1.5. Unless any Rules of the Association provide otherwise, after a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.

4.6.1.6. A meeting may not be adjourned beyond the earlier of —

4.6.1.6.1. a date that is 120 (one hundred and twenty) business days after the record date; or

4.6.1.6.2. a date that is 60 (sixty) business days after the date on which the adjournment occurred.

4.6.2. Chairperson

4.6.2.1. The chairperson of the Directors, if any, shall preside as the chairperson at every general meeting of the Members. If there is no such chairperson, or if at any meeting he is not present within 15 (fifteen) minutes extending from the scheduled time of the meeting (or such Person is otherwise unwilling to act as the chairperson), the Members shall elect one of their Members to be the chairperson. Notwithstanding the foregoing, the chairperson shall be the Director appointed by PropCo in terms of Article 5.1.1.

4.6.2.2. The chairperson 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 at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 4.6.1.2, 4.6.1.3 and 4.6.1.4 shall *mutatis mutandis* apply to the adjourned meeting.

4.7. **Members' Resolutions**

- 4.7.1. For an ordinary resolution to be adopted at a Members' meeting, it must be supported by at least 50% (fifty percent) of the voting rights exercised on the resolution, as provided in Section 65(7).
- 4.7.2. For a special resolution to be adopted at a Members' meeting, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in Section 65(7).
- 4.7.3. A special resolution adopted at a Members' meeting is not required for a matter to be determined by the Association, except those matters set out in Section 65(11).
- 4.7.4. For the avoidance of doubt, a special resolution must be adopted in respect of the following matters:
 - 4.7.4.1. to amend the Association's Memorandum to the extent required by Section 16(1)(c) and Section 36(2)(a);
 - 4.7.4.2. to ratify a consolidated revision of the Association's Memorandum, as contemplated in Section 18(1)(b);
 - 4.7.4.3. to ratify actions by the Directors (or the Association) in excess of their authority, as contemplated in Section 20(2);
 - 4.7.4.4. to authorise the basis for compensation of Directors, as required by Section 66(9);
 - 4.7.4.5. to approve the voluntary winding up of the Association, as contemplated in Section 80(1);

- 4.7.4.6. to approve the winding-up of the Association in the circumstances contemplated in Section 81(1);
- 4.7.4.7. to approve an application to transfer the registration of the Association to a foreign jurisdiction, as contemplated in section 82(5);
- 4.7.4.8. to approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or
- 4.7.4.9. to revoke a resolution contemplated in Section 164(9)(c).

4.7.5. Votes of Members

- 4.7.5.1. Each Member present at a meeting of the Members, in person or by proxy, shall be entitled to 1 (one) vote in respect of every Stand or Unit of which it is a Home Owner.
- 4.7.5.2. In addition to the votes (if any) to which it may be entitled in terms of Article 4.7.5.1, PropCo shall be entitled to 1 (one) vote for every 2 (two) Stands and Units comprising the Estate, plus an additional 10 (ten) votes.
- 4.7.5.3. In the case of an equality (deadlock) of votes on any matter, whether on a show of hands or on a poll, the chairperson of the meeting shall be entitled to exercise a second or casting vote.
- 4.7.5.4. A poll demanded at the election of a chairperson 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 chairperson of the meeting directs. Notwithstanding anything to the contrary, 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.
- 4.7.5.5. Every resolution and every amended resolution proposed for adoption by a general meeting of the Members shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.

4.7.5.6. Unless any Member present at a general meeting, in person or by proxy, has objected to any declaration made by the chairperson as to the result of any matter voted on (whether by show of hand or otherwise), or to the validity of the procedure at such meeting, prior to the closure of the meeting, the relevant declarations by the chairperson shall be deemed to be a true and correct statement of the voting outcomes; and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted. In these circumstances, an entry in the minutes to the effect that any motion has been carried or defeated, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

4.7.5.7. On a poll, Members may give their votes personally or by proxy.

5. ARTICLE 5 – DIRECTORS AND OFFICERS

5.1. Composition of the Board

5.1.1. The number of Directors shall be determined from time to time by the Members in an annual general meeting, subject to the following –

5.1.1.1. there shall be a minimum of 3 (three) and a maximum of 10 (ten) Directors of whom PropCo shall be entitled to appoint the majority of the Directors;

5.1.1.2. a retiring Director shall be eligible for re-election; and

5.1.1.3. the nominees of PropCo shall be Directors for so long as PropCo does not revoke their appointment.

5.1.2. Save as is set out in Articles 5.1.3 and 5.1.8, and with the exception of any Director nominated by PropCo, each Director shall continue to hold office as such until the next annual general meeting, at which they shall be deemed to have retired from office, but nevertheless remain eligible for re-election to the Board at this meeting.

- 5.1.3. If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the minimum prescribed threshold, the Directors shall Act promptly to appoint such additional Directors as may be necessary to meet this minimum threshold. If the Director so retiring or resigning was a nominee of PropCo, then its successor shall be appointed by PropCo. In these circumstances, any resolutions taken (or decisions actioned) by the Board shall not be invalidated by the shortfall in the minimum required Directors.
- 5.1.4. Any Director, with the exception of any Director appointed by PropCo, may be removed by a majority of the Directors, irrespective of the reason.
- 5.1.5. The appointment by the Board of any Director to fill any vacancy (for whatsoever reason) must be made within 45 (forty five) days of the date upon which such vacancy occurs.
- 5.1.6. The Directors shall have the power to co-opt Persons onto the Board for the purposes of assisting the Directors in carrying out any of their functions.
- 5.1.7. The authority of the Directors to fill any vacancy on the Board, on a temporary basis, is not limited or restricted by this Memorandum.
- 5.1.8. The office of Director, whether elected, appointed or ex officio, or prescribed officer shall be vacated if the Director or prescribed officer concerned –
- 5.1.8.1. ceases to be a Director by effluxion of the period of his appointment,
 - 5.1.8.2. becomes prohibited from being a Director by virtue of any provision of the Act or this Memorandum;
 - 5.1.8.3. resigns his office by notice in writing to the Association;
 - 5.1.8.4. becomes insolvent or assigns his estate for the benefit of, or compounds with, his creditors;
 - 5.1.8.5. is found to be a lunatic or of unsound mind; or
 - 5.1.8.6. is absent for 3 (three) consecutive regular meetings of the Directors without obtaining prior leave of absence; or

- 5.1.8.7. in the case of a Director appointed by PropCo, on PropCo revoking his appointment.

5.2. **Alternate Directors**

- 5.2.1. Any Director may for any reason, and at or for any time, appoint an alternate.
- 5.2.2. Any Director may obtain leave of absence by resolution of an ordinary majority of the Directors, and the Directors may thereupon appoint an alternate to act for him during his absence with all such powers and privileges conferred on the Director concerned. The appointment of such alternate shall not, however, be valid unless this appointment is confirmed by a resolution of the Directors present at the meeting.

5.3. **Remuneration of Directors**

- 5.3.1. Save for an honorarium, as may be approved by the Board from time to time, no Director shall directly or indirectly receive any remuneration for his services as a Director, provided that nothing in these Articles shall prohibit him from reimbursement for all of his travelling, subsistence and other expenses properly incurred by him in the execution of his duties, and which is authorised and/or approved by the Board.
- 5.3.2. In the event of any Director committing a breach of Article 5.3.1, he shall forthwith cease to be a Director and shall not be eligible for re-election in this office.

5.4. **Authority of the Board**

- 5.4.1. Subject to the Act and this Memorandum, the business of the Association shall be managed by the Directors who may, on behalf of the Association, exercise all such powers and functions of the Association.
- 5.4.2. Without derogating from the generality of Article 5.4.1, the Directors shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum.
- 5.4.3. The Directors may, in the exercise of their rights, obligations and duties as provided for and contemplated by this Memorandum, incur such

expenditure as is necessary and/or requisite (and howsoever arising) so to enable them to give proper effect to the provisions of this Memorandum.

- 5.4.4. The Association shall, at an annual general meeting of the Members, have the right to limit and/or restrict the powers of the Directors, by general resolution, but not without the consent of PropCo, which resolution of the Association shall invalidate any prior Act of the Directors which would otherwise have been construed as valid.

5.5. **Board Meetings**

- 5.5.1. A decision that could be voted on at a meeting of the Board, may instead be adopted by written consent of a majority of the directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by the Directors undertaking a vote at a meeting of the Board.
- 5.5.2. A Director authorised by the Board —
 - 5.5.2.1. may call a meeting of the Board at any time; and
 - 5.5.2.2. must call such a meeting if required to do so by at least —
 - 5.5.2.2.1. 25% (twenty five percent) of the Directors if the Board has 12 (twelve) or more Directors; or
 - 5.5.2.2.2. 2 (two) Directors, in any other case.
- 5.5.3. The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for the participation in a meeting by electronic communication, as set out in Section 73(3), is not limited or restricted by this Memorandum.
- 5.5.4. The Board may determine the form and time for giving notice of its meetings and such notice may be delivered using any of the methods of delivery as contemplated in Regulation 7, but—

- 5.5.4.1. a Director may on 14 (fourteen) days written notice to all of the other Directors, at any time, summon a meeting of the Directors;
and
- 5.5.4.2. no meeting of the Board may be convened without notice to all of the Directors, subject to Article 5.5.5.
- 5.5.5. Except to the extent that this Memorandum may provide otherwise —
 - 5.5.5.1. if all of the Directors of the Association —
 - 5.5.5.1.1. acknowledge actual receipt of the notice;
 - 5.5.5.1.2. are present at a meeting; or
 - 5.5.5.1.3. waive notice of the meeting,

the meeting may proceed even if the Board failed to give the required notice of that meeting, or there was a defect in the giving of the notice;
 - 5.5.5.2. a majority of the Directors must be present at a meeting before a vote may be called at a meeting of the Directors;
 - 5.5.5.3. each Director has 1 (one) vote on a matter before the Board; and
 - 5.5.5.4. a majority of the votes cast on a resolution is sufficient to approve that resolution; and in the case of a tied vote, the chairperson shall be entitled to exercise a second or casting vote.
- 5.5.6. The quorum necessary for the transaction of the business of the Board shall be a majority of Directors holding Office at that time, provided however that there shall be no quorum of Directors unless at least 1 (one) Director appointed by PropCo is present.
- 5.5.7. If at a meeting of the Board neither the chairperson (nor the deputy chairperson, if applicable) is present within 10 (ten) minutes after the scheduled time for the meeting, the Directors present may choose one of their number to act in the capacity of chairperson for that meeting.

- 5.5.8. Any questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an alternate Director. Each Director shall be entitled to exercise 1 (one) vote, provided that no resolution of Directors shall be carried unless at least 1 (one) nominee of PropCo votes in favour of such resolution. Subject to the foregoing, if there is an equality of votes, the chairperson shall have a second or casting vote. Where a Person is an alternate Director to more than 1 (one) Director, or where an alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors he is representing.
- 5.5.9. All acts done in terms of any resolution passed at any meeting of the Board, (or a committee of the Board), notwithstanding that it may afterwards be discovered that there was some defect in the relevant Directors' authority to act (or any one of them were disqualified so to act), shall be construed as valid as if any such Person acting as Director in the meeting of the Board (or committee of the Board) has been duly appointed and had qualified to be a Director.
- 5.5.10. No Director shall be liable for any loss, damage or misfortune howsoever arising out of or in connection with the execution of the duties of his office, unless such loss, damage or misfortune is attributable to that Director' own dishonesty, gross negligence or default, breach of duty or breach of trust.

5.6. **Indemnification of Directors**

- 5.6.1. Except to the extent that this Memorandum may provide otherwise, the Association –
- 5.6.1.1. may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Association; and
- 5.6.1.2. may directly or indirectly indemnify a Director for expenses contemplated in Article 5.6.1.1, irrespective of whether it has advanced those expenses, if the proceedings—
- 5.6.1.2.1. are abandoned or exculpate the Director; or

- 5.6.1.2.2. arise in respect of any liability for which the Association may indemnify the Director, in terms of Articles 5.6.1.1 and 5.6.5.
- 5.6.2. Except to the extent that this Memorandum may provide otherwise, the Association may indemnify a Director in respect of any liability arising other than as contemplated in Article 5.6.3.
- 5.6.3. Notwithstanding anything to the contrary, the Association may not indemnify a Director in respect of –
 - 5.6.3.1. any liability arising –
 - 5.6.3.1.1. in terms of Section 77(3)(a), (b) or (c);
 - 5.6.3.1.2. from wilful misconduct or wilful breach of trust on the part of the Director and as otherwise contemplated in Article 5.5.10; or
 - 5.6.3.1.3. in terms of any fine or penalty contemplated in Article 5.6.4.
- 5.6.4. The Association may not directly or indirectly pay any fine or penalty that may be imposed on the Director of the Association (or on a director of a related Association) as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability.
- 5.6.5. Except to the extent that this Memorandum may provide otherwise, the Association may purchase insurance to protect –
 - 5.6.5.1. a Director against any liability or expenses for which the Association is permitted to indemnify a Director in accordance with article 5.6.2 or
 - 5.6.5.2. the Association against any contingency including, but not limited to –
 - 5.6.5.2.1. any expenses –

5.6.5.2.1.1. that the Association is permitted to advance in accordance with Article 5.6.1.1;

5.6.5.2.1.2. for which the Association is permitted to indemnify a Director in accordance with Article 5.6.1.2; or

5.6.5.2.1.3. any liability for which the Association is permitted to indemnify a Director in accordance with Article 5.6.2.

5.6.6. The Association is entitled to claim restitution from a Director of the Association (or of a related Association) for any money paid directly or indirectly by the Association to or on behalf of that Director in any manner inconsistent with this Article 5.6 or Section 78.

5.7. **Committees of the Board**

5.7.1. Except to the extent that this Memorandum may provide otherwise, the Board may —

5.7.1.1. appoint any number of committees of Directors; and

5.7.1.2. delegate to any committee any of the authority of the Board.

5.7.2. Except to the extent this Memorandum, or a resolution establishing a committee, may provide otherwise, the committee —

5.7.2.1. may include Persons who are not Directors of the Association, but —

5.7.2.1.1. any such Persons must not be ineligible or disqualified to be a director in terms of Section 69; and

5.7.2.1.2. no such Person has a vote on any matter to be decided by the committee;

5.7.2.2. may consult with or receive advice from any Person; and

5.7.2.3. has the full authority of the Board for the matters specifically delegated to it.

5.7.3. The Directors may delegate any of their powers to committees consisting of such Persons as they think fit, including chairpersons appointed by them. Any constituted committee shall operate in an advisory capacity and shall be required to report, and be responsible to, the Directors and within the authority delegated to it.

5.7.4. Should the Directors not appoint a chairperson of a committee constituted by them, the Members of that committee shall be entitled elect such a Person. If at any meeting of a committee, the chairperson is not present within 10 (ten) minutes after the scheduled time for the meeting, the committee members present may elect one of their number to be the chairperson for that meeting.

5.7.5. A committee may meet and adjourn as it thinks fit. Any questions arising at any meeting shall be determined by a majority of votes of the committee members present and, in the event of an equality of votes, the chairperson shall be entitled to exercise a second or casting vote.

5.8. **Delegating the Powers of Directors**

5.8.1. The Board may, from time to time, entrust to and confer upon the CEO (or any other designated official of the Association or consultant or any other Person), such of the powers and authorities vested in the Directors, as it may think fit. Any such powers and authorities conferred upon the CEO (or other designated official) shall be exercised for such objects and purposes, and subject to such terms and conditions and restrictions, as the Board may determine to be proper and expedient. Any such powers and authorities may be conferred either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors, provided however that the Board shall retain the right to revoke or vary all or any of such powers and authorities.

5.8.2. The CEO shall, in terms of Section 66(10) read with Regulation 38, be a prescribed officer of the Association and, as such, the provisions of Sections 69, 75, 76, 77 and 78 shall apply to and be binding on the CEO.

5.9. **Assignment of Powers and Functions**

The Association shall have all powers as may be reasonably required by it for the purposes of carrying out its functions. Without derogating from the generality of the foregoing, the Association shall perform such functions and have such powers as are conferred upon a body corporate in terms of Sections 37 and 38 of the Sectional Titles Act No. 95 of 1986, as amended.

5.10. **Minutes**

5.10.1. The Directors shall cause minutes to be kept of the following matters –

5.10.1.1. the appointments of all officers, including Directors;

5.10.1.2. the names of Directors present at every meeting of the Association and at every meeting of the Board; and

5.10.1.3. the proceedings at all meetings of the Association and/or the Directors and/or committees of the Board.

5.10.2. The minutes contemplated in this Article 5.10, once they are approved as a true record of proceedings, shall be signed by the chairperson of the meeting at which the proceedings took place or, to the extent necessary, by the chairperson of the following meeting.

6. ARTICLE 6 – ACCOUNTING RECORDS

6.1. The Directors shall cause to be kept such accounting records as may be prescribed by the Act or any other applicable law or regulation. These accounting records shall accurately and fairly represent the state of affairs and financial position of the Association.

6.2. The accounting records shall be kept at the Office of the Association or at such other place or places as the Directors deem fit, which accounting records shall always be open to inspection by the Directors.

- 6.3. The Directors shall, from time to time, determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounting records of the Association (or any of them) shall be open to inspection by the Members not being Directors. No Member (not being a Director) shall have any right to inspect any accounting records or documents of the Association except to the extent such right is conferred by the Act or otherwise authorised by the Directors for the purposes of annual general meetings.

7. ARTICLE 7 – ANNUAL FINANCIAL STATEMENTS

- 7.1. The Directors shall, from time to time, in accordance with Section 30, cause annual financial statements to be prepared within the meaning and purport prescribed by the Act.
- 7.2. A copy of any annual financial statements which are to be laid before the Association at any annual general meeting of the Members shall, not less than 15 (fifteen) business days prior to the meeting, be sent to every Member of the Association, provided however that this Article 7.2 shall not require the delivery of these documents to any Person whose address is not known to the Association.

8. ARTICLE 8 – LEVY FUND

- 8.1. The Directors shall establish and maintain a levy fund sufficient, in their opinion, for the repair, upkeep, control, management and administration of the Association and the Estate, including:
- 8.1.1. the provision of security services for the Estate;
 - 8.1.2. garden maintenance services;
 - 8.1.3. optic fibre cable networks;
 - 8.1.4. the payment of rates and taxes and other charges on the Estate levied by the Local Authority (or any other authority);
 - 8.1.5. any charges for the supply of electrical current, gas, water, fuel and sewage disposal, refuse collection;
 - 8.1.6. any other Services as may be required by the Association so to enable it to carry out its main and ancillary objects;

- 8.1.7. for the covering of any losses suffered by the Association;
 - 8.1.8. for the payment of any premiums of insurance; and
 - 8.1.9. for the payment of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligation of the Association (provided that nothing in this Memorandum shall be construed as obliging the Association to pay service charges and/or rates and taxes due by Home Owners to the Local Authority).
- 8.2. All levies due by the Members shall be payable to the Association immediately when such levies become due and owing (without deduction, demand or set-off).
- 8.3. The proportions in which Members shall make contributions towards the levy fund in terms of Article 8.1 shall be determined by the Board. The Directors, in making any such determination, shall have regard to all prevailing circumstances at the time and may, in any case where they consider it equitable to do so, assign to any Home Owner any greater or lesser share of the costs as may be reasonable in the circumstances.
- 8.4. The levies shall be payable in respect of all Stands or Units whether or not they have been developed with the construction of dwelling houses or other buildings on such Stands or Units.
- 8.5. Notwithstanding Article 8.4, the levies shall be payable only in respect of serviced stands which form part of a proclaimed township.
- 8.6. Notwithstanding anything to the contrary, it is expressly recorded that PropCo shall not be required to pay any levies in respect of any Common Facilities and/or the Common Properties located on the Estate.
- 8.7. All of the levy contributions received from the Members shall forthwith be deposited into a separate, distinct banking account of the Association.
- 8.8. The monies in the levy fund shall be utilised to defray the expenses referred to in Article 8.1 above.
- 8.9. Notwithstanding any Person ceasing to be a Member, all levies attributable to any period whilst such Person was a Member, shall continue to be of full force and effect and be recoverable from such Person.

- 8.10. Any amount due by a Member, whether in respect of a levy or any other amount falling due for payment in terms of this Memorandum, the Rules of the Association or the End-User Lease (whether to the Association or PropCo) which remains unpaid after the due date, shall bear interest as from the due date for payment to the date of actual payment at a rate of interest equal to the prime overdraft rate plus 3 (three) percentage points, such interest to be calculated and compounded monthly.
- 8.11. The Board shall have the power to impose additional special levies on the Members in respect of any unforeseen and unanticipated expenditure and/or in circumstances where any budgeted income of the Association is or is likely to become insufficient to discharge the liabilities of the Association (whether such liabilities are foreseen or not).
- 8.12. No Member shall be entitled to demand the repayment of any amount standing to the credit of his levy account.
- 8.13. All contributions levied under the provisions of this Article 8 shall be due and payable by the Members on the passing of a resolution by the Board to that effect; may be recovered by the Association by action in any court (including any Magistrate's Court) of competent jurisdiction from the Persons who were Members at the time when such contributions became due.
- 8.14. Should a Member be more than 30 (thirty) days in arrears with the payment of any levies due, or any other amount of whatsoever nature, to the Association or PropCo and remain in arrears notwithstanding demand for payment by the Association, then such Member shall be precluded from exercising any voting rights, whether in person or proxy, at any meeting of the Members. A letter addressed to the chairperson of any such meeting dated not more than 5 (five) days prior to the meeting shall constitute proof of non-payment of any arrear amounts contemplated by this Article 8.14.
- 8.15. In the event of there being a dispute as to the amount of levies due by any Member, such dispute shall be referred to the Association's auditors for a decision, whose decision shall be final and binding on the parties.
- 8.16. The Board may establish a levy stabilisation fund to supplement any levies paid by Members in terms of this Article 8. Any such levy stabilisation fund shall be funded in such manner as may be determined by the Directors from time to time.

- 8.17. If and to the extent that PropCo (by virtue of its ownership of the Land) is required to pay to the Local Authority any rates and taxes and/or other charges in respect of Common Property on the Estate, the Association indemnifies PropCo in respect thereof and shall pay to PropCo an amount equal to such rates and taxes and/or other charges.
- 8.18. Without limiting the generality of the provisions of Article 8.17, it is recorded that PropCo is required to maintain a fund of R200,000 (two hundred thousand Rand) (subject to escalation) as security for the payment of any unpaid rates and taxes and/or other charges. If and by virtue of the circumstances contemplated in Article 8.16, such fund is depleted and PropCo is required to make any payment to such fund, the Association shall make the payment on behalf of PropCo and the Association accordingly indemnifies PropCo in this regard.
- 8.19. On the expiry of a financial year (and until the Members become liable for contributions in respect of the ensuing financial year), the Members shall be liable for contributions in the same amounts, being payable in the same instalments, as were due and payable by them during the preceding financial year, provided however that the Directors may, if they consider it necessary and by written notice to the Members, increase the contributions due by the Members by a maximum of 10% (ten percent) to take account of any anticipated increase in the liabilities of the Association.

9. ARTICLE 9 – REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE ESTATE

9.1. Building and Improvements

The Rules (in particular any conduct Rules read together with any architectural and landscaping guidelines) shall contain the Rules relating to the placement on, or the attachment of, any objects to buildings or other structures on or about the Estate, as well as the Rules applicable any improvements of whatsoever nature.

9.2. Landscaping

The Rules (in particular any conduct Rules read together with any architectural and landscaping guidelines) shall contain the Rules relating to landscaping on or about the Estate.

9.3. Provision of Services

The Association may, from time to time, contract with suppliers for the provision of Services to the Estate, subject to the limitation contained in Article 10.

9.4. **Open Spaces and Rights of Access**

Subject to this Memorandum and the Rule of the Association, the Home Owners shall be entitled to use all of Common Facilities situated on or about the Estate.

9.5. **Occupation and Use of Stands or Units**

9.5.1. The occupation and use of Stands or Units shall, at all times, be in compliance with this Memorandum and the Rules of the Association. The Directors may, in their sole discretion, determine that any Person, not being a Member or Resident, be denied access to the Estate and be required to leave in the event of such Person breaching this Memorandum or the Association's Rules. No Member shall use any Stand or Unit (or any part of any building) or allow any other Person to use such Stand or Unit (or any part of any building) for purposes not permitted by this Memorandum and/or the Rules.

9.5.2. Without limiting the generality of this Memorandum and any of the Association's Rules, the following provisions shall apply to every Member, Home Owner and their invitees –

9.5.2.1. no Member or Home Owner shall carry on, and will not allow to be carried on or about the Stand or Unit, as a primary business any business which sells or distributes liquor or potable alcohol or which carries on any form of gaming or lottery, or any form of escort agency, strip show or similar entertainment. Members and Home Owners shall use their best endeavours to use their Stands or Units in such manner which is not offensive to PropCo. Notwithstanding anything to the contrary, the provisions of this Article 9.5.2.1 do not prohibit the serving of alcohol to guests or invitees of a Home Owner for *bona fide* recreational purposes;

9.5.2.2. no Member or Home Owner shall be entitled use their Stands or Units for any illegal or improper purposes or in any manner which creates an unlawful nuisance or disturbance to other Persons; and

9.5.2.3. no Member or Home Owner will be entitled to object to any application by Witwatersrand Estates Limited and/or any third party to any governmental or other authority relating to or in connection with any development to take place on the remainder of the Farm Waterval No. 5 (or any part thereof) provided that such development is substantially in accordance with the requirements of the Local Authority and/or the Department of Agriculture, Conservation, Environment and Land Affairs and/or any other relevant authority.

9.6. **Services**

The Members shall be required to consent to the provision of such Services in such places as the Board may determine from time to time; and to Persons authorising by them entering upon the Estate, or any part thereof, for the purpose of providing, establishing, maintaining and/or repairing the Services, provided however that such work shall be carried out with as little inconvenience to Home Owners as reasonably possible in the circumstances.

9.7. **Security of the Estate**

The Association will not be liable to any Member or Home Owner (or any of their respective invitees) for any breach in security on or about the Estate and/or by reason of any security provisioned by the Association not being adequate.

9.8. **Maintenance of Open Spaces and Public Road Verges**

The Association shall be responsible for the maintenance, upkeep and repair of the Common Facilities.

10. ARTICLE 10 – LIMITATION ON SERVICES

10.1. The following services shall be provided by service providers nominated or approved by Waterval Investment Association Proprietary Limited (or its nominee), provided that such services are of a reasonable and acceptable standard in all circumstances –

10.1.1. waste management, removal and sanitation services;

10.1.2. broadband-based services which shall include voice (internal and external) services, data (internet) services, video services (including video on demand

and television programs, when available) and fibre optic networks, and the design, implementation, operation and maintenance of the infrastructure required to provide such services;

10.1.3. security services; and

10.1.4. mortgage origination services (to include Sanlam Home Loans Proprietary Limited),

it being the intention to standardise the provision of all such services in respect of all developments to take place on the Remaining Extent of the farm Waterval No. 5, Registration Division IR, including subdivisions thereof.

10.2. The Waterval Islamic Institute or its authorised nominee, may at its sole cost and without compensation to any Person, procure the erection of Communications Infrastructure in suitable locations on or about the Estate. Any such Communications Infrastructure shall only be erected on a Stand by prior agreement with the Lessee or with PropCo (in the instance where an End-User Lease is yet to be concluded in respect of the relevant Stands).

10.3. Waterfall City Management Company Proprietary Limited may nominate a service provider in respect of insurance to be obtained and maintained over and in connection with the Common Facilities; provided that the cost thereof and cover obtained is market-related.

11. ARTICLE 11 – MEMORANDUM BINDING ON INVITEES

The provisions of this Memorandum (including, in particular, restrictions and conditions relating to the use of Stands or Units and Common Facilities) shall be binding on all and any invitees of the Members as if such invitees were Members themselves.

12. ARTICLE 12 – RESTRICTION AGAINST ALIENATION

12.1. No Member shall be entitled to Alienate Leasehold Rights to any third party unless –

12.1.1. the third party concerned has first agreed in writing to become a Member of the Association;

12.1.2. the Board has certified in writing that all levies and similar monies payable by the Member concerned to the Association have been paid (or otherwise

secured to the satisfaction of the Board for a period terminating not earlier than 3 (three) months after the date of such certificate); and

12.1.3. PropCo has certified in writing that all other monies payable by the Member concerned to PropCo, in terms this Memorandum, applicable Rules and/or End-User Lease, have been paid (or otherwise secured to the satisfaction of PropCo for a period terminating not earlier than 3 (three) months after the date of such certificate).

12.2. Upon the assignment of any End-User Lease to a third party, such assignee will automatically be and become a Member of the Association.

13. ARTICLE 13 – INTERNAL SERVICES

13.1. The Local Authority shall not be liable for any malfunction in the servicing or maintenance of any internal roads, storm water drainage systems and/or essential Services in or about the Estate, save where the responsibility for such roads, drainage system and/or essential Services is specifically assumed by the Local Authority.

13.2. The Association shall be obliged to maintain all internal roads, storm water drainage systems and Common Properties in good order and condition at its sole cost and expense.

13.3. To the extent as may be required by the Local Authority, the Association (including the Members) shall be obliged to consent to the registration of a servitude of right of way for municipal purposes over any area of the Estate in favour of the Local Authority.

14. ARTICLE 14 – RESTRICTION IN FAVOUR OF LOCAL AUTHORITY

14.1. The written consent of the Local Authority shall be required prior to:

14.1.1. the deregistration of the Association;

14.1.2. this Memorandum being amended provided such amendment(s) will have an effect on the Local Authority;

14.1.3. any access, park, erven or portion of the Estate being alienated or transferred;
or

14.1.4. the Land being rezoned.

- 14.2. The Association shall enable the Local Authority (acting through any relevant department) access to the Estate, at any time, for the purposes of maintaining and/or installing any facility for which the Local Authority is responsible, and for the purposes of rendering Services in or about the Estate.
- 14.3. Each and every Home Owner of a Stand and/or Unit situated on the Property shall have free access over the access portion/servitude to afford them access to the public road.
- 14.4. The Association shall properly and clearly display the street names and street numbers allocated to the Estate and shall maintain such names and signs to the satisfaction of the Local Authority.

15. ARTICLE 15 – SOLE MANDATE

- 15.1. No Leasehold Rights may be Alienated or disposed of other than through the agency of PropCo or its nominee. For this purpose, PropCo or its nominee shall be appointed as the sole and exclusive agent for the Alienation and disposal of any Leasehold Rights.
- 15.2. The commission payable to PropCo or its nominee in connection with the sale of any given Leasehold Rights, as contemplated in Article 15.1, shall be an amount equal to 5% (five percent) (plus VAT) of the consideration payable for the Alienation or disposal of the Leasehold Rights concerned.
- 15.3. Articles 15.1 and 15.2 shall not apply at the instance of a forced or distressed disposal of Leasehold Rights as contemplated in the End-User Lease.

16. ARTICLE 16 – ENFORCEMENT OF MEMBER OBLIGATIONS

Should any Member, including any invitee of that Member, fail to perform any obligation incumbent upon that Member (or invitee) within the period of any notice given for such compliance (if applicable), the Association shall be entitled, but not obliged, to do such things and incur such expenditure as may be necessary to procure compliance. The costs thereby incurred by the Association shall be recoverable from the Member concerned and deemed to form part of (and added to) the levy due by that Member to the Association.

17. ARTICLE 17 – DETERMINATION OF DISPUTES

- 17.1. In the event of any dispute arising between a Member and the Directors (as the representatives of the Association) as to the construction, meaning or interpretation

of any provision in this Memorandum, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 (fourteen) days, then such dispute or difference shall be submitted to and decided by summary arbitration.

17.2. The arbitration shall be held –

17.2.1. at Sandton, Johannesburg;

17.2.2. in a summary manner (that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as may be prescribed by the strict rules of evidence);

17.2.3. as soon as reasonable practicable in the circumstances and with a view to it being contemplated within 21 (twenty one) business days after it is demanded.

17.3. The Arbitrator shall be a Person agreed to between the parties to the dispute and, failing agreement, a Person nominated for such purpose by the president (or failing him, the secretary) for the time being of the Law Society of the Northern Provinces (or its successor in title).

17.4. The arbitrator shall determine –

17.4.1. the issues submitted to him according to what he considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to strict procedural rules;

17.4.2. which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.

17.5. The arbitrator shall be deemed to act as an expert and not as an arbitrator.

17.6. The decision of the Arbitrator shall be –

17.6.1. final and binding on all parties;

17.6.2. carried into effect; and

17.6.3. capable of being made an order of any court of competent jurisdiction.

18. ARTICLE 18 – DISCLAIMER

- 18.1. Neither the Association nor PropCo shall be liable for any injury, loss or damage suffered by any Person in or about the Estate, regardless of the cause. For the avoidance of doubt, the Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association and/or PropCo for any injury, loss or damage; nor will any Member be entitled to withhold or defer payment of any amount due by them to the Association for any reason whatsoever.
- 18.2. The Members shall accept responsibility for, and indemnify, the Association and its employees, agents and lawful invitees from and against all and any claims contemplated by Article 18.1.

19. ARTICLE 19 – CONFLICTING PROVISIONS

If there is any conflict between any provision of this Memorandum and any of the provisions of the Rules and/or any End-User Lease, then the provisions of this Memorandum shall prevail.