
INDEX TO SANTORINI DOCUMENTS

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**Companies and Intellectual Property Commission
Republic of South Africa**

Memorandum of Incorporation

of

SANTORINI MASTER HOMEOWNERS ASSOCIATION

Registration No. 1986/004091/08

**(which is referred to in the rest of this Memorandum of Incorporation
as “the Association”)**

The long standard form of Memorandum of Incorporation for Non-Profit Companies with Members, Form CoR15.1E, as amended from time to time, shall not apply to the Company.

The Memorandum of Incorporation is in a form unique to the Company, as contemplated in Section 13(1)(a)(ii) of the Companies Act, 71 of 2008, as amended.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by a Special Resolution of the Members passed on the ____ day of _____ 2015 and in substitution for the existing Memorandum and Articles of Association of the Company.

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The Association is a Non Profit company with Members, with the following objects:-

- 1. to promote, advance and protect the communal interests of the owners of the units who are the Members of the Association;**
- 2. to promote, advance and protect the interests of the Members generally and to co-operate with the Local Authority, the KwaZulu-Natal Provincial Government and all other appropriate authorities for the benefit of the Association and its Members;**
- 3. to represent the interests of Members and to provide a united voice by which such interests may be expressed;**
- 4. to collect levies and other contributions toward funds of the Association for the attainment of the objectives of the Association or any other of them;**
- 5. to impose fines and other penalties upon Members disobeying the Memorandum or the House Rules made in terms thereof;**
- 6. to maintain private roads, private road verges, public road verges, street furnishing, private open spaces and conservation areas within the Development and enforce regulations governing the use thereof by Members;**
- 7. to provide security within the Development and make and enforce regulations in this regard;**
- 8. in particular and in no way detracting from the generality of the aforesaid to ensure that all buildings and other structures erected within the Development, as well as any external fixtures and fittings thereto, comply**

with the aforesaid and generally to ensure that the external appearance of all buildings and other structures and all gardens and other areas in the Development comply with standards set out in the aforesaid documentation.

The Memorandum of Incorporation is as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Memorandum of Incorporation, unless the context otherwise requires: –
 - 1.1.1. "Act" means the Companies Act 71 of 2008, as amended and any Regulations in force thereunder from time to time;
 - 1.1.2. "Association" means the Santorini Master Homeowners Association and Company shall have the same meaning;
 - 1.1.3. "Board" means the Board of Directors of the Association for the time being;
 - 1.1.4. "Body Corporate" means a Body Corporate as defined in Section 1 of the Sectional Titles Act and bodies corporate shall have the same meaning;
 - 1.1.5. "Debt" means any amount owed by a Member to the Association in respect of levies (of whatsoever nature) and/or fines and/or penalties and/or interest and/or legal costs and/or howsoever otherwise arising;
 - 1.1.6. "Delivered" means delivery of any notice, letter and/or other document by hand at the Member's address or to the Member's postal address as designated by the Member in writing (and recorded in the Association's register of Members) or dispatched by telefax or email to the facsimile number or email address as designated by the Member in writing to the Association from time to time;
 - 1.1.7. "Development" means the various sectional title schemes comprising of villages of units known as THIRA, AKROTIRI, PERISSA, PYRGOS, KAMARI and KALLISTI erected upon the previously consolidated land known as Erf 204 Shakas Rock, Kwadukuza Municipality, Administrative District of Kwazulu Natal, the remainder of which is held by the Association under Deed of Transfer No. T34538/2014 excluding public roads and the term "Santorini" or the "Township of Santorini" or "the Township" shall have a similar meaning;

- 1.1.8. "Directors" means the Directors of the Association for the time being;
- 1.1.9. "Individual Ownership" means ownership by a natural or juristic person or persons;
- 1.1.10. "Unit" means a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established upon the land referred to in Article 1.1.7.;
- 1.1.11. "Manager" means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Association's affairs in respect of the Development;
- 1.1.12. "Member" means an Owner or the natural person nominated as its duly appointed representative by a juristic person or duly registered trust, which is the registered Owner of a Unit;
- 1.1.13. "Memorandum" means Memorandum of Incorporation for the time being of the Association;
- 1.1.14. "Municipal Services" means electricity, water, sewerage, refuse removal, telecommunications and such other utilities and services as may be provided by the Local Authority to the Development from time to time;
- 1.1.15. "Office" means the registered office of the Association for the time being;
- 1.1.16. "open space" means the community area and the area where a conservation servitude is registered and other common areas in the Development;
- 1.1.17. "Owner" means any person who is the registered Owner of a Unit. For the purposes of this Memorandum, a reference to "a Person" shall include a natural person, juristic person and a registered trust;
- 1.1.18. "Property Time Share Control Act" means the Property Time Share Control Act No. 75 of 1983 as amended and any Regulations in force thereunder from time to time;
- 1.1.19. "Rules" mean the rules made by the Directors in accordance with the provisions of Article 8.5 hereof;
- 1.1.20. "Scheme" means the Town Planning Scheme, in the course of preparation as amended from time to time or any other Town Planning scheme applicable to the Development from time to time;

- 1.1.21. "Sectional Titles Act" means the Sectional Titles Act No. 95 of 1986 as amended and any regulations in force thereunder from time to time;
- 1.1.22. "Services" means security, maintenance of private roads, private road verges, community conservation zones and such other utilities or services as may be provided or managed by the Association from time to time;
- 1.1.23. "Special Resolution" means a resolution adopted with the support of at least 75 % (seventy five percent) of the voting rights exercised on the resolution:-
 - 1.1.23.1. at a Members' meeting; or
 - 1.1.23.2. by Members acting other than at a meeting, as contemplated in Section 60 of the Act;
- 1.1.24. "Writing" or "Written" means written, printed, typewritten, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.
- 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; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include Bodies Corporate, and vice versa in each instance.
- 1.4. The heading above any of the Articles of this Memorandum is intended for reference purposes only and shall not influence the interpretation of the Memorandum.
- 1.5. Any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in the manner and form permitted in terms of the Act and/or the Regulations.
- 1.6. Any reference to "days" shall be construed as calendar days unless qualified by the word "business" in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as Gazetted by the Government of South Africa from time to time.

2. MEMBERSHIP

2.1. Membership of Association

- 2.1.1. Membership of the Association shall be obligatory for an Owner;
- 2.1.2. No Owner shall transfer a Unit unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of Article 2.2.;
- 2.1.3. In order to procure compliance with the provisions of the Memorandum, it shall be registered as a condition of ownership of a Unit that no Unit shall be alienated without the written consent of the Association first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor).

For the purposes of this Article "alienate" means to alienate any Unit and includes by way of mortgage, sale, exchange, donation, deed, intestacy, will, cession, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolute condition. In the case of an artificial person, such as a company, close corporation or trust, the material change in the "beneficial ownership" or in the "controlling interest" thereof, shall be deemed to constitute an alienation for the purposes of this Memorandum and, in the event of there being any dispute as to whether there has been a material change in "beneficial ownership" or in the "controlling interest", such matters shall be resolved by way of procedures provided for in Article 22 below.

- 2.1.4. In the event of a Unit being owned in undivided shares by more than 1 (one) Owner such co-owners shall together be deemed to be collectively 1 (one) Member of the Association and have the rights and obligations of 1 (one) Member of the Association; provided always that there shall never at any time be more than 4 (four) joint owners, all of whom shall be jointly and severally liable for the due performance of any obligation to the Association. Such co-owners shall nominate one of them to represent the others as Member and a power of attorney shall be provided to the Association evidencing such authority within 7 (seven) days of such co-owners becoming co-owners of the Unit.
- 2.1.5. Where a Member is a legal entity (company, close corporation, trust or other entity, whether incorporated or unincorporated) such Member shall designate a person to represent it with respect to the Association. A power of attorney shall be provided by the legal entity to the Association evidencing the

authority of the person to represent it. Such authorised representative shall be obliged to provide proof of identity and confirmation of his representative capacity to the Chairman or his duly appointed representative, at any general meeting attended by such representative. The shareholders, members and/or trustees of such legal entity shall be personally liable, jointly and severally with such Member, for the due performance by the Member of all its obligations to the Association.

- 2.1.6. A Member may not tender resignation of his membership to the Association.

2.2. Admission of Members

- 2.2.1 The Members of the Association shall be those persons who, from time to time, become Members in accordance with the provisions of this Memorandum.
- 2.2.2 The right to determine admission of the membership of a proposed acquirer of a Unit is hereby conferred upon the Board. The Board shall not unreasonably decline to admit the membership an applicant in the event of the applicant having undertaken to comply with and abide by this Memorandum and all the Association's requirements, Rules and regulations and the party from whom the applicant is taking transfer of the Unit, has complied with this Memorandum and all the Association's requirements, Rules and regulations (and in no way detracting from the generality of the aforesaid), has made payment of any amounts due by such transferor to the Association.
- 2.2.3 Members shall be of a single class, being voting Members each of whom shall have a vote, the value of which shall be calculated in accordance with the provisions of Article 3.3.7 below.

2.3 Rights and duties of Members

- 2.3.1 Subject to the rights of membership as prescribed by the Act, membership of the Association shall confer upon each Member, unless otherwise stipulated, the following rights:
- 2.3.1.1 the right to inspect and/or receive copies of the annual financial statements of the Association;
- 2.3.1.2 the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Company as listed in Section 26 of the Act, which it is recorded includes the following, namely:

- 2.3.1.2.1 the Memorandum and any amendments to it and any Rules made by the Company;
 - 2.3.1.2.2 the records in respect of the Company's Directors;
 - 2.3.1.2.3 the reports to Members' meetings and annual financial statements;
 - 2.3.1.2.4 the notices and Minutes of Members' meetings and any communications to the Members; and
 - 2.3.1.2.5 the register of Members;
- 2.3.1.3 if the Member is in good standing (that is, he has paid all Debts due and payable to the Association), the right to vote, either personally or by proxy, at all general meetings of the Association in accordance with the provisions of this Memorandum;
- 2.3.1.4 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;
- 2.3.1.5 should Members holding between them, in aggregate, not less than 10 % (ten percent) of the voting rights in the Association, collectively so decide, the right to convene a general meeting in terms of Section 61 of the Act.
- 2.3.2 Members shall not interfere with nor give instructions to any officers, employees, agents or contractors of the Association and management thereof, and any complaints shall be addressed in writing to the Manager. The Manager may request that any complaint be dealt with at the forthcoming annual general meeting of the Association.
- 2.3.3 No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.
- 2.3.4 No Member shall be permitted to conduct a property time sharing scheme in terms of the Property Time Share Control Act in respect of his Unit.
- 2.4 Cessation of Membership
 - 2.4.1 Membership of the Association shall cease:

- 2.4.1.1. upon a Member ceasing to be an Owner;
- 2.4.1.2. upon the issue of a final order of sequestration or liquidation of the Member concerned;
- 2.4.1.3. upon the death of a Member, or upon the Member being declared insane or incapable of managing his affairs.

2.4.2. In the event of a Member ceasing to be a Member in terms of Article 2.4.1.2 or 2.1.4.3 the legal representative of such Member shall, for all purposes, be recognised and bound as the Member under this Memorandum.

2.5. Liability of each Member

The liability of each Member as a Member of the Association, shall be limited to R1.00 (one rand) together with such other amount as may be owing by a Member to the Association, from time to time, from whatever cause arising.

2.6. Register of Members

The Association shall maintain at its Office a register of Members as provided in Section 24 of the Act. The register of Members shall be open to inspection as provided in Section 26 of the Act.

3. GENERAL MEETINGS

3.1. Annual General Meeting

The Association shall hold a general meeting in every year as its annual general meeting on such date and at such time and place as may be determined by the Board, and shall specify the meeting as such in the notice calling it, provided, however, that the annual general meeting shall be held not later than 6 (six) months after the end of each financial year of the Association, and provided that not more than 15 (fifteen) months shall elapse after the holding of the last preceding annual general meeting.

3.2. Notice of General Meeting

The annual general meeting and any meeting called for the passing of a Special Resolution shall be called by not less than 15 (fifteen) business days' notice in writing and any other general meeting shall be called by not less than 10 (ten) business days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under this Memorandum, entitled to receive

such notices from the Association: provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.

3.3. Proceedings at General Meetings

3.3.1. Business

The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the audited annual financial statements and the estimates of income and expenditure and levies for the ensuing year, a decision on the number of Directors subject to the provisions of Article 5.1; and election of Directors when such decision is required in accordance with the provisions of this Memorandum, and the appointment of an auditor, and any other business laid before it. All business laid before any other general meeting shall be considered special business.

3.3.2. Quorum

3.3.2.1. A quorum for:

3.3.2.1.1. a general meeting shall be Members holding between them, in aggregate, not less than 5% (five percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote (subject to a minimum of 3 (three) Members personally present);

3.3.2.1.2. a general meeting called for the passing of a Special Resolution shall be Members holding between them, in aggregate, not less than 25% (twenty five percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote.

3.3.3. If within half-an-hour after the time for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to a date not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting and 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 shall be a quorum.

3.3.4. Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 3 (three) days after the adjournment, send written notice to each Member of the Association, stating:

- 3.3.4.1. the date, time and place to which the meeting has been adjourned;
- 3.3.4.2. the matter before the meeting when it was adjourned; and
- 3.3.4.3. the grounds for the adjournment.

3.3.5. Chairman

The Chairman, if any, of the Board shall preside as Chairman at every general meeting of the Association. If there is no such Chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as Chairman, the Members shall elect one of their Members to be Chairman.

- 3.3.6. The Chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of Articles 3.3.3 and 3.3.4 shall *mutatis mutandis* apply to such adjournment.

3.3.7. Voting

Subject to the provisions of Article 3.4, at any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by the Chairman or by any Member, and unless a poll is so demanded, a declaration by the Chairman that a resolution has, on a show of hands, been carried (by a particular majority) or negatived, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the results of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be appointed by the Chairman to determine the result of the poll. In case of equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote, subject to the provisions of Article 3.4.

Unless any Member present in person or by proxy at a general meeting, prior to closure of the meeting, objects to any declaration

made by the Chairman with regard to the result of any voting at the meeting, whether by show of hands or otherwise, or to the correctness or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minute book to the effect that the motion has been carried or lost, 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.

3.3.8. Proxy

The instrument appointing a proxy shall be in writing, dated and signed by the appointer and shall be in such form as the Directors shall approve.

3.3.9. The instrument appointing a proxy shall be deposited at the Office of the Association not less than 24 (twenty four) hours before the time for the holding of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy otherwise provides.

3.3.10. 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, provided no intimation in writing of the death or revocation shall have been received at the office or by the Chairman of the meeting before the vote is given.

3.3.11. In the event of a Member being a juristic person, such as a close corporation, company or trust, such Member shall lodge at the Office of the Association, a resolution authorising a particular natural person to represent the Member generally and to exercise the Member's vote on its behalf. Such resolution shall be lodged at the Office of the Association at least 24 (twenty four) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

3.4. Votes of Members

Each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote for every Unit which such Member (or the Owner of which he is the nominee) owns. Where an Owner has two or more units which are garages, store rooms or staff rooms in addition to his/her

residential unit such Owner shall be deemed for the purposes of this Article to own one Unit for voting purposes.

3.5. Resolutions of Members

3.5.1. For an ordinary resolution to be approved of by Members, it must be supported by more than 50% (fifty percent) of the Members of the Association who are present or represented by proxy or by a representative recognized by law at a general meeting.

3.5.2. For a special resolution to be approved of by Members, it must be supported by at least 75% (seventy five percent) of the Members of the Association who are present or represented by proxy or by a representative recognized by law at a general meeting.

4. MEMBERS ACTING OTHER THAN AT A MEETING (ROUND ROBIN)

4.1. In accordance with the provisions of Section 60 of the Act, a resolution that could be voted on at a Members' meeting (other than in respect of the election of Directors) may instead be –

4.1.1. submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and

4.1.2. voted on in writing by such Members within a period of 20 (twenty) business days after the resolution was submitted to them.

4.2. A resolution contemplated in Article 4.1 –

4.2.1. will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Members' meeting; and

4.2.2. if adopted, will have the same effect as if it had been approved by voting at a meeting.

4.3. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided in this Article 4, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution.

5. DIRECTORS (TERMS OF OFFICE)

5.1 The number of Directors and the election thereof shall be determined from time to time by the Members in a general meeting subject to the following provisions:

- 5.1.1 there shall be a maximum of 8 (eight) Directors and a minimum of 4 (four) Directors;
- 5.1.2 a retiring Director shall be eligible for re-election;
- 5.1.3 only Members or their spouses are entitled to become Directors ;
- 5.1.4 all Directors shall be elected by an ordinary resolution of the Members in a general meeting.
- 5.2 Each nomination for a new Director together with his/her curriculum vita (CV) must be delivered to the Manager at the Manager's office not less than 6 (six) business days before the required date of notification of a general meeting or an annual general meeting.
- 5.3 Save as is set out in this Article 5.3 and Article 10, each Director shall continue to hold office from the date of his commencement of office until the next annual general meeting following the said appointment, at which meeting each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Directors at such meeting.
- 5.4 If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the level as specified in this Memorandum. The validity of any resolutions taken or acts performed by Directors to bring the number up to the prescribed level in terms of the foregoing only during a period when the number falls short of that provided in 5.1 above, shall not be prejudiced by such shortfall.
- 5.5 The appointment by the Board of any Director to fill any vacancy for whatever reason, shall be made within 45 (forty five) days of the date upon which such vacancy occurs.
- 5.6 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. Any person so co-opted onto the board shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 5.7 The Chairman shall be elected by the Directors at their first meeting after the annual general meeting.
- 6. **ALTERNATE DIRECTORS**

Any Director may obtain leave of absence by a resolution of the majority of the Directors, and the Board may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him. The appointment of such alternate shall not, however, be valid unless confirmed by a resolution of the majority of Directors present at the meeting.

7. REMUNERATION OF DIRECTORS

- 7.1. A Director shall not directly or indirectly receive any remuneration for his services as a Director of the Association, provided that nothing in this Memorandum shall prohibit him reimbursement of any travelling, subsistence and other expenses properly incurred by him in the execution of his duties in or about the business of the Association and which is authorised or approved by the Board.
- 7.2. If any Director commits a breach of Article 7.1, he shall forthwith cease to be a Director and shall not be eligible for re-election.

8. POWERS AND DUTIES OF DIRECTORS

- 8.1. The business of the Association shall be managed by the Directors who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not required by the Act, or by this Memorandum, to be exercised by the Association in a general meeting.
- 8.2. Without in any way affecting the generality of article 8.1 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.
- 8.3. The Directors may, pursuant to their rights, obligations and duties in terms of this Memorandum and as provided for and contemplated under this Memorandum, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of this Memorandum.
- 8.4. The Association in general meeting, shall have the right to limit and restrict the powers of the Directors, provided that no resolution of the Association shall invalidate any prior act of the Directors which would otherwise have been valid.
- 8.5. Rules

The Directors shall, on behalf of the Association, have the power to propose Rules from time to time as well as the power to substitute, add to, amend or repeal same (subject always to such Rules being approved by at least 75% (seventy five percent) of the Members of the Association who are present or represented by proxy or by a representative recognized by law at a general meeting), for the management, control, administration, use and enjoyment of the Development, 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.

8.5.1. In no way detracting from the generality of the Director's powers outlined in Article 8.1, the Directors may from time to time make Rules, applicable within the Development, with regard to:

- 8.5.1.1. the preservation of the natural environment;**
- 8.5.1.2. vegetation and flora and fauna in the Development;**
- 8.5.1.3. the placing of movable objects upon or outside the buildings included in the Development, including the power to remove any such objects;**
- 8.5.1.4. the storing of flammable and other harmful substances;**
- 8.5.1.5. the conduct of any persons within the Development and the prevention of nuisance of any nature to any Owner of immovable property in the Development;**
- 8.5.1.6. the use and maintenance of private roads, private road verges, pathways and private open spaces;**
- 8.5.1.7. the imposition of fines and other penalties to be paid by Members of the Association;**
- 8.5.1.8. the management, administration and control of private roads, pathways and private open spaces;**
- 8.5.1.9. the erection of all buildings and other structures, including service connections to buildings;**
- 8.5.1.10. the establishment, installation and maintenance of private gardens;**
- 8.5.1.11. the use by Owners or tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings**
- 8.5.1.12. the maintenance of the storm water system by Members in respect of their Unit;**
- 8.5.1.13. the control of commercial premises in the Development (if any) and the use of land within the Development;**
- 8.5.1.14. the appointment and conduct of estate agents to sell units in the Development;**
- 8.5.1.15. the provision of security within the Development;**

and generally in regard to any other matter which the Directors from time to time consider appropriate.

8.5.2. Enforcement of Rules

8.5.2.1. The Directors may take or cause to be taken such steps as they may consider necessary to remedy the breach of any Rules of which the Member may be guilty and debit the costs of so doing 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 amounts of such fines and/or penalties shall be determined by the Board from time to time.

8.5.2.2. In the event of any breach of the aforesaid conduct Rules or this Memorandum by any tenant, or occupier of any Unit owned by the Member, or any person who goes upon the Development by virtue of a Member's rights thereto, such breach shall be deemed to have been committed by the Member and the Directors shall be entitled to take such action as they deem fit against the Member responsible.

8.5.2.3. Notwithstanding the foregoing, the Directors may in the name of the Association enforce the provisions of any Rules by any application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or counsels they may deem fit.

8.6. Any Rules made by the Directors shall reasonably be in the interest of the Association and the Development and shall apply equally to all Owners.

8.7. The Rules made by the Directors from time to time in terms of the powers granted to them shall be binding on all Members.

8.8. In no way detracting from the generality of any other provision of this Memorandum, in the event of the Association incurring any legal costs as a result of any breach of this Memorandum by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.

9. MINUTES

9.1. The Directors shall in terms of the Act cause Minutes to be kept;

9.1.1. of all appointments of officers;

- 9.1.2. of names of Directors present at every meeting of the Association and at every meeting of Directors; and
- 9.1.3. of all proceedings at all meetings of the Association and / or the Directors.
- 9.2. Annual General Meeting minutes, once they are approved as a true record of proceedings, shall be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the following meeting.

10. DISQUALIFICATION OR RESIGNATION OF DIRECTORS

The office of Director shall be vacated if the Director:-

- 10.1. ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or this Memorandum; or
- 10.2. resigns his office by notice in writing to the Association and the Registrar; or
- 10.3. becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- 10.4. is found to be a lunatic or of unsound mind; or
- 10.5. is absent for 3 (three) consecutive regular meetings of the Directors without obtaining prior leave of absence;
- 10.6. is otherwise ineligible or disqualified from serving as a Director on the grounds set out in Section 69 of the Act.

11. PROCEEDINGS AT MEETINGS OF DIRECTORS

- 11.1. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (four) times during a financial year.
- 11.2. A Director may, on 7 (seven) days written notice to all other Directors, at any time summon a meeting of the Directors.
- 11.3. The quorum necessary for the transaction of the business of the Directors shall be at least 50% (fifty percent) of the total number of Directors.
- 11.4. If at a meeting the Chairman is not present within 10 (ten) minutes after the time appointed for holding the same, the Directors present may choose 1 (one) of their number to be Chairman for that meeting subject to the provisions of 5.7.

- 11.5. 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. Each Director shall be entitled to exercise 1 (one) vote. In the event of an equality of votes the Chairman shall have a second or casting vote. Where a person is an alternate Director to more than 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.
- 11.6. All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any person acting as Director, notwithstanding that it be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Directors or a committee of Directors had been duly appointed and had qualified to be a Director.
- 11.7. A Resolution signed by all of the Directors shall be a valid Resolution notwithstanding that such Resolution may not have been passed at a meeting of Directors.
- 11.8. A meeting of the Board of Directors may be conducted by electronic communication or one or more Directors may participate in a meeting by electronic communication, as contemplated, and subject to the provisions of Section 73(3) of the Act.
- 11.9. Committees
- 11.9.1. The Directors may delegate any of their powers to committees consisting of such persons as they think fit, the Chairman of which committees may be appointed by the Directors. Any committee so formed shall be in an advisory capacity to the Board and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Directors.
- 11.9.2. Should the Directors not appoint the Chairman of a committee, the members of that committee shall elect a Chairman of its meetings. If at any meeting the Chairman is not present within 10 (ten) minutes after the time appointed for holding the same, the committee members present may elect 1 (one) of their number to be Chairman for that meeting.
- 11.9.3. A committee may meet and adjourn as it thinks fit. Questions 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 Chairman shall have a second or casting vote.
- 11.10. Limitation of Liability of Directors

11.10.1. Subject to the provisions of the Act, no Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same occurs as a result of his own dishonesty, gross negligence or default, breach of duty or breach of trust.

11.10.2. The Association may:-

11.10.2.1. advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defense of legal proceedings, as set out in section 78(4);

11.10.2.2. indemnify a Director in respect of liability as set out in section 78(5); and/or

11.10.2.3. purchase insurance to protect the Association or a Director as set out in section 78(7),

and the power of the Association in this regard is not limited, restricted or extended by this Memorandum.

11.10.3. The provisions of Article 11.10.1 shall apply mutatis mutandis in respect of any former Director or Member of any committee of the Board.

12. DELEGATION OF POWERS OF DIRECTORS

The Board may from time to time entrust to and confer upon the Manager, or any other designated official of the Association or consultant or any other person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

13. ASSIGNMENT OF POWERS AND FUNCTIONS

The Association shall carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Association may require to be delegated to it by the relevant bodies corporate in relation to any Sectional Title Scheme in the Development. In addition to the foregoing, any controlling body of any Sectional Title Scheme shall assign such powers and functions to the

Association as may be required of it by the Association as envisaged in Article 27.

14. FINANCE

- 14.1.** The Directors shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, maintenance, control, management and administration of the Association, and the Development in general, including any matter arising from the provisions of Article 13, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Development and for the discharge of any other obligations of the Association (provided that nothing in this Memorandum shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).
- 14.2.** All levies due by Members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.
- 14.3.** The Board shall determine the proportions in which Members shall contribute towards the levy fund in accordance with the following principles, having regard to all circumstances prevailing at the time and to equity:
- 14.3.1.** they shall assign those costs arising directly out of the Unit itself to the Owner owning such unit;
- 14.3.2.** they shall assign those costs relating to the Development generally to the Owners of all units based on the participation quota or contribution quota of each Unit relative to the total participation quotas of the six sectional title schemes referred to in Article 1.1.7.
- 14.4.** All contributions received from Members shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 14.5.** The monies in the levy fund shall be utilised to defray the expenses referred to in Article 14.1 above.
- 14.6.** Notwithstanding any person ceasing to be an Owner, all levies attributable to any period whilst such person was an Owner, shall continue to be of full force and effect and recoverable from such person.
- 14.7.** Any amount due by an Owner whether in respect of a levy or any other amount falling due for payment under this Memorandum, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at the maximum permissible legal rate of interest which shall be compounded monthly.

- 14.8. The Directors shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in Article 14.3.
- 14.9. A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 14.10. All contributions levied under the provisions of this Memorandum shall be due and payable by Members on the passing of a resolution to that effect by the Directors and may be recovered by the Association by action in any Court (including any Magistrate's Court) of competent jurisdiction from the persons who were Owners at the time when such contributions became due and the Owner concerned shall in connection with any such recovery be liable for all the costs incurred by the Association including costs as between attorney and own client, collection commission and all and any disbursements.
- 14.11. Should a Member be more than 60 (sixty) days in arrears with payment of any Debt and remain in arrears notwithstanding demand for payment by the Association, then in that event such Owner shall not be entitled either in person or by proxy to speak or vote at a meeting of Owners of the Association. A letter addressed to the Chairman of a meeting of Members of the Association by the Board, dated not more than 2 (two) days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Owner and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Owner or his proxy speaking or voting at such meeting (even if payment is made by such Owner before such meeting but subsequent to the aforesaid letter having been signed on behalf of the Board).
- 14.12. In the event of there being a dispute as to the amount of any Debt due by the Member, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.
- 14.13. The Association shall not be entitled to borrow money, save in accordance with a Special Resolution of Members.
- 14.14. Although the obligation to pay the aforesaid levy to the Association shall rest with the individual Member, it shall be the responsibility of the body corporate of any sectional title scheme in the Development, to collect the aforesaid levy, due to the Association, from the body corporate's members, on the Association's behalf, and to pay same over to the Association timeously.
15. **ACCOUNTING RECORDS**
- 15.1. The Directors shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and

explain the transactions and financial position of the trade or business of the Association.

- 15.2. The accounting records shall be kept at the Office of the Association or at such other place or places as the Directors think fit, and shall always be open to inspection by the Members.

16. ANNUAL FINANCIAL STATEMENTS

- 16.1. The Directors shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are prescribed by the Act.

- 16.2. A copy of the audited financial statements shall be laid before the Association at the annual general meeting. A summary of the aforesaid audited financial statements, shall, not less than 21 (twenty one) days before the date of such meeting, be sent to every Owner of the Association: Provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.

17. AUDITOR

An Auditor shall be appointed in accordance with the Act.

18. DELIVERY OF NOTICES

- 18.1. Each Member of the Association:-

18.1.1. shall notify in writing to the Association an address within the Republic of South Africa for the purposes of receiving written notices from the Association and if he has not named such an address, it shall be considered sufficient for the Association to serve notice at the Owner's address; and

18.1.2. may notify in writing to the Association an email address and/or facsimile number; which address shall be his address for the purposes of receiving notices by way of electronic communication.

- 18.2. Any notice or any other communication in writing shall be Delivered by the Association to the Member's chosen address provided in terms of 18.1.

- 18.3. Save in the case of any notice of any general meeting, any notice served by post shall be deemed to have been Delivered on the 7th day following posting.

- 18.4. Any notice sent by facsimile or by email shall be deemed to have been delivered on the day after the transmission thereof.

- 18.5. Notwithstanding any provisions to the contrary contained in this Memorandum, any notice or other written communication served by the

Association shall be considered Delivered where receipt has been acknowledged by the addressee or can be proved by the addressor.

- 18.6. The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.

19. WINDING-UP OF ASSOCIATION

In the event of the Association being wound up, its assets (if any) shall devolve upon such other corporation as the Members in such winding-up order determine, provided that such corporation has aims and objectives similar to those of the Association.

20. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE DEVELOPMENT

20.1. Buildings and improvements

- 20.1.1. In order to procure compliance with the nature and amenity of the Development nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Association, no building, extension or alteration to an existing building or any other structure shall be built or erected in respect of any unit, other than in accordance with the Scheme and plans approved by the Association which approval shall be in writing and signed by a duly authorised representative of the Association. Before giving such approval, the Association may require, *inter alia*, that there be lodged with them:

20.1.1.1. such descriptions and/or drawing and/or plans as may be necessary, in the opinion of the Association, to enable them to consider the matter;

20.1.1.2. details of construction materials to be used;

20.1.1.3. the payment of a scrutiny fee, set by the Association, to peruse the aforesaid documentation (which fee shall be set by the Association in its sole and absolute discretion);

20.1.1.4. a special resolution of the Members of the sectional title scheme of the village affected by the proposed building, extension or alteration to any existing building or buildings specifically where it affects the structure, aesthetics and theme of the scheme.

Any approval as contemplated herein may be subject to such conditions as the Association may deem fit. In the event of any building or other structure being erected in respect of a Unit,

save in accordance with the plans approved of by the Association as set out in this Article, then in that event, the Association shall be entitled to enforce compliance by the Owner, at the Owner's cost, with the building plans approved of by the Association and recover any costs incurred by the Association from the relevant Owner of the Unit in question, which amount shall be deemed to be part of the levy due by the Owner to the Association. This Article shall in no way alter or supersede any requirements of or obligations to the relevant Local Authority.

- 20.1.2. Members shall ensure that their Units are kept in a neat and tidy state at all times. (If not attended to in reasonable time after request by the Association then Association can make good and charge the Owner all costs incurred in undertaking such remedial action.)

20.2. Provision of Services

The Association may, from time to time, contract with suppliers of services to provide services to the Development.

20.3. Maintenance of Buildings

Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition by the Member owning such building (or in the event of the building being a sectional title unit by the Body Corporate of such scheme) and no Member or Body Corporate shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Association which consent shall not unreasonably be withheld. A Member shall, on receipt of a notice given by the Association, undertake such work as may be specified in such notice relative to such Member's building. Should any Member fail to carry out any work as required by the Association, after the Association has given the Member notice which the Association deems reasonable in the circumstances, so to comply, the Association shall be entitled to carry out such work and to recover the reasonable cost thereof from the Member concerned which amount shall be deemed to be part of the levy due by the Member of the Association.

20.4. Occupation of Building

Occupation and use of a building shall, at all times, be in compliance with the Scheme, the Rules and this Memorandum. No Member shall use any building on any land or allow any other person to use such building for purposes not permitted by the Scheme or this Memorandum or the Rules.

20.5. Services

Inasmuch as the provision, establishment, maintenance and repair of Municipal Services may be required to take place in the Development, Members shall be obliged to accept the laying out and installation of such Municipal Services across the land in respect of their Unit, in such places as the Local Authority determines, from time to time. The Local Authority, or persons authorised by it, shall be entitled to enter upon such land for the purposes of providing, establishing, maintaining and/or repairing the Municipal Services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible. Further the Association, or any person authorised by it shall be entitled to enter upon land for the purposes of providing, establishing, maintaining and/or repairing Services, provided that such work shall be carried out with as little inconvenience to the aforesaid party as reasonably possible.

20.6. Maintenance of Private Roads and Services

- 20.6.1.** The Association shall be responsible for the maintenance and upkeep of all private roads, verges and rights of way within the Development.
- 20.6.2.** Further in the event of the Local Authority, or any other service provider, not having the means or being unwilling to maintain or provide the Municipal Services normally provided by a Local Authority or, in the event of the Local Authority or any other service provider not maintaining the services normally provided by a Local Authority to a standard acceptable to the Association, then in that event, the Association may in consultation with the Local Authority, provide and maintain such services.

20.7. Use of Private Roads

Members and their invitees shall be entitled to use all private roads and rights of way in the Development which are necessary to enable the Member to gain ingress to and egress from their property subject to such rules and directions as may be laid down by the Board from time to time, provided that at all times Owners shall have vehicle and pedestrian ingress to and egress from their property, via private roads or otherwise, to a public road. No resolution for the winding up of the Association shall be passed prior to the rights of vehicle and pedestrian ingress and egress referred to above being secured by way of servitudes registered against the title deeds of the Development or the transfer of such accesses to the Local Authority as public roads.

20.8. Security

Subject always to the provisions of Article 23, the Association shall provide such security within the Development as it deems appropriate, from time to time. The Association shall be entitled to enforce the provisions of the Security Protocol in the same manner as other provisions of this Memorandum and the Rules of the Association as provided for elsewhere in

this Memorandum. The Association shall be entitled to draw a distinction between the level of security provided to particular Owners or particular groups of Owners.

21. ENFORCEMENT OF OBLIGATIONS OF OWNERS

- 21.1 Should any Member or any lessee of an Owner fail to perform any obligation incumbent upon him, within the period of any notice given for compliance, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Association, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Owner concerned, which shall be payable on demand. The Owner shall be obliged to bring to the attention of any tenant of his unit, the Rules and regulations of the Association. In addition, an Owner shall utilize its best endeavours to ensure that any invitee of the Owner who goes upon the Development complies with the Association's Rules and regulations.
- 21.2 No Member shall let or otherwise part with occupation of any Unit owned by him within the Development, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such unit as a *stipulatio alteri* in favour of the Association that such occupier shall be bound by all the terms and conditions of this Memorandum and the proposed occupier has signed an undertaking to this effect.

22. DETERMINATION OF DISPUTES

- 22.1. In the event of any dispute or difference arising between the Members inter se or between a Member and the Association as to the construction, meaning, interpretation or effect of any of the provisions or as to the rights, obligation or liabilities of the Association or any Member in terms of this Memorandum, the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 60 (sixty) days, then such dispute or difference shall be submitted to arbitration in accordance with the provisions set out below.
- 22.2. The arbitrator shall be if the question in issue is:
- 22.2.1. primarily an accounting matter, an independent chartered accountant of not less than 15 (fifteen) years standing as such appointed by the President for the time being of the South African Institute of Chartered Accountants in Natal;
- 22.2.2. primarily a legal matter, a practicing senior Advocate of not less than 10 (ten) years standing as such, or a practicing attorney of not less than 15 (fifteen) years standing as such, in either event as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society);

- 22.2.3. any other matter, an independent person agreed upon between the parties and, failing agreement, as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) regard being had to the needs of the dispute and the qualifications required therefore.
- 22.3. If the agreement cannot be reached within 10 (ten) business days after the arbitration has been demanded as to whether the question in issue falls under 22.2.1, 22.2.2 or 22.2.3, then a practicing Advocate of not less than 10 (ten) years standing or alternatively practicing attorney of not less than 15 (fifteen) years standing as such, as agreed between the parties and failing agreement as may be appointed by the President for the time being of the KwaZulu-Natal Law Society (or any body enacted to replace such Society) as soon as possible thereafter, shall determine that issue so that an arbitrator can be appointed and the arbitration can proceed as soon as reasonably practical in the circumstances.
- 22.4. The arbitration referred to in 22.1 shall be held:
- 22.4.1. in a summary manner, i.e. on the basis that it shall not be necessary to observe or carry out either:
- 22.4.1.1. the usual formalities or procedure, which may otherwise be prescribed in terms of the law referred to in Article 22.4.3 below, or
- 22.4.1.2. the strict rules of evidence;
- 22.4.2. immediately and with a view to it being completed within 30 (thirty) days of the appointment of the arbitrator having particular regard to any urgency regarding the matter in issue, provided that should any party to such dispute delay or omit to fulfill any act required of it to enable the arbitration to be duly completed within the period aforesaid, any other party hereto shall be entitled at its election and upon the expiration of 6 (six) days' notice to the defaulting party to that effect, without any such defaulting party having remedied its default or omission to the satisfaction of the arbitrator, either to require the arbitrator summarily without hearing the parties to determine the rules of procedure for the finalising of the arbitration proceedings within such further period not exceeding 14 (fourteen) days beyond the original 30 (thirty) day period as the arbitration may determine, or alternatively and in the discretion of the party serving such 6 (six) day notice aforesaid, to require the arbitrator to proceed with the arbitration without the further participation of the defaulting party, in which event the defaulting party shall be barred from participating in the further conduct of the arbitration other than at the hearing thereof, and the decision of the arbitrator then to proceed with the arbitration, either with the

presence or in the absence of the defaulting party, will be competent, or further alternatively and in the discretion of the party serving the 6 (six) day notice aforesaid, such party shall be entitled to have recourse to the competent Court having jurisdiction, in which event the arbitrator shall then be entitled to make an award of the wasted costs occasioned by the proceedings, and whereupon such arbitration proceedings shall then terminate and the wasted costs borne by the party against whom the award is made, and the decision of the arbitrator as to such costs shall be final and binding upon the relevant parties;

- 22.4.3. otherwise, but subject to the relevant provisions hereof and subject to any other alternative directions which the arbitrator may and shall be competent to prescribe, under the provisions of the arbitration laws of the place in which the arbitration takes place as amended from time to time.

22.5. The arbitrator shall:

- 22.5.1. be entitled to make any award as to costs of the proceedings;
- 22.5.2. decide the matter submitted to him according to what he considers just and equitable in the circumstances, and shall have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially, and the strict rules of law need not be observed or taken into account by him in arriving at his decision.

22.6. The parties irrevocably agree that the decision of those arbitration proceedings:

- 22.6.1. shall be binding on all of them and shall be forthwith carried into effect;
- 22.6.2. may at the instance of any party hereto be made an Order of Court of competent jurisdiction, provided that such proceedings for such Order of Court shall not delay in any way at all the due execution and carrying into effect of the arbitrator's award.

22.7. Notwithstanding anything to the contrary contained in this Article 22, the provisions hereof shall not preclude any party hereto from taking any action against any other party or parties to the dispute in any competent Court having jurisdiction where such action is reasonably required either to restrain temporarily pending the outcome of any arbitration proceedings as hereinbefore provided for, any party hereto from commencing or continuing any action or course of action or likewise to enforce temporarily pending such arbitration proceedings any omission by any party, which action, course of action or omission is or is likely to materially prejudice any party hereto, and regard being had to all the circumstances, is of such urgent nature that it would not be appropriate merely to have recourse to

arbitration proceedings, the parties agreeing that the test to be generally applied being that which would otherwise entitle any party hereto to an urgent interdict against any other party in accordance with the relevant laws applicable.

23. DISCLAIMER OF RESPONSIBILITY

23.1. The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered upon the Development regardless of the cause thereof, nor shall the Association be responsible for any theft of property occurring within the Development. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

23.2. The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents, servants, invitees or customers or any member of the public dealing with the Member or any lessee for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Development, regardless of the cause thereof.

23.3. Members shall indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this Article 23.

24. AMENDMENT TO MEMORANDUM

24.1. Subject to Article 25, this Memorandum may only be amended or varied by way of a Special Resolution adopted at a Member's meeting or in terms of a court order.

24.2. Amendments to the Memorandum may be proposed by the Board or by Members entitled to exercise at least 10 % of the voting rights.

24.3. The Board shall nevertheless have the power to alter this Memorandum to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in Section 17 of the Act. A notice of any such alteration must be sent to each Member at least 10 (ten) business days prior to the filing of the notice of alteration with the Commission.

25. RESTRICTIONS ON AMENDMENT TO MEMORANDUM

This Article and the provisions of Articles 2.1.1, 2.1.2 and 2.1.3 may never be altered by the Members.

26. NO TRANSFER OF RIGHTS AND OBLIGATIONS UNDER THIS MEMORANDUM AND GENERAL UNDERTAKINGS

Save as provided for herein the rights and obligations of a Member shall not be transferred and every Member shall –

- 26.1. further the objects and interests of the Company to the best of his ability;
- 26.2. observe all Rules, provided that nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms hereof as security to the mortgagee of the Member's Unit;
- 26.3. ensure that no person, Member, company, close corporation or trust, as a Member of the Company, may adopt any memorandum and articles of association, memorandum of incorporation, user-agreement, scheme, resolution, or deed in contrast or contrary to this Memorandum or the Rules made thereunder.

27. ASSOCIATION VESTED WITH THE OVERALL CONTROL OF ALL MATTERS AFFECTING THE DEVELOPMENT

27.1. Notwithstanding that Members hold title to their Units individually, and notwithstanding that in those cases where the Units concerned are held under the Sectional Titles Act, the bodies corporate as defined in that statute are accorded certain powers and duties, it is recorded that the development of the Township of Santorini is of a homogenous nature and that the Company shall be vested with the overall control of all matters affecting the Township. To this end all the Members agree –

- 27.1.1 to do all in their power to procure that the Bodies Corporate in each Sectional Title Scheme in the Township shall delegate its powers, functions and duties to the Company, and in the event of any conduct rule of a Body Corporate being in conflict or inconsistent or irreconcilable with this Memorandum or the Rules then this Memorandum or the Rules shall prevail;
- 27.1.2. in the event of any association of members being formed within the Township, specifically of owners of certain erven or units or certain classes of Members, the Members forming such association hereby agree to do all in their power to procure that the powers and duties of any such associations are delegated to the Company and any such association of members as stated above *ipso facto* subjected to Article 26.3 above.

27.2 The Company may in turn delegate the powers and duties delegated to it in terms of Article 27.1.1. and 27.1.2. above to such other person or company as it may deem fit.

25.9.15

SANTORINI MASTER HOMEOWNERS' ASSOCIATION

HOUSE RULES

1. DEFINITIONS:

In these rules, unless the contrary intention appears, the following words shall have the definitions assigned to them:

- 1.1 **"Township" means** CONSOLIDATED LOT NO: 204 SHAKAS ROCK TOWNSHIP, situated in the KWADUKUZA MUNICIPALITY, Administrative District of Kwa-Zulu Natal, and the term "Santorini" or the "Township of Santorini" shall have a similar meaning;
- 1.2 **"Association" means** the Santorini Master Homeowners Association;
- 1.3 **"S.M.H.O.A." means** the Santorini Master Homeowners Association;
- 1.4 **"Directors" means** the directors of the Santorini Master Homeowners Association;
- 1.5 **"MOI" means** the Memorandum of Incorporation of the Santorini Master Homeowners Association;
- 1.6 **"Open space" means** any area in the township not covered by a building;
- 1.7 **"Unit" means** sectional title apartment.
- 1.8 **"Member" means** a member of the association.
- 1.9 Where terms are defined in the Memorandum of Association of the association (MOI), such terms shall bear the same meaning in these rules as defined in such MOI.

2. RIGHT OF OWNERS:

- 2.1 These rules serve to further good neighbourly relations and will be interpreted and applied with that object in mind.
- 2.2 The basic principle is that each owner will utilise his property in such a manner that:

- i) he does not impinge upon the rights of other owners;
- ii) the market value and prestige of the township will be enhanced;
- iii) the equality of life or enjoyment of owners will be enhanced / improved.

3. MOTOR VEHICLES:

- 3.1 No person shall drive any motor vehicle at a speed in excess of 20 (TWENTY) kilometers per hour on any road or driveway within the township;
- 3.2 No person shall ride or drive any vehicle at any place within township except:
 - 3.2.1 Upon the paved areas or otherwise constructed portions of Santorini;
 - 3.2.2 Upon any driveway within any residential lot;
 - 3.2.3 Upon any other road or track specially designated by the directors as being for vehicular use on a plan of Santorini to be kept by the directors.
- 3.3 The association may by means of appropriate signs give directions as to the use of roads or driveways or any portion thereof as it in its discretion may deem fit, provided that such signs shall insofar as possible be in accordance with the road signs laid down in terms of the National Road Traffic Act as amended from time to time.
- 3.4 No person shall drive any vehicle at any place within the township unless he/she is the holder of a valid, current driver's licence which would permit him/her to drive such vehicle upon a public road within the Province of Kwa-Zulu Natal.
- 3.5 No person shall drive any vehicle in the township, while he/she is under the influence of alcohol or any drug that may in any way affect his/her ability to control such vehicle.

- 3.6 No person shall use any road or driveway within the township in such a manner as to constitute a danger or a nuisance to any other person or property within the township.
- 3.7 No person shall use any road or driveway within the township in such a manner as would, if such road were a public road within the Province of Kwazulu-Natal, constitute a breach of the National Road Traffic Act as amended from time to time.
- 3.8.1 No person shall ride any skateboard, roller skates or any form of conveyance not driven by motive power anywhere in the township, save for pedal cycles and such conveyances as may be used for infants or the disabled.
- 3.8.2 No motor cycle of any sort shall be brought into the township without the consent of the association.
- 3.9 No person shall store, park or leave unattended by some person competent to drive such vehicle, any vehicle at any place in the township except:
- 3.9.1 In a structure designed for use as a garage or carport, and allocated for the exclusive use of the occupant of that section occupied by such person;
- 3.9.2 In any area designated for the purpose by the association by means of appropriate signs.
- 3.9.3 Trailers may only be parked in the areas which are demarcated for trailers.
- 3.9.4 Where lines are marked on the surface of any parking area delineating that area or delineating parking spaces within that area, no vehicle shall be parked in such manner that any portion thereof protrudes over any such line.
- 3.10 No caravans shall be brought into the township except with the consent of, and subject to, such conditions as may be laid down by the association.

- 3.11 Repairs to and reconditioning of vehicles on the property is not permitted within the township except in cases of emergency and then only with the consent of the estate manager.
- 3.12 Motor vehicles may only be washed on those portions of the township which have been designated for that purpose.

4. OPEN SPACE:

- 4.1 No person shall anywhere in the township, disturb, harm, destroy or permit to be disturbed, harmed or destroyed any animal, insect, reptile or bird.
- 4.2 No camping shall be permitted anywhere within the township.
- 4.3 No person shall discard any litter or any item of any nature whatsoever at any place in the township except in such receptacles and in such places as may be set aside for the purpose and designated as such by the association.
- 4.4 No person shall use any open space within the township in any manner which may unreasonably interfere with the use and employment thereof by other persons in the township.
- 4.5 No person shall use or conduct himself upon any open space within the township in such a manner as may in the opinion of the association detrimentally affect the open space or any of the amenities thereof.
- 4.6 No person shall be entitled to access the whole of the area designated as the "conservation servitude" on the general plan of the township which shall be displayed at the estate manager's office at Thira, except via such paths as may have been made by the association for the purpose, and anyone entering such area shall keep to such paths.

- 4.7 No trail or path in the open space shall be used except by pedestrians unless specially designated for some other use by the association. The association shall further have the right at any time to close, whether temporarily or permanently, any such trail or path.
- 4.8 Access to the beach from the township shall be by way of a path or paths specially designated by the association, and no person shall enter the beach from the township or vice versa except by way of a path so designated.
- 4.9 Gates leading to the beach must be kept locked at all times.

5. GARDENING

- 5.1 No person shall anywhere in the township disturb, prune, destroy, remove or collect any plant material. In the event of excessive growth, owners may apply to the estate manager who will refer the matter to the Board of Directors for a decision. Contravention of this section shall be subject to a fine.

6. LAUNDRY

- 6.1 Washing hung out to dry is at the sole risk of the person so doing.
- 6.2 Washing may not be hung out to dry upon any portion of the common property and may not be hung out to dry in any part of a section where it is visible to the general public or other residents.
- 6.3 Washing, towels, rugs etc may not be hung over balustrades, in the common property or in the gardens.

7. SANITARY SERVICES

- 7.1 Rubbish or bins may not be visible from the common property unless a specific place has been designated for such bin.

- 7.2 Rubbish may not be handled contrary to the regulations of the local authority.
- 7.3 Should occupiers or their domestic staff take rubbish or refuse directly to the refuse removal area, if such area be established, such refuse must be deposited in the containers provided.

8. NOISE AND NUISANCE

- 8.1 Music and noise must be contained within reasonable levels and not create a nuisance, especially during the evening, in accordance with the bylaws.
- 8.2 Threatening or abusive behaviour is not tolerated in Santorini and S.M.H.O.A. reserves its rights, in its discretion, to prosecute any offender.

9. CHILDREN

- 9.1 No ball games are permitted against any built surfaces including walls, or where such game could damage plants or property. Children should be encouraged to use the recreational area adjacent to the tennis court.
- 9.2 Occupiers shall supervise their children and the children of their visitors so that no damage or nuisance is caused to any open space or any section owned by any other member.

10. DOMESTIC STAFF

- 10.1 Occupiers shall ensure that domestic staff in their employ do not loiter on the open space, or cause undue noise within the township.
- 10.2 Occupiers shall ensure that staff quarters are occupied only by staff bona fide in the employ of the occupier concerned. No other persons shall be permitted to occupy such quarters.

11. SUNDRY PROVISIONS

- 11.1 Inflammable or dangerous material or articles may not be brought into the township except with the consent of the association.
- 11.2 No firearms or pellet guns may be discharged within the township.
- 11.3 No fireworks may be discharged within the township.
- 11.4 Should any damage of whatsoever nature be caused to the open space by any member, his family, his tenants, his guests or invitees or any animal belonging to any of such persons, the member concerned shall be liable to reimburse the association for the cost of repairing such damage. The member concerned shall further be deemed to have caused such damage himself, provided however that the association shall not thereby be debarred from taking action against the person actually causing such damage.
- 11.5 Owners, their tenants or visitors shall be obliged to comply with any security procedures that are in place.

12. PETS

- 12.1 No animal may be kept within the Township.

13. VISITORS AND TENANTS

- 13.1 Members shall ensure that their tenants and visitors are made aware of the provisions of these rules. Any person entering the township shall be subject to the provisions of these rules as if he were a member. Notwithstanding the above, members shall ensure that their tenants, guests and invitees comply with the terms of these rules and in the event of their failure so to do the member shall himself be deemed to be in breach of these rules.

14. BUSINESS ACTIVITIES

- 14.1 No business, profession or trade may be conducted within the township except those which are specifically allowed by the local authority in terms of its Town Planning Scheme.
- 14.2 No auction, jumble sale, garage sale or sale of any description, may be held in a section or upon the open space.
- 14.3 No advertisements or publicity material may be exhibited or distributed within the township without the consent of the association.

15. SWIMMING POOL AND POOL AREA

- 15.1 No glass objects of any sort are permitted in the pool area.
- 15.2 The only access to the pool area shall be through the gates provided.
- 15.3 No braais / barbeques are permitted within the pool area without the consent of the estate manager.
- 15.4 No private parties may be held within the pool area without the consent of the estate manager.

16. NON-LIABILITY OF ASSOCIATION

- 16.1 Any person using any open space does so entirely at his own risk and no claims of whatsoever nature shall be made either against the association or the estate manager arising out of any such use.

17. VILLA OCCUPANCIES

The maximum number of persons that may occupy a sectional title unit are, in the case of:

One bedroom villas	-	4 persons
Two bedroom villas	-	6 persons
Three bedroom villas	-	8 persons
Four bedroom villas	-	10 persons
Staff rooms	-	1 person

18. WORKMEN

- 18.1 No workmen carrying out work within the township are permitted to sleep in an owner's villa.

19. FINES

- 19.1 The Board of Directors is empowered to impose fines in terms of the MOI.
- 19.2 Fines in addition to compensation for the re-instatement of property will be imposed where appropriate. The amount of such fines shall be determined by the Board of Directors. In addition, the Board of Directors may take whatever legal steps it considers appropriate to remedy a breach of these rules

20. ARREAR LEVY COLLECTION PROCEDURE

- 20.1 The Santorini Master Home Owners Association's budget is based on annual income and expenditure, and the total annual levy is due and payable at the beginning of the month in which the S.M.H.O.A financial year starts.

- 20.2** In accordance with Prescribed Management Rule 31(3) of Annexure 8 of the Sectional Titles Act, the Directors of the S.M.H.O.A. agree that levies may be paid in 12 equal monthly instalments subject to the following conditions:
- 20.2.1 As set out in the MOI, levies shall be payable in advance on the first day of each and every month of each financial year.
- 20.2.2 If the levy or any amount due by the debtor to the S.M.H.O.A. is outstanding after the 7th day of the month in which it is due and payable, a letter of demand will be sent to the debtor.
- 20.2.3 If the current month and the previous month's levy or any other amount due by the debtor to the S.M.H.O.A. is still outstanding, the matter may be handed over to an Attorney for legal action and collection.
- 20.2.4 Owners shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, interest, expenses and charges incurred by the body corporate in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.
- 20.2.5 As the budget is based on annual income, even though levies are payable monthly by agreement of the trustees, if a monthly levy falls into arrears and is handed over, the full year's levy may be claimed.
- 20.2.6 The sequence of the above credit control procedure may be amended by the S.M.H.O.A. depending on specific circumstances.
- 20.2.7 The fact that a demand letter was not received by the debtor is not a defence to legal action being taken. All legal fees remain payable by the debtor.
- 20.3** In accordance with Prescribed Management Rule 31(6) of Annexure 8 of the Act, the trustees are entitled to charge interest on arrear amounts at such rate

as they may from time to time determine. This rate shall accordingly be 2% per month compounded or such other percentage as may be agreed by the Board of Directors.

21. PROCEDURES FOR THE APPROVAL OF ALTERATIONS OR ADDITIONS TO UNITS

- 21.1 Application must be made to the Board of Directors in writing stating the structural changes contemplated including a sketch plan and perspective with dimensions indicated. All proposed alterations must comply with the National and Municipal buildings bylaws.
- 21.2 S.M.H.O.A. will respond and advise if the contemplated alteration is acceptable in principle. If acceptable in principle, the board will refer the applicant to the S.M.H.O.A. consultant architects.
- 21.3 The consultant architects will, by appointment, advise the applicant and offer advice and guidance as to the acceptability of the intended alteration, paying particular attention to the architectural integrity of the complex as a whole.
- 21.4 If, in the professional opinion of the architect, the intended alteration is unacceptable with or without amendment, the decision of the architect will be final. All costs associated with this approval process will be for the applicant's cost.
- 21.5 If the consultant architect agrees to recommend acceptance of the proposed alterations and subject to changes he may propose, the applicant will be free to proceed to obtain written permission from the registered owners of the applicable sectional title development. The proposed letter requesting permission from the fellow owners, together with a copy of the plans, must first be forwarded to the S.M.H.O.A. for approval.
- 21.6 If the S.M.H.O.A. receives 75% written approval, the proposed alteration may proceed subject to Municipal approval of the proposed alteration.

- 21.7 If any valid objection is received the proposed changes will not be authorised.
- 21.8 If the applicant appoints the consultant architect of the S.M.H.O.A. to assist with the process of submitting the plan, culminating in Municipal plan approval and supervision of the work, the costs thereof must be negotiated between the architect and the applicant.
- 21.9 No internal alterations which may affect the structural stability of building, eg the removal of walls or the forming of openings, will be permitted without a civil engineer's certificate. Any work which may affect load bearing walls must be designed by a civil engineer and include an undertaking from such engineer to monitor construction and to ensure that the work complies with National and Municipal building regulations. In the event that substantial construction is undertaken, proof of suitable insurance cover must be supplied to the S.M.H.O.A. before any work commences.
- 21.10 The S.M.H.O.A. reserves the right to request the applicant to provide written proof of Workmen's Compensation and Contractors' All Risks and Public Liability Insurance to the levels of indemnity required by the Association from the applicant's building contractor.
- 21.11 No internal alterations to plumbing, drainage or electrical installations will be permitted without the approval of the Estate Manager, who will, where necessary, refer the matter to S.M.H.O.A.'s consultants, which will be for the applicant's cost. All such alterations may only be undertaken by suitably qualified plumbers or electricians, who must provide proof of qualification to the Estate Manager upon demand.
- 21.12 The enclosure of patios is discouraged, but, in the event of an application for a glazed enclosure of a covered patio being accepted in principle (including approval of the type of doors to be allowed), there must be a minimum setback of 600mm from the inside of the arches and the construction of such enclosure

is subject to the scrutiny and control of the Estate Manager. S.M.H.O.A. reserves the right to deny approval of the enclosure of a patio where this is considered aesthetically unacceptable, affects the neighbours' use and enjoyment of their units or for any other reason.

- 21.13 Specifications for the type, colour, positioning etc of any external fixtures such as tiling, patio wall colour, sliding doors, air conditioners, awnings, satellite dishes, windows etc must be obtained from the Estate Manager and only these specifications are allowed.
- 21.14 No changes, such as retaining walls, extension of terraces or fencing may be constructed in exclusive use or common property areas unless prior written consent has been obtained from the Board of Directors.
- 21.15 Patios must be waterproofed to a level acceptable to the Estate Manager before re-tiling takes place.
- 21.16 No sundecks may be constructed.
- 21.17 No construction work may commence until all permissions and approval of plans have been submitted to the S.M.H.O.A. and formal written permission has been obtained from S.M.H.O.A.
- 21.18 Alterations must be completed within 120 days. Should it be apparent that more time will be needed to complete the alterations, the owner must apply for an extension of time, which the board may, in its discretion, grant. Should the owner not comply by applying for an extension, or fail to complete the alterations within the extended time allowed, a penalty of a minimum of R500 per day may be enforced for each day that the alterations remain uncompleted.
- 21.19 Contractors who do not comply with Santorini's rules, with or without the owner's instruction, will be denied access to the site until the owner agrees to remedy any breaches of the rules.

SANTORINI RULES



- NO PETS or DOMESTIC ANIMALS ALLOWED
- Please note that there is only 1 PARKING space per Unit. GARAGE or PARKING BAY number will correspond with your unit number. No parking on yellow lines or NO PARKING areas. Any extra vehicles must be parked in VISITORS' parking. Vehicles parked INCORRECTLY will be WHEEL CLAMPED and a fine of R 1000 imposed.
- TRAILERS must to be PARKED at TRAILER PARK ONLY (Trailer Park is alongside Tennis Court) Campervans, Boats or other vehicles too large for parking bays must park at KALLISTI VISITORS' PARKING (On Left Hand Side of Main Entrance)
- SPEED LIMIT throughout SANTORINI is 20 km/h.
- Contact your LETTING AGENT or OWNER with irregularities inside your unit.
- Please be AWARE of the numerous small wild animals and birds resident in the Estate. LAUNDRY & CLOTHING are NOT to be laid out over balconies, balustrades bushes, gardens etc. There is a DRYING YARD at the entrance to Pyrgos Village or you may make use of the coin operated LAUNDROMAT at Thira (Opposite the office)
- No FIREWORKS are permitted in Santorini premises.
- NO LOUD MUSIC is allowed to be played from APARTMENTS or VEHICLES. NO SHOUTING is allowed. Please keep NOISE Levels to a Minimum – especially at Night.
- REFUSE BAGS must be placed outside your apartment between 7:30 and 11:00 Mondays to Saturdays. (Collection on Sundays during Holiday periods only, between 09:00 and 11:00.) Please do not place refuse bags out after hours, as stray cats and mongoose may rip open the bags and create a mess.
- Staff members of SANTORINI, ALPHA SECURITY & VIA-NATHI LANDSCAPING are not permitted to assist owners / tenants and holiday makers to carry luggage, wash cars etc. during working hours which are 07:00 to 15:30 weekdays.
- UNLICENSED drivers are NOT permitted to drive around Santorini.
- BEACH GATES and TURNSTILES are locked between 23H00 and 05H00 every evening.
- PLEASE do NOT FEED the MONKEYS or MONGOOSE.
- **ALL EMERGENCIES** should be reported to **ALPHA SECURITY** : 032 525 8803 or 076 885 2049

SANTORINI ESTATE

- (B) Benches
- (●) Bush Area
- (E) Beach Access
- (T) Tennis Court
- (J) Jungle Gym
- (P) Pools
- (A) Ablutions
- (Br) Braai Area
- (Vp) Visitors Parking
- (Tp) Trailer Parking
- (Cw) Car Wash

Trails

- (1) Bushbuck
- (2) Francolin
- (3) Mongoose
- (4) Hadedra
- (5) Monkey
- (6) River
- (7) Starling

