

**REPUBLIC OF SOUTH AFRICA**

**COMPANIES ACT 71 of 2008**

**MEMORANDUM OF INCORPORATION**

**OF**

**Non-Profit Company**

(as provided for in Schedule 1 of the Companies Act, 71 of 2008)

Registration No of Company

**2004 / 021284 / 08**

Name of Company:

PINNACLE POINT HOME OWNERS ASSOCIATION NPC

('the Association')

The Memorandum of Incorporation of the Association is as follows :

1. In the interpretation of this Memorandum of Incorporation, unless the context otherwise indicates :
  - 1.1 the following words and expressions shall have the following meanings :
    - 1.1.1 'Authorised Representative' means a person authorised in terms of the Companies Act by a company or other body corporate to act as its representative at any Members meeting;
    - 1.1.2 'Chairman' means the chairman for the time being of the Board appointed in terms of article 54 below;
    - 1.1.3 'Club' means the Pinnacle Point Beach and Golf Estate;
    - 1.1.4 'Cluster Development' means a cluster housing scheme having a shared or common area for amenities;
    - 1.1.5 'Common Property' means the part of the Development belonging to the Association which is not subject to any exclusive right of use by a Member including the Golf Course Land and the club house and other facilities thereon, such as the swimming pool and tennis courts;
    - 1.1.6 'Companies Act' means the Companies Act No. 71 of 2008 and any amendment or modification thereof or substitution therefor from time to time;
    - 1.1.7 'Council' means the Municipality of Mossel Bay and its successor/s;
    - 1.1.8 'Deliver' means deliver in the manner in which the Association is entitled to give notice or deliver documents in accordance with the provisions contained herein and in terms of the Companies Act;
    - 1.1.9 'Development' means the Pinnacle Point Beach and Golf Estate residential development, golf course and other amenities situated on the Development Area;
    - 1.1.10 'Development Area' means the land comprising Erven 15391 and 16579 Mossel Bay, on which the Development is established;

- 1.1.11 'Director' means a Director appointed in accordance with the provisions contained herein;
- 1.1.12 'Erf' or 'Erven' means an erf (or erven) in the Development, including an erf in a Group Housing Development or Cluster and/or Sectional Development, villas and golf lodges;
- 1.1.13 'Facilities' mean all and any facilities or amenities of whatsoever nature which may be provided within the Development Area, including the Golf Course Land and the club house, swimming pool, tennis courts and any other facilities thereon;
- 1.1.14 'Electronic Address' means in regard to Electronic Communication, any email address furnished to the Association by a Member or a Director or an Alternate Director;
- 1.1.15 'Financial Year' means the financial year of the Association which shall run from the first day of July in each year until 30 June of the next year;
- 1.1.16 'Golf Course' means the golf course constructed on the Golf Course Land and includes the club house and all sporting, recreational and other facilities controlled by the Club;
- 1.1.17 'Golf Course Land' means the land within the Development on which the Golf Course has been constructed and includes the land on which the club house and all other facilities controlled by the Club are located;
- 1.1.18 'Group Housing Development' means a group housing scheme as defined in the scheme regulations to the Land Use Planning Ordinance No. 15/1985 (C);
- 1.1.19 'Ineligible or Disqualified' means ineligible or disqualified as contemplated in the Companies Act, which shall apply not only to Directors and Alternate Directors but also to members of Board committees and Prescribed Officers;
- 1.1.20 'Levy' or 'Levies' means the levy or levies referred to in articles 12.1, 12.2 and 17 below;

- 1.1.21 'Local Authority' means the local authority having jurisdiction in respect of the Development Area or the relevant portion thereof;
- 1.1.22 'Managing Agent' means the managing agent/s (if any) appointed by the Board from time to time;
- 1.1.23 'Member' means a member of the Association;
- 1.1.24 'Minutes' means the minutes of a Member's meeting or a Board meeting, as the case may be;
- 1.1.25 'MOI' means this memorandum of incorporation;
- 1.1.26 'Person' includes a natural person and a juristic person;
- 1.1.27 'Registered Owner' means a registered owner of an Erf or Unit as registered in the relevant Deeds Office;
- 1.1.28 'Rules' means the management and conduct rules made by the Board or the Members from time to time;
- 1.1.29 'Sectional Titles Act' means the Sectional Titles Act No. 95 of 1986 and any amendment or modification thereof or substitution therefor from time to time;
- 1.1.30 'Services' mean such utilities, amenities and services as may be provided by or on behalf of the Association for the Registered Owners and residence within the Development and/or the Development Area;
- 1.1.31 'Unit' or 'Units' means a unit (or units) (as defined in the Sectional Titles Act) in a sectional title scheme within the Development;
- 1.1.32 'Syndicate' means a group of Persons who own property in the Development;
- 1.2 references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.3 references to Members entitled to vote Present at a Meeting or acting in person shall include Juristic Persons represented by duly Authorised Representative or acting in the manner prescribed in the Companies Act;

- 1.4 any words signifying the singular shall include the plural and *vice versa* and any word signifying the masculine shall include the feminine and *vice versa*;
  - 1.5 any word or expression which is defined in the Companies Act and which is not otherwise defined in this MOI shall have the meaning assigned thereto in the Companies Act (and which, for ease of reading, have been capitalised in this MOI);
  - 1.6 the head notes to the articles of this MOI are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate;
  - 1.7 if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
  - 1.8 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI;
  - 1.9 any reference to an enactment is to that enactment as at the date on which this MOI is adopted and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date on which this MOI is adopted. If as a result of an amendment or re-enactment that section number changes the relevant provision of this MOI shall be read as if it referred to the correct section, without the necessity for an actual amendment;
  - 1.10 to the extent that any provisions of this MOI are based on any unalterable provisions of the Companies Act or the Regulations and any of those provisions are amended, the Board is authorised to amend this MOI to reflect such amendments (which amendments will apply to the Association by operation of law), in addition to any other rights to amend the MOI and in so doing eliminate the risk that if there is a conflict between any provision of this MOI and the unalterable provisions of the Companies Act or the Regulations as amended, the relevant provision of this MOI will be void to the extent that it contravenes, or is inconsistent with the amended unalterable provisions of the Companies Act or the Regulations, as the case may be.
2. Subject to any provisions in this MOI to the contrary and notwithstanding any omission of any provision from this MOI, the Association may do anything which the Companies Act authorises a Non-Profit Company to do if so authorised by its MOI.

## **NON-PROFIT COMPANY**

3. The Association is a Non-Profit Company:
  - 3.1 as it is incorporated for a public benefit or other object as required by item 1(1) of Schedule 1 to the Companies Act;
  - 3.2 as this MOI is consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Companies Act; and
  - 3.3 as the Association is subject to the restrictions in section 10 and Schedule 1 of the Companies Act.

## **OBJECTS OF THE ASSOCIATION**

4. The objects of the Association are to manage the Development for the benefit of all Members, including the management and maintenance of the facilities thereon, and related or ancillary activities.

## **MEMBERSHIP OF THE ASSOCIATION**

5. Membership of the Association shall be compulsory for every Registered Owner of an Erf or a Unit.
6. Membership shall commence simultaneously with registration of transfer of an Erf or Unit into the name of the transferee, in accordance with the following process:
  - 6.1 the Association shall, upon receipt of an offer to purchase document ("OTP" ) from the transferee in respect of an Erf or Unit, provide the transferee with a written application form for the transferee to become a Member;
  - 6.2 the transferee shall, by no later than the date upon which the necessary filing is made with the Deeds Office for the transfer of the Erf or Unit to the transferee, provide the Association with a duly completed application form (in accordance with any instructions reflected on such application form); and
  - 6.3 the transferee shall become a Member with effect from the date upon which the transferee becomes a Registered Owner.
7. Membership of the Association shall be limited to those Persons who are Registered Owners, provided that where any such Registered Owner is more than one Person, all the Registered Owners of the Erf or Unit shall be deemed jointly and severally to be one Member of the Association and shall nominate one of them to represent them and to vote at meetings of the Association.

8. When a Member ceases to be a Registered Owner, he shall *ipso facto* cease to be a Member of the Association.
9. While a Person is a Registered Owner, that Person shall not be entitled to resign as a Member of the Association and shall be bound by the terms of this MOI.
10. No Member shall be entitled to sell or transfer an Erf or a Unit unless:
  - 10.1 the transferee becomes a Member of the Association;
  - 10.2 such Member obtains the written consent of the Association which consent shall be given provided that :
    - 10.2.1 such Member has paid to the Association all Levies and any other amounts of whatsoever nature or howsoever arising, owing by such Member to the Association;
    - 10.2.2 the transferee agrees in writing to be bound by the MOI and the Rules of the Association;
    - 10.2.3 such Member has duly complied with all of its obligations in terms of this MOI; and
    - 10.2.4 the provisions of article 6 have been complied with.

## **MEMBERS REGISTER**

11. The Association shall maintain a register of Members to the extent required by section 24(4)(a) of the Companies Act.

## **LEVIES**

- 12.1 The Board may from time to time, impose Levies upon the Members for the purposes of meeting all the expenses in relation to the Common Property, roads, buildings, Facilities and Services (including the Golf Course Land and the Golf Course, the club house and all facilities and services thereon, including any swimming pools and tennis courts), and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs. In calculating the amount of the Levies, the Board shall take into account income (if any) earned by the Association.
- 12.2 The Board must at all relevant times ensure that there are sufficient reserve funds available as it deems proper, for the making provision of expenses or contingencies relating to the acquiring, repairing, improving and maintaining of any assets, buildings, plant, machinery, clubhouse, golf course and all other facilities connected

with the club, common property, development, erven, golf course and facilities and to set aside sufficient monies available to cover the loss in wear and tear or other depreciation in the value of any of the assets of the club and/or extraordinary expenditure and/or for any other purpose for which these monies may be properly applied. The Board may divide the reserve fund into such special funds as it thinks fit with full power to employ the assets constituting such fund or funds in the business of the club and may make such investments without being liable for any loss in consequence of such investments, provided that the funds may only be invested in prevailing money market funds which are available from time to time and that such investments are sound and prudent.

13. Municipal rates and taxes will be payable to the Council in accordance with applicable legislation by a Registered Owner.
14. The Board shall estimate the amount which shall be required by the Association to meet the expenses contemplated during each financial year, together with such estimated deficiency (if any) as shall result from the preceding financial year, and shall impose a Levy upon the Members equal as near as is reasonably practical to such estimated amount. The Board may include in such Levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such Levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such financial year.
15. The Board may in its discretion prior to the end of each financial year give every Member at the address chosen by him a written notice of the contribution payable by that Member to such expenses and reserve fund.
16. Notwithstanding anything contained to the contrary, every member shall be obliged to continue to pay the levy previously imposed without deduction or set off on due date.
17. The Board may from time to time impose special Levies upon the Members in respect of all such expenses as are mentioned herein (which are not included in any estimate made in terms of article 14) and such Levies may be imposed in the sum or by such installments and at such times as the Board shall deem fit.
18. In calculating the Levy payable by each Member, the Board shall as far as reasonably practical :
  - 18.1 assign those expenses attributable to a particular Erf or Unit itself, to the Registered Owner thereof;
  - 18.2 assign those expenses attributable to a particular sectional title development to the Registered Owners of Units in such development as determined by the Association and in



terms of the particular sectional title scheme charged by the Body Corporate;

- 18.3 assign those expenses attributable to a particular Cluster Development or Group Housing Development to the Registered Owners of all Erven in such development equally;
  - 18.4 assign those expenses attributable to any other development node (including a single residential development node) to the Registered Owners of all Erven in such development node equally;
  - 18.5 assign those expenses relating to the Development generally and/or any other expenses not assigned, to the Registered Owners of all Erven and Units equally, provided, however, that the Board may in any case where the Board consider equitable to do so, assign to any Member any greater or lesser share of such expenses as may be reasonable in the circumstances.
19. Any amount due by any Member by way of a Levy shall be a debt due by that Member to the Association. The obligation of a Member to pay a Levy shall cease upon that Member ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear Levies. No Levies paid by a Member shall under any circumstances be repayable by the Association upon that Member ceasing to be a Member.
20. A Member's successor in title to an Erf or a Unit shall be liable as from the date upon which he becomes a Member pursuant to article 6, to pay the Levy attributable to that Erf or Unit.
21. No Member shall be entitled to any of the rights or privileges of membership of the Association (including Voting Rights), which rights and privileges shall be suspended, until he shall have paid every Levy, subscription or other sum (if any) which shall be due and payable to the Association in respect of his membership thereof, but all obligations imposed on the Member by this MOI shall continue to apply during such suspension.
- 22.
- 22.1 The Board shall be empowered to impose fines in respect of non-compliance with the provisions of this MOI and/or to charge interest on any arrear Levies and to determine the rate of interest from time to time chargeable upon such arrear Levies, which shall be in addition to such other rights as the Association may have in law against the Members, provided that such interest shall not exceed the rate laid down in terms of any relevant Act.
  - 22.2 A purchaser of an Erf or Erven undertakes to commence construction and ensure completion thereof in accordance with the architectural guidelines referred to in this MOI within a period of eighteen (18) months of registration of the Erf or Erven and failing to

complete the building within such period will result in a fine of twice of the levy payable being imposed each month of delay. The Board may in addition thereto impose a monthly levy equivalent to quadruple of the monthly levy if such building (whether construction has commenced or not) is not fully completed within thirty (30) months of registration of transfer. Final completion will be determined by the architectural review committee as evidenced by a certificate being issued by a duly qualified architect whose decision in this regard is final and binding. Reference to building includes a cluster development, sectional title development, a residence or any construction whether completed or in the process of completion.

- 22.3 Buildings which are wholly or partially unconstructed on an erf or erven, currently registered in the name of the owner thereof must be completed by no later than 1<sup>st</sup> January 2018 failing which a penalty of twice of the monthly levy will be imposed for a period of six months and thereafter the Board may in addition thereto impose a monthly levy equivalent to quadruple of the monthly levy until such time as the building is fully completed in accordance with the provisions contained in 22.2. Building plans in respect of the buildings referred to herein must be submitted and approved on or before 1<sup>st</sup> June 2017.
23. Should any dispute arise at any time between any one or more Members and the Board in regard to the determination or calculation of the Levies, the decision of the auditors for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the Members and the Board, provided that should the Association not have an appointed auditor at that time then the dispute shall be determined in accordance with articles 144 to 154.
24. In the event of any dispute arising in regard to the determination or calculation of any Levy, every Member shall until the determination of such dispute, pay the Levies determined by the Board.

## **RESPONSIBILITIES OF THE ASSOCIATION**

25. The Association shall at all times promote environmental awareness and responsibility within the Development and amongst its Members from time to time.
26. Management and maintenance of all facilities and private open spaces owned by the Association shall vest in the Association, including the Golf Course Land, the club house and all other facilities thereon.
27. The Association shall be responsible to the Council in respect of the various facilities and private open spaces, roads and buildings

forming part of the development after properties have been transferred to the Association.

## **RIGHTS OF THE ASSOCIATION**

28. The Association may register, where necessary, various service servitudes across the Development in favour of the Local Authority and/or the Association, whether in respect of any separate Erven, the Common Property or the Golf Course Land.
29. No Member shall be entitled to object to the subdivision and/or development of any part of the Development Area provided that such subdivision and/or development is not inconsistent with any development plan approved by the relevant authorities for that part of the Development Area.
30. No Erf or Unit shall be sub-divided or rezoned without the prior written consent of the Association.
31. The Association shall at all times be entitled to draw electricity from Erven adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Association but recovered as part of the Levy upon Members.
32. Ownership of an Erf or Unit does not confer any right, including that of access, in respect of property owned by the Association, including any right of way or access across such property.
33. The Association is entitled to develop other areas in the Development Area in the future and to connect any parts of the Development Area to the Services in the Development.

## **MANAGEMENT AND CONDUCT RULES**

34. Subject to this MOI, to any restriction imposed or direction given at a Members meeting and subject to any condition imposed by the local authority, the Board may from time to time make Rules, being management and conduct rules, and vary or modify these Rules and has the authority to have separate Rules for golf lodges, section title units (subject to the Sectional Titles Act) and residential properties, in regard to :
  - 34.1 the right to prohibit, restrict or control the keeping of any animal to which they regard as dangerous or a nuisance;
  - 34.2 the conduct of any persons within the Development for the prevention of nuisance of any nature to any Member;
  - 34.3 the use of Services and recreational areas, amenities and facilities (including the Golf Course Land and the club

- house and other facilities thereon) including the right to charge a reasonable fee for the use thereof;
- 34.4. the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within the Development;
- 34.5 the control of the number of occupiers or residents permitted on any one Erf or Unit;
- 34.6 the admission of any Person within the Development, and the eviction of any Person not entitled to be thereon, excluding the Members of the Club and *bona fide* visitors to the Club;
- 34.7 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the Members and/or the residents within the Development.
35. For the enforcement of any of the Rules made by the Board in terms of any of the provisions of this MOI generally, the Board may :
- 35.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Board may determine; and/or
- 35.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the Rule or provision of this MOI which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and/or
- 35.3 take such action, including the imposition of a fine, or proceedings in court, as the Board may deem fit.
36. Should the Board institute any legal proceedings against any Member or resident within the Development for the enforcement of any rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
37. In the event of any breach of the Rules by the Members or any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.

38. If any Member disputes the fact that he has committed a breach of any of the provisions of the Rules or any provisions of this MOI, a committee of 3 (three) Directors appointed by the chairman of the Board shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairman may direct.
39. Notwithstanding anything to the contrary herein contained, the Board may in the name of the Association enforce the provisions of any Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as it may deem fit.
40. The Association may in a Members meeting itself make any Rules in regard to any matter and may also vary or modify any Rule made by it or by the Board from time to time.
41. All Rules shall be reasonable and shall apply equally to all Registered Owners of Erven and Units put to substantially the same use.

#### **PINNACLE POINT BEACH AND GOLF ESTATE**

42.
  - 42.1 The Association undertakes in the event of an alienation of the Golf Course, to entrench the provisions in any agreement of sale with a prospective subsequent registered owner thereof.
  - 42.2 The registered owner of the Golf Course Land shall at its cost keep and maintain the Golf Course, the club house and all other facilities thereon in good order and condition and in accordance with the standards of the South African Golf Association (or its successor/s from time to time) for a first class championship golf course. It is recorded that the Golf Course land, the Club House and all other facilities thereon is currently registered in the name of the Association
  - 42.3 The registered owner of the Golf Course Land shall establish and maintain a club for the Golf Course, the club house, and the club facilities in accordance with the club constitution to be drawn up by the registered owner of the golf course land which constitution shall not derogate in any way from the provisions contained herein.
  - 42.4 The registered owner of the Golf Course Land shall at its cost manage and control the Club, the Golf Course, the club house and the club facilities to a high standard.

- 42.5 The registered owner of the Golf Course Land shall be responsible for the security of the Golf Course and the club house.
- 42.6 The registered owner of the Golf Course Land shall at its cost insure and keep insured the Golf Course, the club house and all other facilities thereon in the names of the registered owner of the Golf Course Land and the Association for their respective interests for their full replacement cost against the risk of loss, destruction, or damage by fire, storm, flood or any other cause whatsoever, and shall submit to the Association proof of payment of all premiums and other amounts payable in respect of such insurance.
- 42.7 The Registered Owners are not obliged to become members of the Club and Registered Owners who are members of the Club are not obliged to remain members and may relinquish their membership, including family membership.
- 42.8 The Association as the registered owner of the Golf Course Land shall, in its sole discretion, determine the membership entry fees of future Registered Owners.
- 42.9 The Registered Owners who are members of the Club shall pay the same green fees or playing fees commensurate with courses of this nature in the Garden Route from time to time.
- 42.10 The *bona fide* guests of any hotel or hotels established or to be established within the Development Area shall be entitled to use the Golf Course, the club house and the club facilities save and except during corporate golf days, tournaments and professional events. The registered owner of the Golf Course Land shall be entitled to allow other guests to play on the Golf Course provided that any such group does not interfere with any Member's ability to play on the Golf Course.
- 42.11 The membership of Registered Owners of the Club shall not be transferable except to the Persons to whom the Erven or Units owned by such Registered Owners are transferred in accordance with the policy and recommendations made by the Association as determined from time to time.
- 42.12 The registered owner of the Golf Course Land shall determine the annual membership fee of each class of member of the Club from time to time in its sole discretion.
- 42.13 The registered owner of the Golf Course Land shall not do anything or permit anything to be done in or on the Golf

Course, the club house and/or the club facilities, which may be or may become a nuisance or annoyance to or any way interfere with the comfort of the Members or any other occupants of the Development or hotel site, save and except in respect of corporate golf days, tournaments or professional events as determined by the Board of Pinnacle held in each calendar year at which the public will have controlled access to the Golf Course Land and the club house. The registered owner of the Golf Course shall have two daily four-ball tee-off times open for it to utilise as it sees fit without limitation.

- 42.14 Should any special events be held on the Golf Course or in the club house or the club facilities, the registered owner of the Golf Course Land shall ensure that the provisions of article 42.13 are observed in accordance with criteria comparable to other golf courses which host similar professional events, and that there is adequate security, traffic control and parking for such event.
- 42.15 The registered owner of the Golf Course Land shall at its cost comply with all laws, title deed conditions and other conditions appertaining to the property, the Golf Course, the Club and the club facilities, including town planning conditions, conditions of rezoning, subdivisions, environmental laws, liquor licensing laws, and fire regulations and ensure that there is adequate and comprehensive insurance cover in respect thereof in the event of damage or destruction arising from any cause whatsoever.
- 42.16 Should the Golf Course, the club house and/or the club facilities be destroyed or damaged by any cause whatsoever, the registered owner of the Golf Course Land shall at its cost reinstate the same substantially to its previous state as soon as possible in the circumstances or to reinstate the same in an amended form with the written approval of the Association, which approval shall not be unreasonably withheld.
- 42.17 Should the registered owner of the Golf Course Land :
- 42.17.1 commit any breach of any of the provisions and fail to remedy such breach within a reasonable time after receipt of written notice from the Association to remedy such breach; or
- 42.17.2 repeatedly breach any of these provisions in such manner as to justify the Association in holding that the conduct of the registered owner of the Golf Course Land is inconsistent with the intention or ability of

the registered owner of the Golf Course Land to carry out the terms hereof; or

- 42.17.3 commit an act of insolvency or be placed under sequestration, liquidation (whether provisional or final) or business rescue,

then and in any one of such events, the Association shall forthwith be entitled (but not obliged) without prejudice to any of its other rights or remedies, including the right to claim damages :

- 42.17.4 in the case of article 42.17.1 above, the Association shall be entitled to remedy such breach and immediately recover from the registered owner of the Golf Course Land the total costs incurred by the Association in doing so;

- 42.17.5 to purchase the Golf Course Land and take control of the Golf Course, club facilities and management, together with the Club, the club house and the club facilities at their fair market value as agreed between the registered owner of the Golf Course Land and the Association, and failing such agreement, as determined by an independent valuer appointed by the South African Institute of Valuers or their successor/s who shall take into consideration any additions or improvements to the facilities.

43. If at any time the Golf Course Land, the club house, and/or the club facilities cease to be used for the purposes of a golf club, subsequent to an alienation as contemplated above, then and in that event, ownership of the Golf Course and the Golf Course Land, shall vest in the Association and shall be transferred to the Association at its cost, free of any consideration.

## **DIRECTORS**

44. The election of the directors will take place each alternate annual general meeting and accordingly each director will serve on the Board for a successive period of two (2) years. The minimum number of Directors of the Board shall be 3 (three) and the



maximum number of Directors of the board shall be 5 (five). Any failure by the Association at any time to have the minimum number of Directors, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Association.

- 45 Each of the Directors and the Alternate Directors shall be elected (which in the case of a vacancy arising shall take place at a Members meeting held within 6 (six) months of the vacancy arising), as contemplated in article 57. An Alternate Director shall serve in the place of 1 (one) or more Director/s named in the resolution electing him/her during the Director's/s' absence or inability to act as Director. If a Person is an Alternate Director to more than 1 (one) Director or if an Alternate Director is also a Director, he/she shall have a separate vote, on behalf of each Director he/she is representing in addition to his/her own vote, if any.
46. Subject to clause 44 above, the election of Directors shall be take place at an Annual General Members meeting and be conducted as follows:
- 46.1 the notice of the Members meeting provided to Members will invite the Members to each provide the Association with up to 5 (five) nominees for election to the Board ("**Nominees**"), at the Members meeting, at least 10 (ten) Business Days prior to the date of the annual general meeting;
- 46.2 the Association shall request from each Nominee nominated in terms hereof a signed acceptance of their nomination for election to the Board and consent to serve as a Director with effect from the date of their election for a minimum period of two (2) years on the Board (if so elected) ("**Director Consent**") which must be received by the Association not later than 7 (seven) Business Days prior to the date of the annual general meeting;
- 46.3 provided the Association has timeously received a Director Consent from a Nominee and has no reason to believe a Nominee is Ineligible or Disqualified, the Association shall include such Nominee on a list for election at the Members meeting and provide all Members with a copy of such list at least 5 (five) Business Days prior to the date of the Members meeting;
- 46.4 at the Members meeting, the election of Directors, is to be conducted as follows –
- 46.4.1 a series of votes of those Members entitled to Exercise Voting Rights on such election, each of which is on the candidacy of a single Nominee who has accepted a nomination to fill a single vacancy, with the series of votes continuing until all Nominees have been voted on; and

46.4.2 in each vote to fill a vacancy –

46.4.2.1 each Voting Right entitled to be exercised may be Exercised once in respect of each Nominee; and

46.4.2.2 the vacancy is filled only if a majority of the Voting Rights Exercised support the Nominee.

47. If there are more Nominees than vacancies, of those who achieved at least a majority of the Voting Rights Exercised, the Nominees who received the most votes will be elected as Director/s or Alternate Director/s until the vacancies are filled, but if there is an equality of votes any remaining vacancies shall be filled by the drawing of lots or show of hands of members present undertaken by the chairman of the Board in his/her sole discretion.
48. A Director and an Alternative Director shall be a natural person and shall not necessarily be a Member of the Association. A Director and an Alternative Director, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this MOI.
49. There are no general qualifications prescribed by the Association for a Person to serve as a Director or an Alternate Director in addition to the requirements of the Companies Act.
50. No Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.
51. No Person shall be elected as a Director or Alternate Director, if he/she is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a Director or Alternate Director nor act as a Director or Alternate Director. A Person placed under probation by a court must not serve as a Director or an Alternate Director unless the order of court so permits.
52. The continuing Directors (or sole continuing Director) may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to this MOI as a quorum, the continuing Directors or Director may act only for the purpose of summoning a Members meeting.
53. If there is no Director able and willing to act, then any Member entitled to Exercise Voting Rights in the election of a Director may convene a Members meeting for the purpose of electing Directors.
54. The Board shall appoint one of their number to act as chairman for a minimum period of two (2) years, but not for longer than such person's tenure as a Director, and provided that if no such chairman

is elected, or if at any meeting of the Board the chairman is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors present may choose one of their number to be chairman of the meeting.

## REMOVAL AND ROTATION OF DIRECTORS

55. Each Director, shall continue to hold office as such from the date of his appointment to office for a minimum period of two (2) years to the second annual general meeting following his/her said appointment, at which meeting each Director shall be deemed to have retired from office as such, but shall be eligible for re-election to the Board.
56. A Director shall be deemed to have vacated his office as such:
- 56.1 he/she having become Ineligible or Disqualified to act as a Director or the Board resolves to remove him/her on such basis, and in the latter case the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he/she shall be suspended);
  - 56.2 when his/her term of office contemplated expires;
  - 56.3 when he/she dies;
  - 56.4 if he/she is removed by an ordinary resolution of the Members;
  - 56.5 if there are more than 3 (three) Directors in office and if the Board determines that he/she has become incapacitated to the extent that the Individual is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he/she shall be suspended);
  - 56.6 if he/she is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director;
  - 56.7 if there are more than 3 (three) Directors in office and if he/she is removed by resolution of the Board for being negligent or derelict in performing the functions of a Director, and the Director / Alternate Director has not within the permitted period filed an application for review or has filed such an application but the court has not yet confirmed the removal (during which period he/she shall be suspended);

- 56.8 he/she files petition for the surrender of his/her estate or an application for an administration order, or if he/she commits an act of insolvency as defined in the insolvency law for the time being in force, or if he/she makes any arrangement or composition with his/her creditors generally;
- 56.9 he/she resigns from such office in writing; or
- 56.10 he/she is otherwise removed in accordance with any provisions of this MOI.
57. Upon any vacancy occurring on the Board prior to the next annual general meeting of the Members, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board, but the Individual so appointed shall cease to hold office at the termination of the first Members meeting to be held after the appointment of such Individual as a Director unless he/she is elected at such Members meeting in accordance therewith.

#### **DIRECTORS' EXPENSES AND REMUNERATION**

58. Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performances of their duties as Directors as may be approved by the Board.
59. Directors shall be entitled to remuneration as determined by the Association in a Members meeting, provided that the remuneration payable to Directors shall be reasonable and for services rendered to or at the direction of the Association.

#### **POWERS OF DIRECTORS**

60. Subject to the express provisions of this MOI, the Board shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of any managing agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by the Companies Act or by this MOI required to be exercised or done by the Association in Members meeting, subject however to such Rules as may have been made by the Association in Members meeting or as may be made by the Board from time to time.

61. Save as specifically provided in this MOI, the Board shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, Managing Agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Board on such terms as the Board shall decide.
62. The Board shall further have the power :
  - 62.1 to require that any construction of any nature within the Development shall be supervised to ensure that the provisions of this MOI and the Rules are complied with and that all such construction is performed in a proper and workmanlike manner;
  - 62.2 to issue an architectural and environmental design and maintenance manual or instructions in respect of the Development, and to ensure that such manual and instructions are complied with at all times.
63. The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
64. The Board shall be entitled to appoint Board committees consisting of such number of Directors, Members and such outsiders, including a Managing Agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Board may from time to time deem necessary.
65. No Person shall be appointed as a member of a Board committee, if he/she is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.
66. There are no general qualifications prescribed by the Association for a Person to serve as a member of a Board committee in addition to the requirements of the Companies Act.
67. A member of a Board committee shall cease to hold office as such immediately he/she becomes Ineligible or Disqualified in terms of the Companies Act.
68. Committees of the Board may consult with or receive advice from any Person.
69. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of the Board.

70. The Board shall appoint an architectural review committee to exercise the powers set out above which may, but shall not necessarily, consist of the following persons :
- 70.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
  - 70.2 one or more Directors;
  - 70.3 such other members as the Board may determine.
71. Members of the architectural review committee shall not be required to be Members of the Association.
72. All plans for buildings, outbuildings, structures, additions and alterations to be constructed on the Development Area shall be submitted for approval by the Board, or any person designated by them for the purpose, who shall not approve such plan unless it shall first have been reviewed by the architectural review committee.

#### **PROCEEDINGS OF DIRECTORS**

73. The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this MOI. The Board may determine what period of notice shall be given of meetings of the Board and may determine the means of giving such notice which may include telephone, telefax or Electronic Communication. It shall be necessary to give notice of a meeting of the Board to all Directors even those for the time being absent from South Africa.
74. A Director authorised by the Board –
- 74.1 may, at any time, summon a meeting of the Directors; and
  - 74.2 must call a meeting of the Directors if required to do so by at least 2 (two) Directors.
75. If all of the Directors –
- 75.1 acknowledge actual receipt of the notice;
  - 75.2 are present at a meeting of the Board; or
  - 75.3 waive notice of the meeting,
- the meeting may proceed even if the Association failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

76. A meeting of the Board may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all Persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
77. For quorum requirements participation by a director include participation by way of electronic communication for instance, by telephone or video conference. The quorum necessary for the holding of all meetings of the Board shall be 3 (three) Directors present. If no quorum is present, within 15 (fifteen) minutes after the time for commencement of the meeting, then it shall stand adjourned for 7 (seven) days, or if that is not a Business Day, then to the next Business Day thereafter, and if at such adjourned Board meeting a quorum is not present within 30 (thirty) minutes after the time for commencement of the meeting, those Directors present at the adjourned meeting shall constitute a quorum. No further notice is required to be Delivered by the Association of a Board meeting that is postponed, unless the location or time for the Board meeting is different.
78. At any meeting of the Board, each Director or Alternate Director shall have 1 (one) vote.
79. Any resolution of the Board shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the Board shall have a second or casting vote.
80. The Association shall cause Minutes to be kept of every Board meeting and every Board committee meeting, which Minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All Minutes of Board meetings shall, after certification, be placed in a Directors' minute book to be kept in accordance with the provisions of the Companies Act.
81. A resolution passed other than at a meeting of the Board and signed by all the Directors within 20 (twenty) Business Days after the resolution was submitted to them, shall be valid in all respects as if it had been duly passed at a meeting of the Board, duly called and constituted, provided that each Director who is able to receive notice, has received notice of the matter to be decided upon.

## **GENERAL MEETINGS OF THE ASSOCIATION**

82. The Association shall convene an annual general meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting, in addition to any other Members meetings during that year, and shall specify the meeting as such in the notices calling it.

83. Such annual general meeting and all other Members meetings shall be held at such time and place as the Board shall decide from time to time. The authority of the Association to conduct a Members meeting entirely by Electronic Communication, or to provide for participation in a Members meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Members meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Members meeting, as set out in section 63(2), is not limited or restricted.
84. All meetings of the Members other than annual general meetings shall be called general meetings.
85. The Board may, whenever it thinks fit, convene a Members meeting. A Members meeting must also be convened if one or more Written and signed demands for such a Members meeting is/are delivered to the Association, and –
- 85.1 each such demand describes the specific purpose for which the Members meeting is proposed; and
- 85.2 in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting Rights entitled to be Exercised in relation to the matter proposed to be considered at the Members meeting.

## **NOTICES OF MEETINGS**

86. A Members meeting shall be called on at least 15 (fifteen) Business Days' notice Delivered by the Association to each of the Members.
87. The Association may call a Members meeting with less notice than required, but such a Members meeting may proceed only if every Person who is entitled to Exercise Voting Rights in respect of any item on the meeting agenda –
- 87.1 is present at the Members meeting; and
- 87.2 votes to waive the required minimum notice of the Members meeting.
88. A Member entitled to vote, who is Present at a Members meeting:
- 88.1 is regarded as having received or waived notice of the Members meeting if at least the required minimum notice was given;
- 88.2 has a right to:



- 88.2.1 allege a Material defect in the form of notice for a particular item on the agenda for the Members meeting; and
  - 88.2.2 participate in the determination whether to waive the requirements for notice, if less than the required minimum notice was given, or to ratify a defective notice; and
  - 88.2.3 except to the extent set out in article 88.2.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Members meeting.
89. A notice of Members meeting shall specify:
- 89.1 the place, the day and the hour of the Members meeting and the Record Date for the Members meeting;
  - 89.2 the general purpose of the Members meeting, and/or any specific purpose contemplated, if applicable;
  - 89.3 a copy of any proposed resolution of which the Association has received notice, and which is to be considered at the Members meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;
  - 89.4 a reasonably prominent statement that:
    - 89.4.1 a Member entitled to attend and vote at the Member's meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members meeting in the place of the Member entitled to vote;
    - 89.4.2 a proxy need not be a Member;
    - 89.4.3 a Member may appoint more than 1 (one) proxy to Exercise Voting Rights attached to different Erven or Units of which the Member is a Registered Owner which entitle him/her/it to vote at any Members meeting;
    - 89.4.4 the proxy may delegate the authority granted to him/her/it as proxy, subject to any restriction in the proxy itself;
    - 89.4.5 participants in a Members meeting are required to furnish satisfactory identification in terms of

section 63(1) in order to reasonably satisfy the Person presiding at the Members meeting;

- 89.4.6 participation in the Members meeting by Electronic Communication is available, and provide any necessary information to enable Members entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Member entitled to vote or proxy, except to the extent that the Association determines otherwise.
90. A Members meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to article 91, only if every Member who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Members meeting is Present at the Members meeting and votes to approve the ratification of the defective notice.
91. If a Material defect in the form or manner of giving notice of a Members meeting relates only to one or more particular matters on the agenda for the Members meeting :
- 91.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; or
- 91.2 the Members meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of article 90.
92. An immaterial defect in the form or manner of Delivering notice of a Members meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed, does not, unless the board elects to do so, invalidate any action taken at the Members meeting.
93. The annual general meeting shall deal with the presentation of the annual financial statements, the election of Directors, the noting of the levy for the next financial year, the appointment of an auditor, and may deal with any other business laid before it.

## **PROXIES**

94. A Member may be represented at a Members meeting by proxy, who need not be a Member as contemplated in terms of the provisions of Section 58(1) of the Companies Act and is subject to its provisions..
95. A proxy form together with the original or a certified copy of any power of attorney or other authority under which it is signed, shall be

delivered to the Association or any Person which it has identified in the notice of meeting prior to the Members meeting, before the proxy Exercises any rights of the Member entitled to vote at a Members meeting.

96. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time.
97. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form provided that it is in Writing. The Association shall supply a generally standard form of proxy upon request by a Member entitled to vote.
98. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as he/she/it sees fit unless the proxy indicates otherwise.

## **QUORUM**

99. No business shall be transacted at a Members meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed.
100. The quorum necessary for the commencement of a Members meeting shall be sufficient Persons present at the Members meeting to Exercise, in aggregate, at least 10% (ten per cent) of all the Voting Rights that are entitled to be Exercised in respect of at least one matter to be decided at the Members meeting, but if the Association has more than 2 (two) Persons entitled to vote, the Members meeting may not begin unless in addition at least 3 (three) Persons entitled to vote, are Present.
101. A matter to be decided at the Members meeting may not begin to be considered unless sufficient Persons are present at the Members meeting to Exercise, in aggregate, at least 10% (ten per cent) of all of the Voting Rights that are entitled to be Exercised on that matter at the time the matter is called on the agenda for the Members meeting but if the Association has more than 2 (two) Persons entitled to vote, a matter may not begin to be debated, unless in addition at least 3 (three) Persons entitled to vote, are Present.
102. If within 15 (fifteen) minutes after the time appointed for the commencement of a Members meeting, a quorum is not present or if the quorum requirements in article 101 cannot be achieved for any one or more matters, the meeting shall be postponed, without motion, vote or further notice, to the same place at the same time on

the same day of the next week (or if that day is not a Business Day, the first Business Day following that non-business day). If a quorum is not present at such adjourned meeting within 15 (fifteen) minutes from the time appointed for the meeting then, the Members present entitled to vote shall constitute a quorum.

103. After a quorum has been established for a Members meeting, or for a matter to be considered at a Members meeting, the Members meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be Exercised at the Members meeting, or on that matter, is Present at the Members meeting.

### **ADJOURNMENT BY CHAIRMAN WITH CONSENT OF MEETING**

104. A Members meeting, or the consideration of any matter being debated at the Members meeting, may be adjourned from time to time on a motion supported by Persons entitled to Exercise, in aggregate, a majority of the Voting Rights:

- 104.1 held by all of the Persons who are present at the Members meeting at the time; and
- 104.2 that are entitled to be Exercised on at least one matter remaining on the agenda of the Members meeting, or on the matter under debate, as the case may be.

Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to Members), as determined at the Members meeting.

105. In the event of such an adjournment contemplated in article 104, no notice need be given of the adjourned Members meeting, unless the location or time of the Members meeting is different from:
- 105.1 the location or time of the adjourned Members meeting;
- 105.2 or a location or time announced at the time of adjournment.

### **VOTING RIGHTS OF MEMBERS**

106. The chairman, if any, of the Board shall preside as chairman at every Members meeting. If there is no such chairman, or if at any Members meeting he/she is not present within 15 (fifteen) minutes after the time appointed for holding the Members meeting or is unwilling to act as chairman, the Persons entitled to vote which are Present shall select a Director present at the Members meeting, or if no Director be present at the Members meeting, or if all the Directors present decline to take the chair, the Persons entitled to vote shall

select one of their number which is Present to be chairman of the Members meeting.

107. Unless otherwise provided in this MOI, at every Members meeting :
- 107.1 each Member present and entitled to vote, shall on a show of hands have 1 (one) vote, irrespective of the number of Erven or Units he holds or represents (a proxy shall, irrespective of the number of Members he represents, have only 1 (one) vote on a show of hands); and
- 107.2 each Member present and entitled to vote, shall on a poll have 1 (one) vote for each Erf and 1 (one) vote for each Unit he holds in respect of every matter that may be decided on a poll.
108. If an Erf or Unit is registered in the name of more than 1 (one) Person, then all such co-owners shall jointly have only 1 (one) vote.
109. Save as expressly provided for in this MOI, no person other than a Member and who shall have paid every Levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not suspended, shall be entitled to be present or to vote, either personally or by proxy, at any Members meeting.
110. Voting at Members meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded by:
- 110.1 not less than 5 (five) Persons having the right to vote on that matter; or
- 110.2 a Person/s entitled to Exercise not less than 1/10th (one tenth) of the total Voting Rights entitled to vote on that matter; or
- 110.3 the chairman,

and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution. No objection shall be raised as to the admissibility of any vote except at the Members meeting or adjourned Members meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such Members meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the Members meeting, whose decision shall be final and conclusive. A Minute of a Members meeting signed by the chairman of that Members meeting or by the chairman of the next succeeding Members meeting, is

evidence of the proceedings of that Members meeting or the adoption of any resolution at that Members meeting. Any extract from such Minute or extract from any resolution, if signed by the chairman of the Members meeting or by the secretary shall be receivable as evidence of the matters stated in such Minute or resolution.

111. If a poll is duly demanded, it shall be taken in such manner as the chairman of the Members meeting may direct either at once or after an interval or adjournment, and the result of the poll shall be deemed to be the resolution of the Members meeting at which the poll was demanded. The scrutineers may be appointed by the chairman to declare the result of the poll, and if appointed their decision, which shall be given by the chairman of the Members meeting, shall be deemed to be the resolution of the Members meeting at which the poll is demanded. The demand for a poll shall not prevent the continuation of a Members meeting for the transaction of any business other than the question upon which the poll has been demanded. The demand for a poll may be withdrawn.
112. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the Members meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
113. Every resolution of the Members shall either be an ordinary resolution or a special resolution, approved as follow:
  - 113.1 For an ordinary resolution to be adopted at a meeting of Members it must be supported by more than 50% (fifty percent) of the Voting Rights Exercised on the resolution; and
  - 113.2 For a special resolution to be adopted at a meeting of Members it must be supported by at least 75% (seventy five percent) of the Voting Rights Exercised on the resolution.
114. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless :
  - 114.1 written notice of the revocation is received by the Association by the Member concerned prior to the meeting concerned; or
  - 114.2 the chairman of the meeting agrees to accept written or oral notice of such revocation by the Member concerned at the meeting.
115. Any ordinary resolution which could be passed at a general meeting (other than a special resolution or a resolution to appoint or remove

a director or auditor or as otherwise may be required by the Companies Act) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

## ACCOUNTING RECORDS

116. The Association shall prepare its Financial Statements in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board or its successor body, or, if it qualifies in terms of the Regulations, in accordance with the South African Statements of Generally Accepted Accounting Practise as adopted from time to time by the Accounting Practices Board or its successor body, or, if it qualifies in terms of the Regulations, in accordance with such standard as it shall determine, and shall have its annual Financial Statements independently reviewed in accordance with the International Standard for Review Engagements, as issued from time to time by the International Auditing and Assurance Standards Body or its successor body, by a Registered Auditor or a member in good standing of a professional body that has been accredited in terms of section 33 of the Auditing Professions Act, unless it qualifies by reason of its public interest score being less than 100 (one hundred) to use an accounting officer, provided that such independent review must not be carried out by any independent accounting professional who was involved in the preparation of the annual Financial Statements. For this purpose, the Association shall calculate its public interest score for each financial year, calculated as the sum of the following –
- 116.1 a number of points equal to the average number of employees of the Association during the financial year;
  - 116.2 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in third party liability of the Association, at the financial year end;
  - 116.3 1 (one) point for every R1 000 000,00 (one million rand) (or portion thereof) in turnover during the financial year; and
  - 116.4 1 (one) point for every Individual who, at the end of the financial year, is known by the Association, to be a member of the Association or a member of another association which is a member of the Association.
117. The Association shall maintain the necessary Accounting Records which shall be accessible at its Registered Office.
118. The Board shall from time to time determine whether and to what extent and at what times and places (save in the case of Accounting

Records which shall be accessible from the Registered Office) and under what conditions, subject to the Regulations, the Members shall be entitled to inspect and take copies of:

- 118.1 the MOI;
  - 118.2 amendments to the MOI;
  - 118.3 records in respect of Directors;
  - 118.4 Accounting Records required to be maintained by the Association;
  - 118.5 notices and Minutes of Members meetings;
  - 118.6 communications generally to Members.
119. The Association shall notify the Members of the publication of any annual Financial Statements of the Association, setting out the steps required to obtain a copy of those Financial Statements. If a Member demands a copy of the annual Financial Statements, the Association shall make same available to such Member free of charge.

## **SERVICE OF NOTICES**

120. Notices may be given by the Association to any Member or Director or Alternate Director either personally, or by Electronic Communication, or by telegram, telex, fax or by sending it by post in a prepaid letter addressed to such member at his last known address (including such Person's last known Electronic Address). The Association must give notice of availability of a document, record or statement to the Member either to his/her/its last known delivery address or last known Electronic Address
121. Any Member who/which has furnished an Electronic Address to the Association, by doing so :
- 121.1 authorises the Association to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him/her/it; and
  - 122.2 confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.
122. Any notice required to be given by the Association to a Member, and in respect of which the Companies Act does not expressly prohibit



the provisions of this article from applying, shall be sufficiently given by posting it on the Association's web site until at least the date when the event to which the notice refers occurs, provided that the Association gives a notice similar to a notice of availability in the manner contemplated in article 120.

123. If an Erf or Unit is registered in the name of more than 1 (one) Person, all notices shall be given to the Person named first in any register of Members which the Association may keep from time to time, and notice so Delivered shall be sufficient notice to all the Persons entitled to or otherwise interested in the Erf or Unit (as applicable).
124. The Association shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery.
125. As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

## **INDEMNITY**

126. For the purposes of these articles "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
127. The Association may –
- 127.1 not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, 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;
  - 127.2 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Association; and
  - 127.3 directly or indirectly indemnify a Director for –
    - 127.3.1 any liability, other than in respect of –

- 127.3.1.1 any liability arising in terms of section 77(3)(a), (b) or (c) or from wilful misconduct or wilful breach of trust on the part of the Director; or
- 127.3.1.2 any fine contemplated in terms of the MOI;
- 127.3.2 any expenses contemplated herein, irrespective of whether it has advanced those expenses, if the proceedings –
  - 127.3.2.1 are abandoned or exculpate the Director; or
  - 127.3.2.2 arise in respect of any other liability for which the Association may indemnify the Director in terms hereof.
- 128. The Association may purchase insurance to protect –
  - 128.1 a Director against any liability or expenses contemplated herein; or
  - 128.2 the Association against any contingency including but not limited to –
    - 128.2.1 any expenses –
      - 128.2.1.1 that the Association is permitted to advance in accordance herewith; or
      - 128.2.1.2 for which the Association is permitted to indemnify a Director in accordance herewith; or
    - 128.2.2 any liability for which the Association is permitted to indemnify a Director in accordance herewith.
- 129. The Association is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Association to or on behalf of that Director in any manner inconsistent with section 78.

## **GENERAL**

- 130. Whenever they consider that the appearance of any land or building vested in a Member or any signage on the land or building is such as to be unsightly or injurious to the amenities of the surrounding area or the Development Area generally, the Board may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should

the Member fail within a reasonable time, to be specified in such notice, to comply therewith, the Board may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Association.

The Board shall be obliged in giving such notice to act reasonably. In the event of any dispute, the Member shall bear the onus of establishing that the Board acted unreasonably.

131. The Registered Owner of an Erf zoned for residential purposes shall construct and complete the construction of a dwelling house thereon in accordance with the provisions contained in article 22.2 and 22.3 above.
132. Should the Registered Owner of an Erf fail to comply with the provisions of article 22.2 or 22.3 above (as the case may be), then the Board shall be entitled at its sole discretion to give written notice to the Registered Owner to commence construction of a dwelling house or to complete the construction of a partly completed dwelling house within the time frames contemplated in article 22.2 and/or 22.3 above and if the Registered Owner fails to comply with such notice, the Association shall be entitled (but not obliged) to repurchase such Erf at a price equal to the following:
  - 132.1 the purchase price at which the Registered Owner purchased such Erf; plus
  - 132.2 in the case of an uncompleted dwelling house, the value of the works constructed on the Erf as determined by an independent quantity surveyor appointed by the Board whose valuation shall be final and binding on the Association and the Registered Owner.
133. No Member shall be entitled to subdivide or rezone any Erf without prior written consent of the Board.
134. No Member or other person shall be entitled to sink or use any boreholes within the Development Area without the prior written consent of the Board.
135. The Association may enter into agreements with any third party for the provision of facilities and services to or for the Members and may levy charges in respect of the provision thereof, or may pass on such costs directly to the Members.
136. The provisions of this MOI shall be binding upon all Members and, insofar as they may be applicable to all Persons occupying any Erf or Unit by, through or under any Member, whatever the nature of such occupation.
137. No Member ceasing to be a Member of the Association for any reason shall (nor shall such Member's, executors, curators,

- Directors or liquidators) have any claim upon or interest in or right to the funds or any property or assets of the Association.
138. The Association may claim from any Member or his estate any arrear Levy and interest or other sums due from him to the Association at the time of his ceasing to be a Member.
139. Any Person using any of the services, land or facilities of the Association does so entirely at his own risk.
140. Before any Erf or Unit is transferred, a Member who has sold same shall pay to the Association an amount equal to 1% (one per cent) plus VAT of the total consideration payable to him in respect of the sale of his Erf or Unit to cover administration expenses of the Association in respect of the transfer.
141. No Member shall let or otherwise part with occupation of his Erf or Unit without the consent of the Association which consent shall only be withheld if the Association is not satisfied that the provisions of the relevant Rules have been complied with.
142. The Association shall be obliged to enforce compliance with and the Members shall comply with the Record of Decision issued by the Department of Environmental Affairs and Development Planning (“**DEADP**”) dated 29 October 2003 (as amended), the Operational Environmental Management Programme for Pinnacle Point Beach and Golf Resort dated 22 August 2014 (as approved by the DEADP) and the agreement between Pinnacle Point Resorts (Pty) Ltd and WESSA dated 23 August 2004.
143. No Member shall be allowed to erect or display or allow any "For Sale or To Let" signs and/or any sign boards on his/her Erf or Unit.

## **DISPUTES**

144. Subject to the Companies Act (including but not limited to section 166 of the Companies Act), any dispute arising out of or in connection with this MOI shall be determined in terms of these provisions, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
145. On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms hereof).
146. If a party exercises his right to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 15 (fifteen) years' experience in their field:

- 146.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
  - 146.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
  - 146.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
  - 146.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
  - 146.5 if the dispute relates to any other matter, such other independent and suitably qualified person.
147. If the parties are unable to agree either on the person on the classification of the dispute within a period of 7 (seven) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be appointed in terms of the Rules of the Arbitration Foundation of Southern Africa.
  148. Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
  149. The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
  150. It is the intention that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
  151. The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
  152. The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
  153. The provisions hereof constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
  154. The provisions hereof shall be deemed to be severable from the rest of this MOI and shall remain binding and effective as between the

parties notwithstanding that this MOI may otherwise be cancelled or declared of no force and effect for any reason.

## **AMENDING MEMORANDUM OF INCORPORATION**

155. The Memorandum of Incorporation may be amended from time to time in accordance with and in compliance with the provisions of Section 16 of the Companies Act 71 of 2008.