

Memorandum of Incorporation

of

Garlington Homeowners' Association NPC

Registration No 2006/038584/08

INDEX

Clause No	Description	Page No
1.	Adoption of this Memorandum of Incorporation	5
2.	Incorporation and nature of the company	5
3.	Definitions	5
4.	Main object	9
5.	Powers of the company	9
6.	Alterations to this Memorandum of Incorporation	10
7.	Membership	10
8.	Termination of membership	11
9.	Sale and transfer of units	11
10.	Co-ownership of units	13
11.	Member's rights	13
12.	Rights and the benefits of membership	13
13.	Members meetings	13
14.	Notice of members meetings	14
15.	Members right to requisition a meeting	14
16.	Venue of members meetings	14
17.	Quorum for members meetings	15
18.	Agenda at annual general meetings	16
19.	Procedure for proposing resolutions	16
20.	Proxies	17
21.	Electronic participation in members' meetings	18
22.	Members voting	19
23.	Members resolutions	20
24.	Members right to information	20
25.	Record date for exercise of members rights	21
26.	Composition of the board	21
27.	Term of office	21
28.	Election of directors	21
29.	Co-opting of directors onto board	22
30.	Qualification to act as a director	22
31.	Vacation of office as director	22
32.	Electronic participation in directors' meetings	22

33.	Notice of directors' meetings	22
34.	Director's right to requisition a meeting	23
35.	Quorum for directors' meetings	23
36.	Voting at directors' meetings	23
37.	Round robin resolutions: directors	23
38.	Appointment of chairperson and vice-chairperson	23
39.	Director's remuneration	24
40.	Control of meetings	24
41.	Proceedings at meetings of directors	24
42.	Functions and powers of the board	25
43.	Professional advisors	26
44.	Indemnification of directors and officers	26
45.	Variation of decisions	27
46.	Appointment and authority of committees	27
47.	Composition of committees	27
48.	Finance committee	27
49.	Budget	27
50.	Levies	28
51.	Purpose of levies	28
52.	Calculating levies	29
53.	Developer's levies	32
54.	Stables and stable levy	32
55.	Gymnasium and gymnasium levy	33
56.	Care centre	34
57.	Payment of levies	34
58.	Increase of levies	35
59.	Special levies	35
60.	Capital expenditure	35
61.	Levy Stabilisation and Capital Improvement Fund	35
62.	Application of optional provisions of the Companies Act	36
63.	Accounts	37
64.	The Garlington Architectural Review Committee	39
65.	Building plans and builders	39
66.	Compliance with the building code	40
67.	Powers of the Garlington Architectural Review Committee	41

68.	Maintenance of units and common property	41
69.	Building period	41
70.	Building deposit	41
71.	Boundary fences	42
72.	Access by neighbours	42
73.	House rules	42
74.	Compliance with the house rules; objects of the company	45
75.	Legal remedies	45
76.	Common property	46
77.	Use of common property	46
78.	Sport facilities	46
79.	Sale of developer's rights	47
80.	Operating of businesses on the estate	47
81.	Service of notices	47
82.	Access to the estate	48
83.	Estate agents	48
84.	"For sale" signs	49
85.	Disclaimer	49
86.	Environmental management plan	49
87.	Winding up	49
88.	Access ways	50
89.	Access by the company	50
90.	Body corporates	50
91.	Delegation	51

1 Adoption of this Memorandum of Incorporation

- 1.1 The company resolved by a special resolution of the members passed on to amend its existing Memorandum and Articles of Association by replacing those documents in their entirety with this Memorandum of Incorporation.
- 1.2 This Memorandum of Incorporation is a document unique to the company, as contemplated in Section 13(1)(a)(ii) of the Companies Act.

2 Incorporation and nature of the company

- 2.1 The company is a non-profit company as defined in the Companies Act.
- 2.2 The company is also a "pre-existing company" as defined in paragraph (a)(i) of the definition of "company" in Section 1 of the Companies Act. As such, the company continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Companies Act (as provided for in item 2 of Schedule 5 to that Act).
- 2.3 The company is incorporated in accordance with and governed by:
- 2.3.1 The unalterable provisions of the Companies Act, subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum of Incorporation; and
- 2.3.2 The alterable provisions of the Companies Act, subject to any negation, restriction, limitation, qualification, extension or other alteration contemplated in an alterable provision and noted in this Memorandum of Incorporation; and
- 2.3.3 The provisions of this Memorandum of Incorporation.

3 Definitions

- 3.1 In this Memorandum of Incorporation:
- 3.1.1 A reference to a section by number refers to the corresponding section of the Companies Act; and
- 3.1.2 Words that are defined in the Companies Act bear the same meaning in this Memorandum as in that Act.

- 3.2 In this Memorandum of Incorporation, unless the context indicates otherwise,
- 3.2.1 **"architect"** means an accredited architect or designer approved by the Garlington Architectural Review Committee as entitled to design buildings on the estate;
- 3.2.2 **"auditors"** means the auditors of the company;
- 3.2.3 **"the board"** means the Board of Directors of the Company;
- 3.2.4 **"building code"** means the rules setting out the architectural guidelines and building controls applicable to the estate;
- 3.2.5 **"care centre"** means the centre to be built on the estate for the provision of frail care and related services and which shall be operated by a private entity for its own account;
- 3.2.6 **"chairperson"** means the chairperson of the board;
- 3.2.7 **"commercial erf"** means a subdivision of the property which is zoned as "central" in accordance with the town planning scheme and which allows the development of dwelling houses, home activities, medium density development, office buildings, places of public assembly, recreational buildings and, in relation to Erf 318 Garlington, restaurants and shops;
- 3.2.8 **"the common property"** means all those areas that fall outside the residential erven, the commercial erven and the institutional erven and are zoned for Private Open Space;
- 3.2.9 **"the company"** means the Garlington Homeowners Association NPC Registration No 2006/038584/08;
- 3.2.10 **"the Companies Act"** means the Companies Act, 2008 (Act No 71 of 2008);
- 3.2.11 **"the developer"** means the Garlington Development Trust (Registration No IT 705/04) or its successor in title as developers of the property;
- 3.2.12 **"development period"** means the period from the establishment of the company until 31 December 2018;
- 3.2.13 **"director"** means a director of the company;

- 3.2.14 **"dwelling"** means a self-contained, inter-leading group of rooms for a single family, with not more than one kitchen, as provided for in the town planning scheme;
- 3.2.15 **"the estate"** means the development known as Garlington which includes all the amenities built or to be built on the property;
- 3.2.16 **"financial year"** means the financial year of the company which runs from the first day of March in any year to the last day of February in the subsequent year;
- 3.2.17 **"the Garlington Architectural Review Committee"** means the committee appointed in terms of this Memorandum of Incorporation to ensure compliance with the building code;
- 3.2.18 **"general manager"** means any person appointed by the board as an employee to undertake the management of the estate and the affairs of the company, and designated as general manager;
- 3.2.19 **"gymnasium"** means the gymnasium on the estate and which shall be operated by a private entity for its own account;
- 3.2.20 **"institutional erf"** means a subdivision of the property which allows for the development of a care centre or a wellness centre;
- 3.2.21 **"the municipality"** means the uMngeni Municipality being the local authority having jurisdiction over the estate;
- 3.2.22 **"medium density property"** means a property which is indicated as medium density in the town planning scheme, regardless of the method of ownership of that property;
- 3.2.23 **"member"** means a member of the company in terms of clause 7;
- 3.2.24 **"the office"** means the registered office of the company;
- 3.2.25 **"the property"** means Rem of Erf 1 Garlington, Registration Division FT, Province of KwaZulu-Natal;

- 3.2.26 **"the residential erf"** means a subdivision of the property which allows for the development of a dwelling in accordance with the town planning scheme;
- 3.2.27 **"the roads"** means the roads which have been constructed, or may be constructed, on the property;
- 3.2.28 **"sectional title unit"** means a unit, the tenure of which is in terms of the Sectional Titles Act No 95 of 1986, as amended;
- 3.2.29 **"services"** means the provision of water, sewerage, electricity, storm-water drainage and roads and such other utilities and amenities as may be provided by the company;
- 3.2.30 **"sporting facilities"** means all sporting facilities provided on the estate, including but not limited to the gymnasium, whether owned by the company, the developer or a third party;
- 3.2.31 **"stables"**, if any, means the stables which may be built on Erf 422 Garlington, or on such other property as the company, together with the developer, may agree;
- 3.2.32 **"storage unit"** means a unit constructed or to be constructed on Erf 329 Garlington, which may or may not be sectionalised, for the purpose of storing movables owned or controlled by the members;
- 3.2.33 **"town planning scheme"** means the Hilton Town Planning Scheme, or such other scheme as regulates the zoning and development of land within the estate;
- 3.2.34 **"unit"** means any freehold property, sectional title unit or share block on the estate; and
- 3.2.35 **"vice-chairperson"** means the vice-chairperson of the board.
- 3.2.36 Unless the context otherwise requires:
- 3.2.36.1 Words in the singular number shall include the plural and words in the plural number shall include the singular;
- 3.2.36.2 Words importing the masculine gender shall include the female gender; and

3.2.36.3 Words importing natural persons, shall include juristic persons, corporate entities and bodies corporate.

3.2.37 Whenever a number of days is prescribed in this Memorandum of Incorporation, the number of days must be calculated:

3.2.37.1 By excluding the first day and including the last day; and

3.2.37.2 So as to include Saturdays, Sundays and public holidays unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next ensuing day which is not a Saturday, Sunday or public holiday.

4 Main object

4.1 The main object of the company is to manage, promote, advance and protect the communal interests, safety and welfare of the members of the company as owners of units on the estate, and anything necessary or incidental to this object.

4.2 The company:

4.2.1 Must apply all of its assets and income, however derived, to advance its main object; and

4.2.2 Subject to paragraph 4.1, may directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its main object.

5 Powers of the company

In terms of Section 19(1)(b) of the Companies Act a company has all the legal powers and capacity of a natural person except to the extent that a juristic person is incapable of exercising these powers and having these capacities and except to the extent that a company's Memorandum of Incorporation provides otherwise. This company's legal powers and capacity are not subject to any restrictions, limitations or qualifications as contemplated in Section 19(1)(b), provided that this company must restrict itself to the main object set out in clause 4.

6 Alterations to this Memorandum of Incorporation

6.1 This Memorandum of Incorporation may be amended only by a special resolution adopted by the members or in terms of a court order.

6.2 No provision of this Memorandum of Incorporation requires that the amendment of a provision of this Memorandum is subject to any special requirements (ie requirements in addition to the requirements for amending a Memorandum as set out in Section 16 of the Companies Act). Nor does any provision of this Memorandum of Incorporation prohibit the amendment of a provision of this Memorandum.

6.3 Amendments to this Memorandum of Incorporation may be proposed by:

6.3.1 The board; or

6.3.2 Members entitled to exercise at least 25% of the voting rights on the resolution (see Section 16 of the Act). When determining whether this threshold has been met the developer's additional votes, referred to in clause 22.2, must be excluded.

6.4 The board shall nevertheless have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in Section 17(1) of the Companies Act. A notice of such alteration must be published by:

6.4.1 delivering a copy of the notice of alteration to each member by ordinary mail; or

6.4.2 delivering a copy of the notice of alteration to each member by email (provided that a member shall be deemed to have received a copy of the notice if sent to his or her last known email address).

7 Membership

The members of the company shall be any person who is the registered owner of any unit on the estate.

8 Termination of membership

- 8.1 A member remains a member for as long as he or she is the registered owner of a unit on the estate and may not resign or otherwise terminate membership.
- 8.2 A member does not have any claim to the funds or other property of the company when he or she ceases to be a member of the company. Nor shall any member's executors, curators, trustees or liquidators have such a claim.
- 8.3 The company may claim from any member or his or her estate any arrear levies, special levies, interest, legal fees or other sums due by him to the company at the time of his or her ceasing to be a member.
- 8.4 Levies, special levies, interest, legal fees and any other sums paid or due by a member shall not be repayable by the company to the member upon his or her ceasing to be a member.
- 8.5 A member's successor in title to a unit shall be liable to pay the levies, special levies, interest, legal fees or any other sums attributable to that unit as from the date upon which he or she becomes a member pursuant to the transfer of that unit.

9 Sale and transfer of units

- 9.1 A member shall not sell or otherwise agree to alienate a unit on the estate (or an individual share in a unit) unless it is a condition of the agreement of sale that:
 - 9.1.1 The buyer is obliged, to the satisfaction of the company, to become a member of the company upon registration of transfer of the unit to him or her; and
 - 9.1.2 Registration of transfer of that unit into the name of the buyer will automatically constitute the buyer as a member of the company.
- 9.2 No member shall transfer a unit of which he or she is registered owner unless the company has certified in writing that:
 - 9.2.1 All levy contributions and other amounts owing by the member to the company have been paid prior to the transfer

- or that prior provision has been made to the satisfaction of the directors for payment at registration;
- 9.2.2 The seller's contribution to the Levy Stabilisation Fund has been paid or that prior provision has been made to the satisfaction of the directors for payment on registration;
- 9.2.3 The proposed transferee has agreed in writing, to the satisfaction of the company, to become a member of the company; and
- 9.2.4 The purchaser has notified the company in writing of his or her address and contact details as required in clause 81.
- 9.3 A condition of title has been, or is to be registered, against each unit in the estate to give effect to clause 9.2.
- 9.4 The company shall be entitled to charge an administrative fee for its effort and cost providing a certificate in terms of this clause. Until amended by the board from time to time, the administrative fee shall be R500.
- 10 **Co-ownership of units**
- 10.1 Where a unit is owned by more than one registered owner, all the owners of that unit shall together be deemed to be one member of the company.
- 10.2 The co-owners must:
- 10.2.1 Elect one of the co-owners as the contact person for the unit; and
- 10.2.2 Notify the company of the name and address of the contact person.
- 10.3 Any notices served by the company on the contact person shall be deemed to be service upon all the co-owners.
- 10.4 If the co-owners fail to elect a contact person, or to notify the company of the contact person's details, then service of notices by the company may be upon any one of the co-owners and this shall be deemed to be service upon all co-owners.

11 Member's rights

- 11.1 The rights and obligations of a member are not transferable, but may be ceded as security for a mortgage loan on that member's unit.
- 11.2 A member shall at all times further the objects and interests of the company to the best of his or her ability and shall observe all the rules made by the company and the directors.

12 Rights and the benefits of membership

- 12.1 A member who is:
 - 12.1.1 In breach of any rule of the company or of this Memorandum of Incorporation; or
 - 12.1.2 In arrears with regard to the payment of any levies, special levies, legal fees or any other sums due to the company (provided that the sum is 30 days or more in arrears and exceeds an amount equivalent to a monthly levy payable in respect of that member's unit or, if the member owns more than one unit, then in respect of the largest unit owned by that member),

shall not be entitled to attend, speak or vote at any meeting of the company, or to hold office as director, or to use the estate's facilities or any other recreational facilities on the estate (the member's guests, tenants and family members shall, likewise, be precluded from using these facilities).
- 12.2 Where a member has leased out his or her unit, the tenant (and the tenant's guests and family members) shall have the right to the estate's facilities or any other recreational facilities on the estate to the exclusion of the member.

13 Members meetings

- 13.1 The Companies Act provides when members meetings must be held, but allows for a company's Memorandum of Incorporation to provide for additional members meetings. As contemplated in Section 61(2) of the Companies Act, the company is required, in addition to the members' meetings required in terms of the

Companies Act, to hold its annual general meeting within 6 months after the end of each financial year.

- 13.2 Other general meetings shall be called at the discretion of the directors (subject to the provisions of the Companies Act and this Memorandum of Incorporation) and shall be called extraordinary general meetings.

14 **Notice of members meetings**

- 14.1 The minimum number of days' notice which this company is required to give for a members meeting is as follows:

- 14.1.1 An annual general meeting and a meeting called for the passing of a special resolution: 15 business days' notice in writing; and

- 14.1.2 Any other extraordinary general meeting: 10 business days' notice in writing.

- 14.2 Every notice of a members meeting must be accompanied by an agenda setting out the matters to be dealt with at that meeting.

- 14.3 A resolution may not be passed in respect of any matter which does not appear on the agenda accompanying notice of that meeting.

15 **Members right to requisition a meeting**

The board of the company must call a members meeting if a demand is made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter concerned (see Section 61 of the Companies Act). In order to propose an amendment to this Memorandum of Incorporation, members entitled to exercise at least 25% of the voting rights on the resolution must, in terms of paragraph 6.3, propose the amendment. When determining whether this threshold has been met the developer's additional votes, referred to in clause 22.2, must be excluded.

16 **Venue of members meetings**

The authority of the company's board to determine the location of any members meetings, as set out in Section 61(9) of the Companies Act, is limited or restricted as follows: members

meetings of this company must be held within the estate or within a 10 kilometre radius of the estate.

17 Quorum for members meetings

- 17.1 A members meeting may not begin and a particular matter shall not begin to be considered at a members meeting, unless a quorum is present. During the development period the quorum necessary for the holding of any general meeting shall be such of the members entitled to vote, as together for the time being, represent the votes of the developer and the votes of 15% in number of all members entitled to vote. After the development period the quorum shall be such of the members entitled to vote as together for the time being represent the votes of 15% in number of all members entitled to vote.
- 17.2 If within thirty minutes after the appointed time for consideration of a particular matter the requirements for that matter to begin to be considered have not been satisfied:
 - 17.2.1 If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; and
 - 17.2.2 If there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, for one week.
- 17.3 The person intended to chair a meeting that cannot begin because a quorum is not present may extend the thirty minute limit for a reasonable period on the grounds that:
 - 17.3.1 Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting; or
 - 17.3.2 One or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members together with those already present would satisfy the quorum requirements.

17.4 The company shall not be required to give further notice of a meeting that has been postponed in terms of clause 17.2, unless:

17.4.1 The location of the meeting is different from the location of the adjourned meeting or from the location as announced at the time of the adjournment; or

17.4.2 The starting time of the meeting is different from the starting time of the adjourned meeting or from the starting time as announced at the time of the adjournment.

17.5 If, at the time appointed for an adjourned meeting to resume the quorum requirements are again not met, the members present in person or by proxy will be deemed to constitute a quorum.

18 **Agenda at annual general meetings**

The following matters shall be dealt with at every annual general meeting:

18.1 The consideration of the chairperson's report (or, should the chairperson so direct, the report of the general manager);

18.2 The election of directors;

18.3 The consideration of any resolutions proposed for adoption by such meeting (including special resolutions), and the voting upon any such resolutions;

18.4 The consideration of the audited annual financial statements of the company for the financial year of the company preceding the date of such meeting;

18.5 The consideration of the report of the auditors;

18.6 The noting of the levy and budget for the financial year during which such annual general meeting takes place;

18.7 The appointment of auditors and the fixing of their remuneration; and

18.8 Matters placed on the agenda in terms of clause 19.

19 **Procedure for proposing resolutions**

19.1 The company shall, before each annual general meeting or other general meeting, issue a notice in writing to members indicating

that the agenda for the meeting is being prepared and inviting members to submit proposed resolutions, or an adequate description of any matter which they wish to raise for discussion or consideration, to the company within 10 clear days of the notice.

- 19.2 No member shall propose a resolution for voting on at an annual general meeting or other general meeting, or raise a matter for discussion or consideration, unless written notice of the proposed resolution or matter has been given to the company in accordance with clause 19.1.

20 **Proxies**

- 20.1 A member may be represented at an annual general meeting or extraordinary general meeting by a proxy who need not be a member of the company.

- 20.2 The instrument appointing a proxy must be in writing, dated and signed by the member or his or her duly authorised agent, but need not be in any particular form. A proxy appointment remains valid for a period of one year from the date on which it was signed, unless it is revoked in writing or substituted by a later inconsistent appointment and a copy of the revocation instrument is delivered to the company.

- 20.3 Where a unit is owned by:

- 20.3.1 More than one registered owner, the proxy must be signed by one of these owners;

- 20.3.2 A company, the proxy must be signed by a director of the company or by its secretary;

- 20.3.3 A trust, the proxy must be signed by a trustee; and

- 20.3.4 An association of persons, the proxy must be signed by a duly authorised representative of the association.

- 20.4 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of these documents, must be delivered to the company or to any other person on behalf of the company, at any time before the person appointed under the proxy exercises any rights of the shareholder at a shareholder meeting.

- 20.5 As to the revocation of a proxy, a vote given under an instrument of proxy shall remain valid until the company receives notice of such revocation in the manner set out in Section 58 of the companies Act, 2008.
- 20.6 The right of a member of the company to appoint two or more persons concurrently as proxies, as set out in Section 58(3)(a) of the Companies Act, is excluded.
- 20.7 The right of a member of the company to appoint more than one proxy to exercise voting rights attached to different securities, as set out in Section 58(3)(a), is excluded.
- 20.8 The authority of a member's proxy to delegate the proxy's powers to another person subject to any restriction contained in the instrument appointing the proxy, as set out in Section 58(3)(b) of the Companies Act, is excluded.
- 20.9 The authority of a member's proxy to exercise, or abstain from exercising, any voting right of the member without direction from the member (except to the extent that the instrument appointing the proxy provides otherwise), as set out in Section 58(7) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.
- 21 **Electronic participation in members meetings**
- 21.1 Any members meeting may be conducted entirely by electronic communication, or one or more members, or proxies of members may participate by electronic communication in all or part of any members meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 21.2 Any notice of a members meeting at which it will be possible for members to participate by way of electronic communication shall inform members of the ability to participate in this way and shall provide the necessary information to enable members or their proxies to access the available medium or means of electronic

communication, provided that such access shall be at the expense of the member or proxy concerned.

22 Members voting

22.1 Each voting member of the company, present at an annual general meeting or extraordinary general meeting in person or by proxy, shall have one vote for each unit (excluding any storage unit) registered in his or her name.

22.2 During the development period the developer shall, in addition to any vote provided for in clause 22.1, have a further 325 votes at an annual general meeting or extraordinary general meeting.

22.3 No voting rights attach to any storage unit on the estate.

22.4 The following restrictions apply to voting:

22.4.1 a member who is in arrears with regard to the payment of any levies, special levies, legal fees or any other sums due to the company (provided that the sum is 30 days or more in arrears and exceeds an amount equivalent to a monthly levy payable in respect of that member's unit or, if the member owns more than one unit, then in respect of the largest unit owned by that member), may not vote, in person or by proxy, at any general meeting; and

22.4.2 if a unit is registered in the name of more than one person, then all such co-owners shall jointly have one vote.

22.5 Every resolution proposed for adoption by a general meeting, and every amendment of a resolution proposed for adoption by a general meeting, shall be:

22.5.1 Provided to the company in writing at least 72 hours before the agenda is printed and distributed; and

22.5.2 Seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.

22.6 At any meeting of the company a resolution put to the vote shall be decided on a show of hands, unless:

22.6.1 The chairperson of the meeting directs otherwise; or

22.6.2 A member demands a poll.

- 22.7 If voting is decided on a show of hands, then a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry in the minutes of the meeting recording this fact, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- 22.8 A demand for a poll may be withdrawn.
- 22.9 If voting is to be decided by a poll, then voting shall be by way of a secret poll taken during the course of the meeting or alternatively in such other manner as the chairperson of the meeting may direct.
- 22.10 Voting on the election of a chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy and entitled to vote.
- 22.11 The chairperson shall not have a second or casting vote at a general meeting.

23 **Members resolutions**

- 23.1 For an ordinary resolution to be adopted at a members meeting of this company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution at the meeting.
- 23.2 For a special resolution to be adopted at a members meeting of this company, it must be supported by at least 75% of the voting rights exercised on the resolution at a members meeting.

24 **Member's right to information**

Section 26(1) of the Companies Act gives every person who has a beneficial interest in a company's securities the right of access to the following information and documents: the company's Memorandum of Incorporation; any amendments to the Memorandum of Incorporation; the company's rules; certain records relating to directors; reports to annual meetings; the annual financial statements; notices and minutes of annual meetings and other members meetings and the members register. Section 26(3) provides that the Memorandum of Incorporation of a company may

establish additional information rights for persons who have a beneficial interest in a company's securities. In the case of this company, every person who has a beneficial interest in this company's securities has the following right to access information in addition to those rights set out in Section 26(1) of the Companies Act: the right to view the minutes of the meetings of the board at the office of the General manager after arranging an appropriate time to do so with the General manager.

25 Record date for exercise of members rights

If at any time the company's board fails to determine a record date, as contemplated in Section 59(3) of the Companies Act, the record date for the relevant matter is as determined in accordance with Section 59(3) of the Companies Act, namely:

- 25.1 In the case of a meeting, the latest date by which the company is required to give members notice of that meeting; and
- 25.2 In any other case, the date of the action or event.

26 Composition of the board

The board must comprise of not less than 2 and not more than 7 directors.

- 26.1 During the development period, the board shall comprise:
 - 26.1.1 2 directors nominated by the developer; and
 - 26.1.2 3 directors elected by the members.
- 26.2 After the development period, the board shall comprise members elected by the members.

27 Term of office

The elected directors of this company serve for a period of two years, but shall be eligible for re-election for a further period of two years. Thereafter, a director may be re-elected only after a period of 12 months elapsed from the date on which he or she ceased to be a director.

28 **Election of directors**

28.1 Where a director is required to be elected, all the names of the candidates will appear on a ballot paper and the members will elect in a single vote, their preferred candidates, according to the number of vacancies. Each member may vote for as many candidates as there are vacancies.

28.2 Each vote may be exercised once and the candidates who attract the most votes will be elected.

29 **Co-opting of directors onto board**

The board may appoint a qualified person to fill any vacancy on the board on a temporary basis until the next annual general meeting, as contemplated in Section 68(3) of the Companies Act.

30 **Qualification to act as a director**

A director must be a natural person, but need not himself be a member of the company.

31 **Vacation of office as director**

A director shall be deemed to have vacated his or her office if:

31.1 He commits an act of insolvency;

31.2 His estate is sequestrated;

31.3 He is convicted for any offence involving dishonesty;

31.4 He becomes of unsound mind or is found to be lunatic;

31.5 He resigns from office in writing; or

31.6 He is removed from office in terms of the Companies Act.

32 **Electronic participation in directors' meetings**

The authority of the directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 73(3), is not limited or restricted by this Memorandum of Incorporation.

33 **Notice of directors' meetings**

33.1 The board may determine the form in which notice of its meetings is given, as well as the time for giving notice.

33.2 The authority of this company's board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in Section 73(5)(a) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

34 **Director's right to requisition a meeting**

The chairperson of the board of the company must call a directors' meeting if a demand is made by two or more directors.

35 **Quorum for directors' meetings**

A directors' meeting may not begin unless a quorum is present. A majority of directors must be present in order to constitute a quorum.

36 **Voting at directors' meetings**

36.1 Each director of a company has one vote on a matter before the board.

36.2 A resolution is approved if it is supported by a majority of the votes cast at a directors' meeting. The chairperson of the board does not have a second or casting vote in the event of a deadlock in voting by the directors.

37 **Round robin resolutions: directors**

Section 74 of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, a decision of the board of a company may be adopted by written consent of a majority of the directors (without a meeting being held) if each director has received notice of the matter to be decided. The authority of this company's board to consider a matter other than at a meeting, as set out in Section 74, is limited in that only resolutions that are unanimously adopted may be approved without a meeting being held.

38 **Appointment of chairperson and vice-chairperson**

The directors shall appoint from their number a chairperson and vice-chairperson at the first meeting after each annual general meeting.

39 **Director's remuneration**

A director shall be entitled to be repaid all reasonable and genuine expenses incurred by him or her in or about the performance of his or her duties as director, chairperson or vice-chairperson.

40 **Control of meetings**

40.1 The chairperson presides at all meetings of the board, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the board.

40.2 If at any meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the start of the meeting, then the vice-chairperson shall act as chairperson of that meeting and shall exercise all the powers and duties of the chairperson in relation to that meeting. If the vice-chairperson is also not present within 5 minutes after the time appointed for the start of the meeting, then those directors present shall appoint a chairperson for the meeting, who shall also exercise all the powers and duties of the chairperson in relation to that meeting.

41 **Proceedings at meetings of directors**

41.1 The directors may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Memorandum of Incorporation.

41.2 Meetings of the directors shall be held at least once every quarter. Minutes must be taken of every directors meeting, although not necessarily verbatim minutes. The minutes must be reduced to writing and shall then be certified correct by the chairperson of the next meeting. All minutes of directors' meetings shall, after certification, be placed in a directors' minute book to be kept in accordance with the requirements of the Companies Act. The directors' minute book shall be open for inspection at all reasonable

times by a director, the auditors, the general manager and any member in good standing.

- 41.3 All competent resolutions recorded in the minutes of any directors' meeting shall be valid and of full force and effect, with effect from the passing of such resolutions, and until varied or rescinded.
- 41.4 Except to the extent set out in this Memorandum of Incorporation, the proceedings at any directors' meeting shall be conducted in such reasonable manner and form, as the chairperson of the meeting shall decide.

42 **Functions and powers of the board**

- 42.1 The authority of the board to manage and direct the business and affairs of the company, as set out in Section 66(1) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.
- 42.2 Without limiting the generality of clause 42.1, the directors may in their discretion, from time to time, for the purposes of the company borrow or raise such sum or sums of money from members of the company or from such other source as the directors may decide, provided that the sum or sums of money do not exceed R1 000 000. Borrowing shall however only be permitted for the purposes of capital expenditure save with consent of a resolution passed at a General Meeting of the members. The said R1 000 000 shall be increased annually in accordance with the CPIX as published from time to time.
- 42.3 If at any time this company has only one director, the authority of that director to exercise any power or perform any function of the board without notice or compliance with any other internal formalities, as set out in that Section 57(3), is excluded.
- 42.4 Nothing prevents the board from purchasing and taking transfer of a unit on the estate and, other than in the case of common property, disposing of any such unit for the benefit of the company.
- 42.5 If the company, the board or the chairperson of the board receives any notice advising of any intended change in land use or town planning, or of an application for subdivision or consolidation, in relation to a property or properties:

- 42.5.1 In the estate, then the board must inform the members of the notice; and
- 42.5.2 In the vicinity of the estate, then the board may, in its discretion, inform the members of the notice if the board believes that the change or application may have a negative impact on the amenity of the estate.

43 **Professional advisors**

The directors have the right to engage, on behalf of the company, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employees whatsoever for any reason deemed necessary by the directors and on such terms as the directors shall decide, subject to any of the provisions of this Memorandum of Incorporation.

44 **Indemnification of directors and officers**

- 44.1 The authority of this company to advance expenses to a director or officer of the company to defend legal proceedings arising out of his or her service to the company, as set out in Section 78(4) of the Companies Act, is limited, restricted or extended only to the following extent: if the director or officer is found to be liable for a breach of common law or statutory duty or is found guilty of a criminal offence, then the director or officer shall reimburse the company for these expenses within 30 days of the finding (regardless of whether or not the director or officer appeals the finding and provided that, if the finding is overturned on appeal, then the company shall reimburse the director or officer for expenses incurred in the initial proceedings and in the appeal).
- 44.2 The company must indemnify a director or officer, as set out in Section 78(5) of the Companies Act, for expenses incurred in defending legal proceedings arising out of his or her service to the company if the legal proceedings are abandoned or the director or officer is not to be liable (a company may not indemnify a director or officer for wilful misconduct, wilful breach of trust or for liability arising in terms of Sections 77(3)(a), (b) and (c) of the Companies Act).

44.3 The company must purchase insurance to protect the company, a director or an officer against any liability or expense for which the company is permitted to indemnify the director or officer, as set out in Section 78(7) of the Companies Act.

45 **Variation of decisions**

The board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

46 **Appointment and authority of committees**

46.1 The company's board may appoint committees of directors and/or suitably qualified persons and delegate to any such committee any of the authority of the board, as set out in Section 72(1) of the Companies Act.

46.2 The authority of a committee appointed by this company's board to consult with or receive advice from any person, and to exercise the full authority of the board on matters referred to it, as set out in Section 72(2)(b) and (c) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

47 **Composition of committees**

The authority of the board to include in any committee, persons who are not directors, as set out in Section 72(2)(a), is not limited or restricted by this Memorandum of Incorporation.

48 **Finance committee**

There shall be established a finance committee, which shall consist of:

48.1 Two or more suitably qualified persons appointed by the board, at least one of which must be a director; and

48.2 The general manager.

49 **Budget**

49.1 The finance committee must prepare a budget to meet the expenses of the company during each financial year. The budget must:

- 49.1.1 Specify any estimated deficiency which will result from the preceding financial year; and
- 49.1.2 Include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 49.2 The budget must be prepared and delivered to the members not less than 30 days before the end of each financial year (or as soon as reasonably possible thereafter). The budget must estimate, in reasonable detail, the amount which shall be required by the company to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The finance committee may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 49.3 The budget must be accompanied by a notice specifying the levy payable by each member as a contribution to the expenses and reserve fund.
- 49.4 If the finance committee fails for any reason to prepare the budget or to notify members of the levies, then every member shall (until the budget and levy notice has been issued) continue to pay the levy imposed in the previous financial year as an interim measure.

50 **Levies**

The board shall, from time to time, but at least annually establish and maintain a levy fund for the purpose of meeting all the expenses which the company has incurred, or which the directors reasonably anticipate the company will incur (which may include a reasonable provision for contingencies) for the ensuing financial year, in the furtherance of the company's objects.

51 **Purpose of levies**

- 51.1 Levies are intended to cover costs incurred by the company in:
 - 51.1.1 Maintaining, repairing and improving the roads, open spaces and services, the perimeter fence and any buildings, structures, erections and other improvements on common property on the estate;

- 51.1.2 Paying rates and other charges payable by the company in respect of the erven vested in the company and services provided to the company;
- 51.1.3 Paying the salaries and wages of employees; and
- 51.1.4 Paying all other expenses necessarily or reasonably incurred in connection with the management of the company, the estate, and the company's affairs including any expenses reasonably or necessarily incurred in the attainment of the objects of the company or in the pursuit of its business.
- 51.2 Levies shall not cover the consumption of water and electricity, sewerage or the maintenance or improvements of the units. These expenses shall be for the account of the member.
- 52 **Calculating levies**
- 52.1 In calculating the levy, the finance committee shall take into account all expenses which the company has incurred, or which it reasonably might be anticipated will be incurred.
- 52.2 Annually, the finance committee shall settle a base levy and each unit shall attract a differential levy, calculated with reference to the base levy, on the basis set out in the remainder of this clause 52.
- 52.3 **Residential erven and residential sectional title units:**
- 52.3.1 The finance committee shall impose a differential levy in respect of residential erven and residential sectional title units based on the categories set out in the tables below:

Residential erven:	
Levy as a percentage of base levy	Area of property including area of servitude
70%	>500m ²
100%	501m ² - 2 000m ²
125%	2 001m ² - 5 999m ²

150%	6 000m ² and larger
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Residential sectional title units:	
Levy as a percentage of base levy	Area of sectional unit
100%	>400m ²
70%	201m ² -400m ²
50%	131m ² -200m ²
30%	75m ² -130m ²
20%	<75m ²

52.4 **Commercial erven:**

52.4.1 Levies shall be payable in respect of undeveloped commercial erven on the basis set out in the table below:

Levy as a percentage of base levy	Area of property including area of servitude
100%	Up to 1 600m ²
125%	1 601m ² - 5 000m ²
150%	5 000m ² and above

52.4.2 Once a commercial erf has been developed, then the levies shall be 100% of the base levy for each 240m² of developed bulk. Should the building exceed 240m², then the levy shall be increased

by 25% of the base levy for each 60m² of bulk or part thereof above 240m².

52.4.3 In the case of a commercial erf being partially developed, then the property shall attract a levy in respect of the buildings, based on the provisions of clause 52.4.2 and, in addition, shall attract a levy in respect of the vacant land in terms of clause 52.4.1.

52.4.4 In the case of a building on a commercial erf being sectionalised, then the owner of each section shall pay a levy of 25% of the base levy for every 60m² of bulk or part thereof. In calculating the bulk, the common areas shall be included and shall be added to the unit in accordance with the participation quota linked to the sectional title unit.

52.5 Institutional properties:

In the case of an institutional erf, then the levies shall be calculated as follows:

52.5.1 In the case of a vacant institutional erf, the levies shall be on the basis that:

Vacant Institutional Erven	
Percentage of base levy	Area of undeveloped erf or portion of erf
100%	Up to 1 600m ²
125%	1 601m ² - 5 000m ²
150%	5 000m ² and above

52.5.2 Should an institutional erf be developed, then the levy shall be calculated on the same basis as the levies applicable to sectional title units for those portions of the buildings that are set aside for residential usage and, in the case of the common areas, including kitchens, lounges, offices, frail care rooms and any other rooms not set aside for separate

ownership or occupation, there shall be a levy equivalent to one base levy for every 400m² or part thereof.

- 52.5.3 In the case of an institutional erf being partially developed, then the vacant portion shall attract a levy in accordance with the provisions of clause 52.5.1 and in the case of the developed portion, the levies shall be calculated in accordance with clause 52.5.2.

52.6 **Storage units:**

Erf 369 Garlington allows for storage units to be built on that property and the levy in respect of Erf 369 shall be equivalent to one base levy for the entire property. The owners of the garages, whether they are owners in terms of the Sectional Title Act, or the Shareblock Control Act, shall be jointly responsible for the payment of the levy to the Association.

53 **Developer's levies**

- 53.1 The developer shall pay 10% of the levy which would otherwise have been due in respect of any undeveloped erven owned by the developer, provided that, during the development period, the developer shall contribute to any shortfall in respect of the operating costs of the company, after taking into account all levies payable by members.
- 53.2 On termination of the development period, the developer shall continue to pay 10% of the levy which would otherwise have been due in respect of the undeveloped erven but shall no longer be responsible to contribute any shortfall in respect of the operating costs referred to above.
- 53.3 The Pumula Syndicate Trust No. IT 780/2013/PMB (referred to below as PST), being the developer of the Garlington Village being bilt on the properties described as Erven 339-355 Garlington, Ptn 1-Ptn 4 of Erf 437 Garlington, Erven 357 – 361 Garlington, Erven 363 -368 Garlington, Erven 370,371 and 372 Garlington (all of which properties are referred to below as the MLV properties), pay 10% of the levy which would otherwise have been due in respect of any undeveloped property erven owned by the PST.

53.4 The terms of Clause 53.3 shall only apply whilst PST or its successor in title is building a mature lifestyle village as defined in Clause 53.6 below on the MLV properties..

53.5 PST shall, with the consent of the Board of Directors of the Company, be entitled to sell all its rights and all the land vested in it and cede to the purchaser the rights set out in Clause 53.3 and 53.4 upon condition that the purchaser gives its written undertaking too complete the development of the mature lifestyle village. If PST or any successor in title fails to complete the development of the mature lifestyle village within a reasonable time, or if PST gives notice to the board of the intention to develop the MLV properties for some purpose other than the mature lifestyle village, then the levies normally payable on undeveloped land shall immediately become payable.

53.6 For the purpose of this Memorandum of Incorporation, mature lifestyle village (MLV) shall mean the development that is being built on the MLV properties and which includes freehold houses, sectional title units, the provision of frail care facilities, clubhouses, stepdown facilities or any other facility which is commonly incorporated in a residential development designed for elderly people and for which zoning approval has been granted under the uMngeni municipality town planning scheme.

54 **Stables and stable levy**

54.1 The developer has the right, in its discretion, to make provision for:

54.1.1 The stabling of horses on Erf 422 Garlington; and

54.1.2 The grazing of horses on the common property.

54.2 Stables may be owned by homeowners as well as non-homeowners.

54.3 Ownership of the stables shall be in terms of the Sectional Titles Act or the Share Block Control Act.

54.4 Ownership of a stable, the stabling of horses and the movement of the animals on the estate will be strictly in accordance with the rules and conditions relating to the stables, which rules shall be compiled

by the developer and, if required, shall be amended from time to time by the Board.

54.5 The owners of the stables must bear all costs relating to the horses and the stables, and the finance committee shall determine a levy payable by the stable owners on this basis.

54.6 The company may not in any way interfere with the developer's rights to allow horses to graze on the common property.

55 Gymnasium and gymnasium levy, and right of first refusal

55.1 The gymnasium and pool shall be regarded as one indivisible unit and may not be disposed of separately by the developer or any other owner without the consent of the board.

55.2 Subject to clause 56.1, members are obliged to be members of the gymnasium.

55.3 The monthly levy payable by members must include a monthly gymnasium levy payable to the owners of the gymnasium, which may be increased from time to time on notice of no less than 30 days written notice to the members. The gymnasium levy may not be increased by an amount exceeding the increase in levies in any financial year.

55.4 The developer records that it has agreed to grant the company a right of first refusal to buy the gymnasium, the pool and the coffee shop, known as Sections 36, 35 and 34 in the Sectional Title Scheme Garlington Apartments. If the developer receives an acceptable written offer from a third party to purchase this property, the developer shall provide the company with a copy of the offer and the company will have 30 days within which to deliver to the developer a signed offer the property on the same terms. The first right of refusal shall, however, not apply to any sale or transfer by the developer to any of the trustees or beneficiaries of the developer, or to any trusts or companies controlled by any of the beneficiaries or trustees of the developer. In the event of the developer transferring the gym, pool or coffee shop to any of its trustees or beneficiaries or a company or trust controlled by any of its trustees or beneficiaries then the sale shall be subject to a first

right of refusal in favour of the company upon the terms set out above.

- 55.5 The gymnasium shall be maintained to a standard appropriate for the estate, and in a good, neat, tidy and serviceable condition. Without limiting this requirement, the gymnasium equipment shall be kept up to date, and obsolete or unserviceable equipment shall be replaced.

56 Care Centre

- 56.1 Members who own units in the area set aside for the care centre are entitled, in the discretion of the developer, to elect to become members of the care centre, rather than the gymnasium.
- 56.2 The terms and conditions of membership of the care centre will be determined by the owners of the centre from time to time.
- 56.3 The care centre will be available for use by members as well as non-members.
- 56.4 The monthly levy payable by the owners of the care centre shall be an amount equivalent to one base levy for every 4 beds, or part thereof, in the centre, and subject to this levy not increasing by more than the annual increase applicable to the base levy.

57 Payment of levies

- 57.1 Every levy shall be payable monthly in advance on the first day of each and every month. Levies are inclusive of VAT.
- 57.2 Members may pay their levies by stop order, debit order or EFT. If a member, in the opinion of the board, persistently or regularly pays late, then the board may require the member to pay levies by way of a debit order.
- 57.3 If a member fails to pay a levy within 7 (seven) days after due date, then the company shall charge an administration fee equivalent to 10% of the levy on each late payment.
- 57.4 Unless the board otherwise determines, all payments received from members whether on account of levies or otherwise, shall, notwithstanding any contrary directive given by the member concerned, be allocated and applied first to the payment of

administration fees payable in terms of clause 57.3, thereafter to the payment of any fine or penalty imposed in terms of clause 73.3, or otherwise in terms of this memorandum of incorporation, thereafter to the payment of any other amount, excluding levies, owing by the member to the company and finally, to the payment of levies.

58 Increase of levies

The board shall be entitled to review, and amend, the levies from time to time in its discretion. It shall however give the members one month's notice and in the notice provide reasons for its decision.

59 Special levies

The board may from time to time:

- 59.1 Make special levies upon the members in respect of any expenses of the company which were not included in the budget or which were under-estimated in the budget;
- 59.2 Determine the terms of payment of the special levy; and
- 59.3 Determine that a special levy shall be payable exclusively by a specified class of levy payer (or determine that a special levy be allocated on a differential basis between classes of levy payer).

60 Capital expenditure

The board shall not be entitled, without a resolution of members in general meeting, to undertake capital expenditure on any one item which exceeds or is likely to exceed R1 000 000. This amount shall be increased annually in accordance with the CPIX as published from time to time.

61 Levy Stabilisation and Capital Improvement Fund

- 61.1 A Levy Stabilization and Capital Improvement Fund has been established for the purpose of generating funds to assist with the maintenance and development of the common property.
- 61.2 Upon transfer of a property / unit from a member or any successor-in-title, the seller must pay 0.75% of the purchase price payable at that time in respect of the property as a contribution to the Levy

Stabilization and Capital Improvement Fund. Where a property or unit is owned by a company or close corporation, the contribution to the Levy Stabilisation and Capital Improvement Fund is payable whenever the shares or member's interest in the company or corporation are sold, granted, donated, exchanged or otherwise disposed of to another person. Where only part of the shares or member's interest is sold, granted, donated, exchanged or otherwise disposed of, then a proportionate share of the contribution is payable.

61.3 Contributions to the Levy Stabilization and Capital Improvement Fund must be made on the date of registration of transfer from the funds of the seller. The conveyancer must ensure that the contribution is made.

61.4 If a unit is transferred by way of a donation or inheritance, then the contribution to the Levy Stabilization and Capital Improvement Fund shall be calculated at 0.75% of the fair market value of the unit, as determined by a valuer appointed by the company.

61.5 No contribution is payable to the Levy Stabilisation or Capital Improvement Fund upon transfer of a property or unit from the developer or the transfer from the Pumula Syndicate Trust or its successor as the developer of the Mature Lifestyle Village on the properties referred to in Clause 53.3 above.

61.6 The board is entitled to waive a levy stabilisation contribution if:

61.6.1 A unit is transferred to a company or trust and the board is satisfied that the transfer is part of a genuine restructuring of a member's assets; or

61.6.2 Ownership of a unit or undivided share in a unit, passes by inheritance to a deceased member's spouse as defined in Section 1 of the Estate Duty Act, 1955 (Act No 45 of 1955) or to a *bona fide* partner resident in the dwelling.

62 **Application of optional provisions of the Companies Act (audit etc)**

62.1 This company elects, in terms of Section 34(2) of the Companies Act, to comply voluntarily with the enhanced accountability

requirements of Chapter 3 of the Companies Act to the following extent: the financial statements of the company shall be audited once in every financial year.

- 62.2 This company does not elect, in terms of Section 118(1)(c)(ii) of the Companies Act, to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act or to the Takeover Regulations made in terms of the Companies Act.

63 **Accounts**

The notice of the annual general meeting shall be accompanied by audited financial statements for the past financial year.

64 **The Garlington Architectural Review Committee**

- 64.1 The Garlington Architectural Review Committee has been established for the estate. The Garlington Architectural Review Committee has adopted the building code, which applies to the estate. The Garlington Architectural Review Committee may amend the building code from time to time, with the approval of the board.

- 64.2 During the development period, the Garlington Architectural Review Committee shall comprise of a representative of the developer, an architect or architects nominated by the developer and, should the board so wish, a representative of the company.

- 64.3 Upon termination of the development period, the Garlington Architectural Review Committee must comprise:

64.3.1 An architect or architects appointed by the company; and

64.3.2 A nominee of the company.

- 64.4 The Garlington Architectural Review Committee must:

64.4.1 Consider and approve building plans in accordance with the applicable bylaws and the building code;

64.4.2 Determine the position of each building to be built on the estate, whether on common property or on a unit (the position of a building on a unit shall be determined in consultation with

the owner, subject to the condition that the committee's discretion shall prevail in the event of any disagreement);

- 64.4.3 Impose height restrictions on buildings;
- 64.4.4 Approve on an annual basis a list of accredited architects and/or designers to do work on the estate;
- 64.4.5 Impose such other rules as may be required to give effect to its powers and duties.
- 64.5 The Garlington Architectural Review Committee shall be entitled, at any time, to call for a landscaping and gardening plan from any member and, where it deems it necessary, to impose reasonable requirements regarding the landscaping and gardening of that member's unit.
- 64.6 The Garlington Architectural Review Committee must approve the accredited architects and designers with a view to ensuring that buildings on the estate are built to an acceptable standard.
- 64.7 The Board is entitled, on the recommendation of the Garlington Architectural Review Committee, to charge a reasonable fee for the approval of building plans. In charging fees for the approval of building plans, the Board is entitled to charge a higher fee to members who submit plans prepared by architects who have not been approved by the Garlington Architectural Review Committee. The Board is entitled to increase the fee from time to time.
- 64.8 The Garlington Architectural Review Committee shall, on request, supply an owner with the particulars of the building code.
- 64.9 The Garlington Architectural Review Committee shall be entitled, from time to time, to recommend to the board additional rules or amendments to the building and/or landscaping code in order to ensure that an acceptable quality of building standards and aesthetics is maintained. Any additional rules or amendments shall be considered by the board and may be adopted as is, amended or rejected. These additional rules or amendments to the building and/or landscaping code will stand until ratified or set aside at the next annual general meeting.

- 64.10 The building code is subject to whatever building restrictions are imposed in terms of the town planning scheme.

65 Building plans and builders

- 65.1 Every building plan for a building on the estate must be prepared, at the owner's expense, by an architect or designer who is accredited by the Garlington Architectural Review Committee.

- 65.2 No building operations may be carried out:

- 65.2.1 Except in accordance with a plan approved by the Garlington Architectural Review Committee;

- 65.2.2 Except in terms of a contract concluded between the company, the member concerned and the builder; and

- 65.2.3 Unless all statutory regulations have been complied with.

- 65.3 The board shall be entitled, at any time, to:

- 65.3.1 Exclude a builder, on reasonable grounds, from constructing buildings on the estate; and

- 65.3.2 Require that builders be accredited by the company before they are entitled to construct buildings on the estate.

66 Compliance with the building code

- 66.1 Subject to the provisions of the building code, no member or body corporate in whom any common property is vested may, without the written consent of the Garlington Architectural Review Committee:

- 66.1.1 change the colour of the exterior walls of the unit or building concerned, the colour of the exterior of the doors and window frames thereof, or any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;

- 66.1.2 replace any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds shutters, awnings or ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon construction of the unit, with such items of the same nature and of similar appearance;

- 66.1.3 make any additions or extensions to the unit or buildings or erect any further buildings or structures or fences whether of a temporary or permanent nature upon any land vested in him in the estate;
- 66.1.4 remove any fixtures, fittings, doors, windows or demolish any portion of the exterior of any unit or building;
- 66.2 In the event of the destruction of any unit, and the owner thereof deciding to rebuild such unit, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the company, which shall within 21 days of such submission to it, submit any comments which it may have in connection therewith to the Garlington Architectural Review Committee and the local authority.

67 **Powers of the Garlington Architectural Review Committee**

- 67.1 The Garlington Architectural Review Committee may serve notice on any member whose unit is unsightly or injurious to the amenities of the surrounding area or the estate generally, to take such steps as may be specified in the notice to eliminate the unsightly or injurious condition.
- 67.2 If the member fails to take the specified steps within 30 days of written notice, the general manager shall be empowered to take those steps or cause such steps to be taken and the board may recover the cost from the owner.
- 67.3 The Garlington Architectural Review Committee must determine the routine maintenance requirements:
 - 67.3.1 Of the exterior of each and every building within the common property on the estate and instruct the general manager to attend to such requirements from time to time;
 - 67.3.2 Of all open spaces and roads on the estate, in accordance with the provisions of the building code; and
 - 67.3.3 Of all other ground on the estate not covered by buildings whether held by the company or by members, either individually or in undivided shares.

67.4 The general manager may, when instructed by the Garlington Architectural Review Committee, take such steps as may be required by the committee and recover the cost from the members.

68 **Maintenance of units and common property**

68.1 The maintenance of services and the common property shall be controlled by the general manager on the instructions of the board.

68.2 For purposes of exercising its functions, the Garlington Architectural Review Committee, any of its members and the general manager or his or her nominee, shall be entitled to access any unit and the surrounds thereof at all reasonable times.

69 **Building period**

69.1 Once a member begins building, building operations must be continuous and the building must be completed within 12 months from the date of commencement of construction; provided that;

69.1.1 in respect of dwellings in excess of 600m² floor area, upon the recommendation of the Garlington Architectural Committee given only in special circumstances arising from the size and complexity of the dwelling, or

69.1.2 In respect of any delay in construction which is beyond the control of the Homeowner, upon the recommendations of the Garlington Architectural Review Committee, the General Manager may likewise authorise an appropriate extension.

69.2 If a member does not complete construction within the period referred to in clause 69.1, then the member shall be liable to pay triple the levy which would otherwise be payable in respect of the property concerned as from the end of that period until completion of the building (this penalty shall be known as "**the building period penalty**").

69.3 The building period penalty may be amended from time to time by special resolution of the members.

70 **Building deposit**

- 70.1 Before beginning to construct a building on a property at Garlington, a member must pay a deposit to the company as security for any damage which may be caused to the estate, including but not limited to any landscaping required to reinstate any portion of the estate. The deposit may be determined by the board from time to time.
- 70.2 The deposit is refundable subject to inspection on completion of the developed property, provided that no damage has been done by the contractor, his or her agent or sub-contractors to any of the common property during the course of construction. In the event of the property not being reinstated to the satisfaction of the General Manager then the deposit shall be retained by the Company whilst it is reinstated, alternatively the Company may utilise the deposit to repair the damage caused by the member or his or her builder. In the event of the cost of repairing the damage exceeding the deposit then the Company may claim such excess from the member.
- 70.3 The Garlington Architectural Review Committee is entitled to access the site for the full duration of the construction period and may call on the member to undertake additional landscaping prior to any portion of the deposit being refunded to the owner.

71 **Boundary fences**

No person may erect a boundary fence around a unit without a plan approved by the Garlington Architectural Review Committee.

72 **Access by neighbours**

- 72.1 All members shall be obliged to allow reasonable access to their neighbours for the purpose of maintaining abutting walls and appurtenances.
- 72.2 Access shall be subject to prior consent by the company and any rules made by the Garlington Architectural Review Committee from time to time.

- 73 **House rules**
- 73.1 The board may make house rules, as contemplated in Section 15(3) of the Companies Act, on the following topics:
- 73.1.1 The use by members or their households, their guests, and lessees, of the roads, open spaces and the sporting and other amenities (this power shall include the right to prohibit, restrict or control the use of the roads and open spaces or any portions thereof as may from time to time be necessary or expedient);
- 73.1.2 The preservation of the natural environment, vegetation and fauna as appropriate for the estate which is, in the first instance, a residential estate;
- 73.1.3 The use of parking areas;
- 73.1.4 The right to prohibit, restrict or control the keeping of any animals or pets;
- 73.1.5 The use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
- 73.1.6 The control of commercial erven;
- 73.1.7 The placing of movable or other objects upon the outside of buildings, including the power to remove any such objects;
- 73.1.8 The keeping of flammable substances;
- 73.1.9 The conduct of any persons within the estate for the prevention of nuisance of any nature to any member;
- 73.1.10 The imposition of speed limits and other traffic calming methods;
- 73.1.11 The use of any unit on the estate; and
- 73.1.12 Any other matter that the board should reasonably determine.
- 73.2 The board may make, and amend, the house rules by:
- 73.2.1 delivering a copy of those rules or any notice of amendment to each member by ordinary mail or email, provided that a member shall be deemed to have received a copy of the rules if sent to his or her last known email address; and

- 73.2.2 filing a copy of the rules or any notice of amendment with the Companies and Intellectual Property Commission.
- 73.3 In order to enforce the house rules, the directors may:
- 73.3.1 Take or cause to be taken such steps as they may consider necessary to remedy a breach of a house rule, and debit the cost to the member concerned (which amount shall then be deemed to be a debt owing by the member concerned to the company); and/or
- 73.3.2 Impose a system of fines or other penalties (until ratified or set aside at an annual general meeting, a fine or penalty may not exceed R5 000); and
- 73.3.3 Take such other action including legal proceedings, as they may deem fit.
- 73.4 A breach of the house rules by a member's household, or his or her guests, or lessees, shall be deemed to have been committed by the member himself (but, without prejudice to this principle, the board may in its discretion also take or cause to be taken such steps against the person actually committing the breach).
- 73.5 The board shall appoint a disciplinary committee to hear representations from any member who disputes, subject to the provisions of clause 73.9, that he or she is guilty of a breach of the house rules.
- 73.6 The disciplinary committee shall comprise at least one member of the board of the company and one other person appointed by the board (who need not necessarily be a member of the company). The board shall appoint the chairperson of the disciplinary committee.
- 73.7 The disciplinary committee 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 chairperson may direct.
- 73.8 It shall be the duty of the general manager, or such other person or body as may be empowered by the directors, to take reasonable steps to ensure compliance by the members, their guests, lessees,

and all other persons within the estate, with the house rules and to this end, to issue such notices, impose such fines or do such things as may be necessary or requisite.

Notwithstanding the foregoing, no member or other person will have any claim against the company, the general manager, any member of the board, any employee, or agent, or other representative of the company arising from any failure to apply or enforce the house rules or attempting to do so.

73.9 If any fine or other penalty imposed on a member is not disputed by the member concerned, in writing, within 10 business days of notice of such fine or penalty being received (or such extended period as the board may determine) then the member concerned will be deemed to have admitted liability for such fine or penalty.

73.10 The house rules shall be applied in a consistent, fair, reasonable and equitable manner, provided that any failure to enforce or apply any rule shall not be deemed to be a waiver by the board or the rights to enforce the house rules and/or to be a condonation of the transgression concerned.

74 **Compliance with the house rules; the objects of the company**

74.1 Each member undertakes to comply with the house rules, and to ensure that their households, their guests, and lessees also comply.

74.2 Each member shall, to the best of his or her ability, further the objects and interests of the company.

74.3 In the case of any breach or contravention of a house rule by any tenant or guest or invitee of a member, then the member shall be responsible for the payment of the fine, notwithstanding the fact that the member may not have contravened the house rule, him or herself.

75 **Legal remedies**

75.1 The rights given to the company in terms of this Memorandum of Incorporation are in addition to, and without prejudice to, any of the rights which the company may have to proceed against a member,

either to recover any arrear levies or other monies or to claim specific performance, damages or any recourse in law.

75.2 A member shall be liable for, and shall pay, all legal costs, including costs on an attorney and client scale, and collection commission, expenses and all other charges incurred by the company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by a member to the company or in obtaining compliance with the house rules or any provision of this Memorandum of Incorporation.

75.3 If the member disputes the legal costs incurred by the company, then the parties agree that the company may refer the bill of legal costs prepared by the attorney to the Fee Assessment Committee of the Law Society for consideration and determination, and the decision of the Fee Committee shall be final.

76 **Common property**

76.1 No common property owned by the company may be –

76.1.1 Sold;

76.1.2 Alienated or otherwise disposed of;

76.1.3 Transferred; or

76.1.4 Subjected to any rights, whether registered in the Deeds Registry or not (except for servitudes intended to protect the rights of members and ensure that services are maintained and protected for the benefit of members of the company),

except in circumstances laid down in the Conditions of Establishment of the estate or with the support a special resolution of the members of the company.

76.2 Nothing in this Memorandum of Incorporation shall be construed as preventing the company from building upon any erven owned by it any buildings or other improvements which it may be entitled to erect in terms of the town planning scheme, and as may be approved by the municipality.

77 **Use of common property**

The company may, in its discretion, permit the members, subject to the provisions of this Memorandum of Incorporation, to use the common property (unless the members resolve otherwise by special resolution). The directors may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part of the common property, subject to reasonable privacy of members being respected at all times.

78 **Sport facilities**

78.1 The use of sport facilities on the estate will be in accordance with the rules and regulations as decided by the board from time to time.

78.2 Other than membership of the equestrian facilities, if any, provided at the estate, the use of the sport facilities will be restricted to members, their households and their guests, provided that the board may introduce rules and conditions from time to time, permitting usage of the sport facilities by non-members.

79 **Sale of developer's rights**

79.1 If the developer, in one transaction alienates all its rights and all undeveloped land vested in it in respect of the estate, it shall be entitled to cede to the transferee all its rights in terms of this Memorandum of Incorporation and the transferee shall be entitled to exercise all such rights.

79.2 The developer shall, when it is no longer the owner of any unit in the estate, cease to be a member of the company.

80 **Operating of businesses on the estate**

No person may operate a business on any unit on the estate:

80.1 Which is not in accordance with the town planning scheme; and

80.2 Without the board of the company having first granted written consent on such conditions and for such period as they may deem fit.

81 **Service of notices**

81.1 All members must notify the Company in writing of an address for the services of all legal process, notices and other documents. This address will operate as each member's *domicilia citandi et executandi*. When notifying the Company of an address, each member must provide the following information insofar it exists:

81.1.1 Postal address;

81.1.2 Physical address;

81.1.3 Email address;

81.1.4 Telefax number;

81.1.5 Telephone number; and

81.1.6 Cell phone number.

81.2 A notice may be served by the company upon any member, either personally, by electronic mail or by sending it through the post in a prepaid registered letter, addressed to such member at such address as he or she may have notified the company in writing, save that such address shall be within the boundaries of the Republic of South Africa, or if such member has failed to notify the company in writing of any such address at the address of any unit owned by him, provided that copies of all notices sent to members shall be sent to the mortgagee (if any) of that member's unit.

81.3 A notice will be presumed, unless the contrary is proved, to have been given:

81.3.1 if posted by prepaid registered post, 5 days after the date of posting thereof;

81.3.2 if hand delivered during business hours on a business day, on the day of delivery;

81.3.3 if sent by telefax, on the first business day following the date of sending; and

81.3.4 if sent by electronic mail, on the day of sending.

82 **Access to the estate**

The directors shall take such reasonable measures as are necessary to ensure that the general public, with the exception of members, their guests, lessees, and members of their families and such other persons as the directors may reasonably permit, are excluded from the estate.

83 **Estate agents**

83.1 Only estate agents approved by the Board and whose names appear on a list of accredited estate agents published by the company from time to time may sell property on the estate.

83.2 Estate agents may apply to become approved to sell properties on the estate, subject to the successful completion of the company's induction course and such other requirements as may be required by the company.

83.3 Every approved estate agent shall be obliged to pay to the company an annual accreditation fee, which fee shall be determined by the board.

84 **"For sale" signs**

No "For Sale" signs or "Sold" signs shall be erected on units without the written consent of the company.

85 **Disclaimer**

85.1 The company shall not, in the absence of intention or gross negligence:

85.1.1 be liable for any injury or death to any person, damage to or loss of any property to whomsoever it may belong, occurring or suffered on the estate regardless of the cause thereof; or

85.1.2 be responsible for any theft of property occurring on the estate.

85.2 Members shall not, under any circumstances and in the absence of intention or gross negligence, have any claim or right of action whatsoever against the company for injury, death, damages, loss or

otherwise, or be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

- 85.3 The company, its directors, employees and agents shall not, in the absence of intention or gross negligence, be liable to any member or any of the member's lessees, or their respective employees, agents, invitees or customers or any member of the public dealing with the member or any lessee for any injury or death or loss or damage of any description which the member or any such other person aforesaid may suffer or sustain whether directly or indirectly on or about the estate, regardless of the cause thereof.

86 **Environmental Management Plan**

The company is, initially together with developers and once the development period has been completed, solely responsible for the implementation of the Environmental Management Plan for the estate, as shall be prepared by the environmentalists, prior to commencement of development of the property.

87 **Winding up**

- 87.1 No resolution for the winding-up or dissolution of the company and the transfer of the company's assets shall be taken unless:

87.1.1 The company has made adequate provision for the rights of members to obtain access to their units; and

87.1.2 The rights of members to exclusive use of any areas have been safeguarded, if necessary, by registration of servitudes, at the cost of the member concerned if the member so requires.

- 87.2 If the company is wound up, deregistered or dissolved, the assets of the company remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution having objects similar to its main object, to be determined by the members of the company at or before the time of its dissolution or, failing such determination, by the court.

88 **Access ways**

Notwithstanding that erven and share blocks may be held either individually or in undivided shares by members, members shall be obliged at all times to allow any persons, lawfully on the estate, access to any unit by means of any formed or paved access way, including driveways, parking areas and pathways.

89 **Access by the company**

Every member shall be obliged to allow the company or its service providers, access to any unit at reasonable times for purposes enabling the company to carry out its obligations or exercise its rights in terms of this Memorandum of Incorporation.

90 **Body corporates**

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 body corporate as defined in that Act is accorded certain powers and duties, it is recorded that the development of the estate is of a homogeneous nature and that the company shall be vested with the overall control of all matters affecting the township. To this end the members agree:

90.1 To do all in their power to procure that the body corporate in each sectional title development, shall delegate its powers and duties to the company;

90.2 In the event of any association of members being formed within the township, specifically for owners of certain erven 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 association are delegated to this company; and

90.3 The company may in turn delegate the powers and duties delegated to it in terms of paragraphs 90.1 and 90.2 to such other person or company as it may deem fit.

Delegation

The powers of the committees established in terms of this Memorandum of Incorporation, and the powers of the board, and the powers of the company generally may be delegated to the general manager to such extent and upon such conditions as the directors may determine from time to time, and such delegations may from time to time be revoked either in whole or in part or the conditions of such delegations may be changed as the directors may from time to time deem fit.