

Unique Form

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT No 71 of 2008

MEMORANDUM OF INCORPORATION

[NON-PROFIT COMPANY – WITH MEMBERS]

AQUA VISTA HOME OWNERS ASSOCIATION (RF) NPC

REGISTRATION NUMBER 2001/019065/08

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1. FORMAT OF MEMORANDUM

- 1.1 The prescribed form of a Memorandum of Incorporation for a Non-Profit Company with members as provided for in section 13(1)(a)(i) of the Act and the Companies Regulations, 2011, will not apply to the Company.
- 1.2 This Memorandum is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.
- 1.3 By virtue of an administrative order granted by the Companies Tribunal of South Africa on 29 November 2014, this Memorandum of Incorporation is exempted from the prohibition contained in item 4(2)(b) of Schedule 1 of the Companies Act No. 71 of 2008 as amended.

2. POWERS AND CAPACITY OF THE COMPANY AND RESTRICTIVE CONDITIONS

- 2.1 **This Memorandum contains the following restrictive condition or additional requirement for the amendment of this Memorandum of Incorporation as contemplated in section 15(2)(b) of the Act: [Section 15(2)(b)]**
 - 2.1.1 **Clause 3.1.7 which defines the Development Period as referred to in this Memorandum of Incorporation shall not, during the Development period, be changed or amended in terms of Clause 35 without the prior written approval of the Developer first having been obtained.**
 - 2.1.2 **Clause 3.1.16 which defines the Scheme as referred to in this Memorandum of Incorporation shall not be changed or amended in terms of Clause 35 to the extent that Portion 2 of Erf 20 be excluded from the definition of the Scheme without the prior written approval of the Developer first having been obtained.**
 - 2.1.3 **Clause 7.18 which deals with the assessment of Levies on Portion 2 of Erf 20 and its subdivisions shall not be changed or amended in terms of Clause 35 without the prior written approval of the Developer first having been obtained.**
 - 2.1.4 **Clause 13.5.1 dealing with the right to rezone and subdivide Portion 2 of Erf 20 shall not be changed or amended in terms of the provisions of Clause 35 without the written approval of the developer first having been obtained.**
 - 2.1.5 **Clause 21.1 which deals with the number of directors and appointment of directors of the Company during the Development Period and which contains the provision in Clause 21.1.7 that the said Clause 21.1 of this Memorandum shall not, during the Development period, be changed or amended in terms of Clause 35 without the prior written approval of the Developer first having been obtained.**
- 2.2 **This Memorandum containing the aforesaid restrictive or additional condition contemplated in section 15(2)(b) of the Act, obliges the inclusion of the expression “(RF)” at the end of the**

Company's name and the drawing of attention to the said provisions in the Notice of Incorporation filed with this Memorandum, and thereby rendering constructive notice of such restrictive or additional conditions. [Sections 11(3)(b), 13(3) and 19(5)(a)]

- 2.3 The Company is a juristic person as contemplated in terms of section 19 of the Act, which exists continuously until its name is removed from the companies register in accordance with the Act. **[Section 19(1)(a)]**
- 2.4 This Memorandum does not restrict the legal powers or capacity of the Company provided for in section 19(1)(b) of the Act, and accordingly, has all of the powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity. **[Section 19(1)(b)]**

3. DEFINITIONS

3.1 Unless the context otherwise indicates-

- 3.1.1 "Act" means the Companies Act No. 71 of 2008 (as amended).
- 3.1.2 "Company" means Aqua Vista Home Owners Company (RF) NPC, (Registration Number 2001/019065/08).
- 3.1.3 "Board" means the Board of Directors for the time being of The Company.
- 3.1.4 "Chairman" means the Chairman or the Deputy Chairman of the Board.
- 3.1.5 "Communal Areas" includes, but is not limited to, open spaces, servitudes, gatehouses, areas for general community use and recreational amenities in the Aquavista Development, which belongs to the Company or over which The Company has control and Members have a general right of access to, which, without limiting the generality of the aforesaid, shall also include the wet bike jetty, slipway into the dam for launching of boats, boardwalk, picnic area, gardens and walkways, motor vehicle parking area and jetties for small boats on the remainder of erf 15 Kungwini Country Estate (which erf is registered in name of Emerald Sky Trading 733 (Pty) Ltd, a wholly owned subsidiary of the Company).
- 3.1.6 "Developer" means Aquavista Investments (Pty) Ltd Reg No 1997/007034/07.
- 3.1.7 "Development Period" means the period from the establishment of the Company until 30 April 2017. **This definition shall not be capable of being changed or amended in terms of Clause 35 hereof without the prior written consent of the Developer first having been obtained.**
- 3.1.8 "Directors" means the Directors or Alternate Directors for the time being of the Company or, as the case may be, the Directors assembled at a meeting of Directors where a quorum is present.
- 3.1.9 "General Meeting" means an Annual General Meeting or a Special General Meeting of the Company.
- 3.1.10 "Managing Agent" means any person or body appointed by the Company as an independent contractor in terms of this Memorandum from time to time to undertake any functions on behalf of the Company or its Board.

- 3.1.11 “Medium” means any medium of communication recognised by the Directors and the laws of the Republic of South Africa, including but not limited to: electronic mail, the internet, entries on the Aquavista website, facsimile, telephone, short message system, audiovisual and audio compact disc;
- 3.1.12 “Meeting” includes an adjourned meeting.
- 3.1.13 “Member” means any Member of The Company, whether a Voting Member or a Non-voting Member.
- 3.1.14 “Memorandum” or “Memorandum of Incorporation” means this Memorandum of Incorporation, or as from time to time amended by special resolution.
- 3.1.15 “Office” means the registered office of The Company.
- 3.1.16 “Scheme” or the “Aquavista Development” means the development laid out on what erstwhile consisted of erven 15, 16, 18, and 19, 22 and 23 Kungwini Country Estate, Registration Division JR, Province of Gauteng, which properties were subsequently subdivided and renumbered and now form portions or subdivisions of erven 15, 22, 23, 24, 25 and 26 of Kungwini Country Estate, Registration Division JR, Province of Gauteng, plus Portion 2 of Erf 20 Kungwini Country Estate, Registration Division JR, Province of Gauteng, the latter being registered in name of Sunshine Street Investments 142 (Pty) Ltd (Registration Number 2003/014009/07), a company related to the Developer as contemplated in section 2(c)(iii) of the Act. **This definition of the “Scheme” shall not be capable of being changed or amended in terms of Clause 35 hereof to the extent that Portion 2 of Erf 20 be excluded from this definition of the Scheme without the prior written approval of the Developer first having been obtained.**
- 3.1.17 “Property” or “Land” means immovable property situated within the Scheme.
- 3.1.18 “The Rules” means the rules made by the Directors in terms of Clauses 8, 9, 10 or 11 as they apply from time to time.
- 3.1.19 “Register” means the Register of Members of the Company.
- 3.1.20 “Representative” means the person nominated in terms of Clause 6.1.3 to exercise or assume the rights or obligations of Membership;
- 3.1.21 “Secretary” means the secretary of the Company for the time being.
- 3.1.22 “the Statutes” or “the Act” means the Companies Act and the Companies Regulations of the Republic of South Africa as amended from time to time;
- 3.1.23 “Surplus” includes revenue left after all expenses including operating budget and capital items in any particular year, as more fully determined by the Auditors of the Company each year;
- 3.1.24 “Transfer” in relation to Property includes the transfer of Member’s interest in a close corporation; the transfer of shares in a company or the change of trustees or beneficiaries in a trust holding Property in the Scheme.
- 3.1.25 “Township” means the township consisting of the Scheme.
- 3.1.26 “in writing” or “written” includes typewriting, printing, lithography and includes any communication in electronic form transmitted by using any medium.
- 3.1.27 “Voting Member” shall mean any Member who at the time qualifies as and is a Voting Member as defined in terms of Clause 6.2.3 below.

- 3.1.28 “Non-voting Member” shall mean any Member who at the time does not qualify as and is not a Voting Member, as more fully defined in Clause 6.2.2 below.
 - 3.1.29 “Levies” shall mean all Levies determined by the Board and payable by Members to the company in terms of Clause 7 below.
 - 3.1.30 “Clause” shall be a reference to a numbered clause in this Memorandum of Incorporation.
 - 3.1.31 “Aquavista Mountain Estate” shall mean the private township developed on the area of the Scheme.
 - 3.1.32 “Boat-locker” shall mean any of the boat storage facilities developed on portions 3 to 20 and 22 to 36 of erf 26 Kungwini Country Estate Township Gauteng, or any other portion of the Land from time to time designated or utilised for such purpose. It is envisaged that certain portions of Portion 2 of Erf 20 shall also be rezoned and developed into Boat-lockers.
 - 3.1.33 “Portion 2 of Erf 20” shall mean portion 2 of Erf 20 Kungwini Country Estate, Registration Division JR, Province of Gauteng, which erf is currently registered in the name of Sunshine Street Investments 142 (Pty) Ltd, a company related to the Developer as contemplated in terms of section 2(c)(iii) of the Act.
- 3.2 Reference to Members represented by proxy shall include Members represented by an agent appointed under a general or special power of attorney and reference to Members present or acting in person shall include companies represented or acting in a proper and lawful manner; and
 - 3.3 Expressions defined in the Act, or any statutory modification thereof, in force at the date on which this Memorandum become binding on the Company shall have the meaning so defined; and
 - 3.4 Words in the singular number shall include the plural and words in the plural number shall include the singular, words importing masculine gender shall include female gender, and words importing natural persons, shall include juristic persons, corporate entities and bodies corporate.
 - 3.5 Reference to a party includes that party’s successors and permitted assigns;
 - 3.6 Where the day on or by which anything is to be done is not a business day, it must be done on or by the first business day that follows;
 - 3.7 When a number of days is prescribed in this agreement, they must be calculated exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday. Such periods shall be expressed as “business days”;
 - 3.8 Any reference to a document includes an amendment or supplement to, or replacement or novation of that document;
 - 3.9 The captions appearing in this document are for reference purposes only and do not affect the interpretation hereof;
 - 3.10 Where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

4. NON-PROFIT COMPANY WITH MEMBERS

- 4.1 The Company is a non-profit company as defined in Section 1 of the Companies Act 71 of 2008.

- 4.2 The Company shall be a non-profit company with members as contemplated in item 4(1) of Schedule 1 to the Act.
- 4.3 The Company may only place funds which it has available for investment with a Financial Institution as defined in Section 1 of the Financial Services Board Act, Act 97 of 1990, or in listed securities as defined in section 1 of the Financial Markets Act, No 19 of 2012.

5. MAIN OBJECT OF THE COMPANY

- 5.1 The main object of the Company is to carry on, to promote, advance and to protect, manage and administer the communal and group interests of its Members in the Aquavista Development, as more fully described in 5.2 below and further subject to the provisions contained in the Act and this Memorandum of Incorporation, and in particular also the provisions contained in Clauses 33, 34 and 35 below.
- 5.2 Without limiting the generality of 5.1 above, the enhancing of such communal and group interests shall include the ensuring of acceptable aesthetic, architectural, environmental, security and living standards in the Aquavista Development, the enhancement of the communal interests, safety and welfare of the Members of the Company, the maintaining of open spaces, the controlling of the aesthetic appearance of land, landscaping, buildings and improvements in or on the Aquavista Development, controlling traffic, implementing security measures for the controlled access to the Aquavista Development and the cutting of grass, trimming of edges, weeding, tidying and watering of public gardens in the Communal Areas, controlling the acceptable conduct of all persons and animals on the Aquavista Development, the supply of water, electricity and other services to the Aquavista Development and the levying and collection of Levies against all Members and payment of expenses incurred in furtherance of the main object aforesaid.

6. MEMBERSHIP

6.1 GENERAL

- 6.1.1 Subject to the further provisions of this Clause 6 and of Clause 13.6.3 below, The Members of the Company shall be those persons who are the registered owners of Property from time to time.
- 6.1.2 No person other than a person referred to in 6.1.1 shall be entitled to be a Member of the Company.
- 6.1.3 Where two or more persons are registered co-owners of a Property, all such registered co-owners of that Property shall jointly constitute one Member of the Company, provided that each such co-owner shall be jointly and severally liable to the Company for the due performance of any obligation of such single membership. Such co-owners shall nominate one of them in writing to represent the registered owners.
- 6.1.4 When a Member ceases to be the registered owner of a Property, he shall *ipso facto* cease to be a Member of the Company.

- 6.1.5 A Member shall not sell or otherwise agree to alienate a Property or affect the transfer thereof unless such Member has complied with the provisions of Clause 13, and membership of the Company shall not be transferrable.
- 6.1.6 A Member may not resign as a Member of the Company.
- 6.1.7 The Company shall keep a register of Members at the place and in the manner specified in the Act.
- 6.1.8 The rights and obligations of Members shall not be transferable and every Member shall:
- 6.1.8.1 Further, to the best of his ability, the objects and interests of the Company.
- 6.1.8.2 Comply with the provisions of this Memorandum of Incorporation and, without affecting the generality of this Clause, pay all Levies, penalties, charges, interest and assessments which may become payable by such Member in terms of this Memorandum, inclusive of the payment of any charges for electricity, water and other services supplied to any Property registered in the name of such Member.
- 6.1.8.2 Observe and adhere to all rules made by the Company.
- 6.1.8.3 Sign all documents and do all things necessary to enable the vesting and registration of whatever servitudes may be required for services to be registered whether over or in favour of any portion of Land in the Scheme and including the provision of security facilities. Nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms of this Memorandum as security to mortgage that Member's Property or land.
- 6.2 CLASSES OF MEMBERS AND RIGHTS AND OBLIGATIONS OF SUCH CLASSES
- 6.2.1 The Company shall have two classes of Members, being Voting Members and Non-voting Members respectively.
- 6.2.2 Non-voting Members of the Company shall, subject to the provisions of Clauses 6.2.6 and 13.6.3 below, be those persons who are the registered owners of Property from time to time, and at the time of determining the class of membership or at the record date determined in terms of Clause 6.2.5 below, are:
- 6.2.2.1 in arrear with the payment of Levies due and payable to the Company for a period of at least sixty days; or
- 6.2.2.2 persisting in a breach of any of the Rules of the Company (made in terms of this Memorandum) or any provision of this Memorandum, notwithstanding written demand by the Company to refrain from or rectify such breach; or
- 6.2.2.3 are in arrear with the payment of any fine, penalty, interest or any other payment of whatsoever nature due and payable to the Company in terms of this Memorandum or any Rules made by the Company.
- 6.2.3 Voting Members of the Company shall, subject to the provisions of Clauses 6.2.6 and 13.6.3 below, be those persons who are the registered owners of Property from time to time, and at the time of determining the class of membership or at the record date determined in terms of Clause 6.2.5 below are not Non-voting Members as defined in Clause 6.2.2 above.
- 6.2.4 The rights and obligations of Members in each class of membership shall be similar, save that Non-voting Members shall not be entitled to vote at a General Meeting or any Members' meeting of the Company or a written resolution submitted in terms of section 60 of the Act, while Voting Members shall

be entitled to vote at any such meetings of the Company or on any such written resolution in terms of section 60 of the Act.

- 6.2.5 The record date as contemplated in terms of section 59 of the Act for determining whether a Member is a Voting Member or a Non-voting Member of the Company (in order to determine which Members are entitled to participate in and vote at a Members' meeting or decide any matter by written consent or electronic communication as contemplated in section 60 of the Act), shall be one day prior to the date of dispatch of a notice for a meeting of shareholders, or, one day prior to the date of dispatch or submission of any notice, written resolution, written consent or electronic communication as contemplated in section 60 of the Act, and in any other case, one day prior to the date of the action or event for which the record date is being set, is scheduled to occur.
- 6.2.6 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the registered owner at any time of Portion 2 of Erf 20 (prior to further subdivision) shall have one vote only in respect of such Property as a Voting Member. Upon the further subdivision of Portion 2 of Erf 20 into further Erven, and for as long as such subdivisions are still registered in name of the Developer or Sunshine Street Investments 142 (Pty) Ltd (Registration Number 2003/014009/07), or a company related to the Developer as contemplated in section 2(c)(iii) of the Act, the registered owner of such subdivisions shall be regarded a Non Voting Member. When any such subdivisions of Portion 2 of Erf 20 is however sold to a *bona fide* purchaser who is also a Member by virtue of ownership of any Property zoned for residential purposes, such *bona fide* purchaser shall automatically obtain one voting right for each of such subdivisions from date when any of such subdivisions are registered into the name of any such *bona fide* purchaser, further subject however to the qualification as a Voting Member as contemplated in terms of this Clause 6.2.

7. LEVIES

- 7.1 The Company shall, subject to the provisions of Clause 7.18 below, be entitled to impose Levies payable by its Members on Property held in the Scheme. The Directors may from time to time determine the Levies payable by the Members for the purpose of meeting all the expenses which the Company has incurred, or which the Directors reasonably anticipate the Company will incur in the attainment of its objects or the pursuit of its business.
- 7.2 The Directors shall not less than 30 (thirty) days prior to the end of each financial year, or as soon thereafter as is reasonably possible, prepare and serve upon each Member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Company to meet its expenses during the following financial year, and shall specify such deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of a repetitive annual nature.
- 7.3 Each such notice to a Member shall specify the contribution payable by that Member to such expenses and reserve fund. The Board of Directors are duly authorised in determining the Levies payable by Members to differentiate between certain erven and to determine the Levies in accordance thereto, inclusive of the right

- to waive the payment of any Levy, whether current or arrear, or interest thereon, levied at any time by the Company.
- 7.4 Every Levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- 7.5 In the event of the Directors for any reason whatsoever failing to prepare and timeously serve the estimate referred to Clause 7.2 above, every Member shall, until served with such estimate, continue to pay the Levy previously imposed and shall, after such service, pay such Levy as may be specified in such notice.
- 7.6 The Directors may from time to time impose special Levies upon the Members in respect of all expenses as are mentioned in Clause 7.1, which are not included in any estimate made in terms of Clause 7.2, and may in imposing such Levy determine the terms of payment thereof.
- 7.7 The Directors shall be empowered, in addition to such other rights as the Company may have in law against its members, to determine the rate of interest that may be charged from time to time upon arrear Levies, provided that such rate of interest shall not exceed the rate laid down in terms of the Prescribed Rate of Interest Act 55 of 1975, as amended.
- 7.8 Any amount due by a Member by way of Levy and interest shall be a debt due by him to the Company. The obligation of a Member to pay Levies and interest shall cease upon his ceasing to be a Member without prejudice to The Company's right to recover arrear Levies and interest. A Member's successor in title to any land in the Scheme shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that land to pay the Levy and interest attributable to that land.
- 7.9 No property in the Scheme shall be capable of being transferred nor shall the owner be entitled to enter into a lease agreement in respect of such property without a certificate first being obtained from the Company confirming that all Levies and interest have been paid up to and including the date of transfer of such land or date of the lease agreement, whichever is applicable.
- 7.10 Levies paid in advance shall be subject to a pro rata refund when a Member ceases to be a Member.
- 7.11 A Member shall be liable to pay all legal costs, including costs as between attorney and client, including collection commission, expenses and charges incurred by the Company in obtaining the recovery of arrear Levies or any other arrear amounts due and owing by such Member to the Company.
- 7.12 The Directors shall operate a current account in name of the Company at a registered commercial bank, into which Levies shall be deposited.
- 7.13 Notwithstanding anything to the contrary herein contained, the Directors shall be entitled to impose an additional special penalty Levy against any Member who fails to complete the construction of a residence on any Property registered in the name of such Member within a period to be determined by the Directors in their sole discretion from time to time, but without prejudice to the rights of members in respect of building deadline time periods in existence at the time the directors make the determination. The amount of such special penalty Levy shall not exceed the amount of five times the normal Levy, levied in terms of this Memorandum.
- 7.14 Notwithstanding anything to the contrary herein contained, it is recorded that the consumption of water, electricity and other services supplied by the Company to a Property shall be charged to the Member that is

the registered owner of such Property and such shall for all purposes of this Clause 7 be part of the Levy payable by such Member hereunder. Any other charges, penalties, arrears on services supplied during any period or interest that may become payable by any Member hereunder, shall similarly be part of the Levy payable by such Member.

- 7.15 Any failure by a Member to pay such Levy or any part thereof to the Company shall, despite any other right that the Company may have in terms of this Memorandum or in law, entitle the Company to cease or suspend the supply of electricity and any other services, in the sole and exclusive discretion of the Company, to such Member or the Property of which the Member is the registered owner, pending the payment of all amounts due and payable to the Company.
- 7.16 It is recorded that no set-off of any amount of any claim whatsoever that any Member might have or allege or purport to have against the Company at any time shall be capable of being made against any Levy payable by such Member to the Company hereunder. The Company shall be entitled to, in its sole discretion, allocate any payment received from a Member to that Member's general Levy account or arrears or interest charged on such Levy account.
- 7.17 Each and every Member shall be deemed to have waived any possible claims for damages or consequential damages against the Company resulting from the suspension or cessation of the supply of electricity or other services to any Property of which such Member is the registered owner during any period:
- 7.17.1 Which the Company consider reasonable to suspend or cease such services for purposes of maintenance, repairs or works to relevant infrastructure;
- 7.17.2 Which the Company is reasonably unable to supply such services for any reason whatsoever (inclusive, but not limited to, the inability to obtain delivery of bulk supply of electricity and water from the suppliers thereof for any reason whatsoever);
- 7.17.3 Which the Member is in arrear with the payment of Levies hereunder or in breach of any of the provisions of this Memorandum or the terms and conditions of such supply in any way whatsoever.
- 7.18 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation and despite any future subdivision of Portion 2 of Erf 20, the said Portion 2 of Erf 20, together with any subdivision thereof, shall, for as long as same is registered in name of the Developer or Sunshine Street Investments 142 (Pty) Ltd (Registration Number 2003/014009/07), a company related to the Developer as contemplated in section 2(c)(iii) of the Act, for the purposes of assessment of Levies, be considered to remain one single erf only (and despite its size and zoning, attracting Levies as an average size residential erf in the Scheme) until any subdivision thereof has been sold and transferred to a *bona fide* purchaser, where after such subdivision shall be considered as a separate property in the hands of a *bona fide* purchaser and be subject to the payment of separate Levies. **The provisions of this Clause 7.18 shall not be changed or amended in terms of Clause 35 below without the prior written approval of the Developer first having been obtained.**

8. RULES

- 8.1 Subject to any restriction imposed or approval given by the Members at a General Meeting of the Company, the Directors may from time to time make and implement Rules of the Company in respect to the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interest of Members and/or residents of the Aquavista Development, or the use by Members, the members of their households, employees, their guests, and lessees, of Communal Areas and amenities, which may include, but shall not be limited to rules in respect to:
- 8.1.1 Architectural and building guidelines.
 - 8.1.2 The use of the Communal Areas and open areas within the Scheme.
 - 8.1.3 The preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of walls, fences and hedges, whether upon or within the boundaries of any Land or portion of the Scheme.
 - 8.1.4 The right to prohibit, restrict or control the keeping of any animals.
 - 8.1.5 The use, maintenance, repair or replacement of any roadway, which vest in or is controlled by the Company and of any services, connections and equipment under or over such roadway.
 - 8.1.6 The access to and egress from any of the portions of the Scheme.
 - 8.1.7 The right to determine and control all security measures in the Scheme.
 - 8.1.8 The placing and affixing of signs, ornamentation and embellishments upon the outside of the buildings including the power to remove any such objects.
 - 8.1.9 The conduct of any persons within the Scheme for the prevention of any nuisance of any nature to any member.
 - 8.1.10 The control and collection of refuse.
 - 8.1.11 The control and regulation of Traffic and speed controls and limits within the Scheme.
- 8.2 For the enforcement of any of the rules made by the Directors in terms hereof, the Directors may:
- 8.2.1 Take or cause to be taken such steps as they may consider necessary to remedy the breach of a rule of which the Member may be guilty, and debit the reasonable cost of so doing to the Levy account of the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to The Company, and/or;
 - 8.2.2 Impose and Levy a system of fines or other penalties, provided that the amounts of such fines shall be reviewed and confirmed at each annual General Meeting of the Company, and/or;
 - 8.2.3 Take such action, including court proceedings against any Member of resident within the Aquavista Development for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover, on demand, all legal costs and disbursements so incurred from the Member or resident concerned, calculated as between attorney and own client.
- 8.3 In the event of any breach of the Rules by a Member or any Member's household, or his guest or employee or lessee, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their sole discretion may deem fit.

- 8.3.1 In the event of any Member disputing the fact that he has committed a breach of any of the rules aforesaid, a panel of 3 (three) Voting Members who are not directors of the Company and appointed by the Chairman for that purpose, shall adjudicate upon the issue at such time and place and in such manner and according to such procedure as the Chairman may direct, provided that a Member shall be entitled to assistance from an independent mediator, the costs of whom will be borne by the Member. The decision of such panel shall be final and binding on all parties concerned with such decision.
- 8.3.2 Notwithstanding the foregoing, the Directors may in the name of the Company enforce the provisions of The Rules by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 8.4 The Directors are empowered to ensure compliance by the Members with the Rules, and to this end, to issue such notices or do such things as may be reasonably necessary or requisite, and may delegate such authority to any Managing Agent.
- 8.5 Each Member undertakes to the Company that he shall comply with any rules made in terms of Clauses 8, 9, 10 and 11.
- 8.7 Any fine imposed upon any Member or resident shall be deemed to be a debt by the Member or resident to the Company and shall be recoverable by ordinary civil process.
- 8.8 The Company may sue its Members to recover fines.

9. MAINTENANCE

The Directors shall have the power within the parameters contained herein:

- 9.1 From time to time to determine the routine maintenance requirements of the Communal Areas, and to instruct the Managing Agent or any contractor to attend to such maintenance requirements on behalf of and at the cost of the Company;
- 9.2 To maintain the security facilities related to the Communal Areas.
- 9.3 To cut, or cause to be cut, fire breaks on undeveloped properties that are deemed by the Board to be hazardous or necessary, where the Member has failed to do so despite written notification from the Company. The costs incurred by the Company in cutting such firebreaks will fall to the Levy account of the Member concerned and will be a debt payable to the Company.

10. AESTHETICS

- 10.1 Subject to any restriction or direction given at any General Meeting of the Company, and subject always to any restrictions contained in any title deed and/or deed of transfer of any property, the Directors may from time to time proclaim, set up or incorporate rules pertaining to:
- 10.1.1 The aesthetics, standards and guidelines for the architectural design (inclusive of the colour of any paint and finishing used on the exterior) of all buildings and outbuildings, structures of any nature and all additions and alterations to any such buildings, outbuildings, or structures erected or to be erected on a Property.

- 10.1.2 The location or placement of all buildings, outbuildings, structures of any nature and of any additions and alterations thereto.
 - 10.1.3 The preservation of the environment including the right to control vegetation and the right to prohibit and/or control the erection of walls and fences, whether upon or within the boundaries of any property.
 - 10.1.4 The use, maintenance, repair and replacement of any roadway to be constructed within the Township, and of any services, connections and equipment under or over the roadway.
- 10.2 No Member may deviate from the aesthetic rules drafted or incorporated pursuant to 10.1 above.
- 10.3 The Directors may serve notice on any Member to the effect that the Directors consider the appearance of any Land or building vested in the Member or Members as unsightly or injurious to the amenities or appearance of the surrounding area. In such notice the Directors shall specify the steps that are to be taken by the Member or Members to eliminate such unsightly or injurious conditions. Should the Member or Members fail to comply therewith, within such reasonable time as is specified in the notice, the Directors or their duly appointed contractor may enter upon the property concerned and take such steps as may be necessary to remedy the situation, and thereafter to recover any reasonable costs such incurred from the Member or Members concerned which costs shall be deemed to be a debt due and owing to the Company.
- 10.4 The Company may require any Member on whose property a house is erected to maintain a sidewalk adjacent to his property. In the event of such Member failing to maintain such sidewalk to the satisfaction of the Company, The Company shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to recover the reasonable costs thereof from the Member concerned.
- 10.5 No Member of the Company may:
- 10.5.1 Erect any fencing, walling or paving on any Land within the Scheme without the prior written approval of the Company, which approval shall not unreasonably be withheld; provided that, notwithstanding the foregoing, The Directors may withdraw such approval if, in their absolute discretion, such fencing, walling or paving is inconsistent with, or detracts from, the aesthetic appearance of the homes, gardens and appurtenances in the Scheme.
 - 10.5.2 Install television antennae, radio antennae, solar panels and geysers which are exposed to view on any building or structure within the Scheme without the prior written approval of the Company.
 - 10.5.3 Construct within the Scheme any buildings or structure, or effect any additions or alterations to the existing buildings and structures, or build any works of whatsoever nature, including, but without limiting the generality of the foregoing, carports, garages, servant's quarters, storerooms and pergolas, whether of a temporary or permanent nature, without the prior written approval of the Company, which approval shall not unreasonably be withheld; provided that, notwithstanding the foregoing, The Directors may withdraw such approval if, in their absolute discretion, such building, structure, addition or alteration is not in keeping with the architectural style of any or all of the existing structures and buildings within the Scheme.

11. AMENITIES

- 11.1 The Company may provide amenities and services to the Members and levy a reasonable charge in respect thereof.
- 11.2 The Company shall be responsible for the maintenance of all amenities situated on the Communal Areas, and may make, and alter from time to time, such rules as it may consider necessary regarding the use of any such amenities by Members, including the charging of such fee as they may deem reasonable for the use or maintenance thereof.
- 11.3 Should the Company provide security services and/or other services for Members, all Members shall be obliged to:
 - 11.3.1 Permit the installation of any equipment in the homes or on the Land for the purposes of such services as may be determined by the Company from time to time.
 - 11.3.2 Make payment of charges raised by the Company in respect of such services.
 - 11.3.3 Abide by such terms and conditions as the Company may lay down for the provision of such services from time to time.
- 11.4 Where the boundary of a Member's Property also constitutes the boundary of the Scheme, such Member shall be obliged to permit the Company to erect upon such Member's Property immediately adjacent to the boundary such walling, fencing, barbed wire or other equipment as the developer or the Company may determine. Such Member shall not be entitled to interfere in any manner whatsoever with such walling, fencing, barbed wire or equipment, and is obliged to permit The Company free access to the boundary walls, fencing, barbed wire and equipment in order to inspect, maintain, repair or replace it.

12. MANAGING AGENT

- 12.1 The Directors may from time to time, and shall if required by the Members of the Company in General Meeting, appoint in terms of a written contract a Managing Agent to control, manage and administer the affairs of Company or certain functions or powers thereof, and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect Levies from the Members.
- 12.2 The Directors shall ensure that the agreement concluded between the Company and the Managing Agent contains a provision in terms of which the Managing Agent agrees to be bound by the provisions of this Memorandum.
- 12.3 The Directors shall ensure that there is included in the contract of appointment of the Managing Agent a provision to the effect that if it is in breach of any of the provisions of his contract, or if it is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Directors may cancel such contract of appointment and the Managing Agent shall have no claim whatsoever against the Company or any of the Members as a result of such cancellation.
- 12.4 The contract with the Managing Agent shall further provide for the appointment to be revoked and the Managing Agent shall cease to hold office if:
 - 12.4.1 where the Managing Agent is a juristic person, an order is made for its provisional or final Liquidation, or applies for or is subjected to business rescue in terms of the Act; or
 - 12.4.2 where the Managing Agent is a natural person, he surrenders his estate as insolvent or his estate is sequestrated; or

- 12.4.3 the Managing Agent or its managers is convicted of an offence involving fraud or dishonesty; or
 - 12.4.4 where the Managing Agent is a juristic person, any of its Directors or members is convicted of an offence involving fraud or dishonesty; or
 - 12.4.5 a special resolution of the Members of the Company is passed to that effect;
provided that in such event the Managing Agent so removed from office shall not be deprived of any right it may have to claim compensation for work done properly during its tenure as Managing Agent.
- 12.5 The Managing Agent shall keep full records of his administration and shall report to the Company on all matters under its management, including which in its opinion detrimentally or negatively affect the value of any Property.
- 12.6 The Directors shall:
- 12.6.1 give reasonable prior notice to the Managing Agent of all relevant meetings of the Directors, and the Managing Agent or his representative shall be required to be present thereat,
 - 12.6.2 from time to time furnish to the Managing Agent copies of the minutes of all relevant meetings of the Directors and of The Company.
- 12.7 Although The Directors may appoint a Managing Agent in terms of this Clause 12, the duties and responsibilities referred to in Clause 12.1 remain with the Directors.

13 RESTRICTION ON THE TRANSFER, SUBDIVISION, CONSOLIDATION AND / OR REZONING OF LAND

- 13.1 A Member shall not transfer a Property unless:
- 13.1.1 The Company, under the hand of the Managing Agent (acting as agent for and on behalf of the Company) or a Director, has certified in writing that the Member has fulfilled all his financial obligations to the Company in respect of the period up to and including the date specified in such notice; and
 - 13.1.2 the transfer takes place on or before the date specified in the notice referred to in 13.1.1.
- 13.2 No Member shall sell or transfer or otherwise cease to be an owner of his property unless the proposed transferee has irrevocably agreed in writing, to the satisfaction of the Company, to become a Member of the Company and to be bound by the provisions of this Memorandum.
- 13.3 The Company may claim from any Member or his estate any arrears of Levy or interest or other amount due by him to the Company at the time of his ceasing to be a Member.
- 13.4 It is recorded that the title deed of each Property contains the following conditions:
- 13.4.1 When a person becomes the registered owner of any erf in the Scheme, he shall *ipso facto* become a Member of the company, and when he cease to be the owner of any such erf he shall *ipso facto* cease to be a Member of the company;
 - 13.4.1.1 A Member shall not sell or otherwise agree to alienate any portion of the Property unless it is a condition of such agreement that:

- 13.4.1.2 The person to which such Property or portion thereof is to be sold or otherwise to be alienated (the transferee) has bound himself, to the satisfaction of the Company, as a contract for the benefit of the Company, to become a Member of the Company upon the transfer of such Property to him.
 - 13.4.1.3 The registration of transfer of such Property to the transferee shall *ipso facto* constitute the transferee as a Member of the Company.
 - 13.4.1.4 All amounts due by the owner to the Company shall have been paid to the Company prior to date of transfer of any property within the Scheme.
 - 13.4.1.5 No Member shall let or otherwise part with occupation of any erf in the Scheme, whether temporarily or otherwise, unless he has, prior to the proposed occupier taking occupation of the erf in question, in writing agreed with the proposed occupier of any such land as a stipulation alter in favour of the company that such occupier shall be bound by all the terms and conditions of this Memorandum, and furthermore that all amounts due by the Member to the Home Owners Company have been paid in full.
 - 13.4.1.6 A registered owner of any erf in the Scheme may not resign as a Member of the Company.
 - 13.4.1.7 In the event that such conditions have for any reason whatsoever been omitted from any title deed, the registered owner of the property in issue hereby agrees to the registration of a notarial deed incorporating the above conditions, at the cost of the Company.
- 13.5 A member shall, subject to the provisions of Clauses 13.5.1 and 13.5.2 below, not subdivide, consolidate or rezone any Property without the prior written consent of the Company first having been obtained, which consent the Company shall be entitled to grant or refuse in the absolute discretion of the Board.
- 13.5.1 Notwithstanding the prohibition contained in Clause 13.5 above, the registered owner of Portion 2 of erf 20 shall be entitled to rezone and subdivide the said Portion 2 of Erf 20, subject thereto that such entitlement shall not pass to any purchaser and subsequent owner of any subdivision of the said Portion 2 of erf 20 without the prior written consent of the Board. **The provisions of this Clause 13.5.1 shall not be changed or amended in terms of the provisions of clause 35 without the prior written approval of the developer first having been obtained.**
- 13.5.2 The registered owner of Portion 2 of Erf 20 shall be obliged to allow the registration of appropriate servitudes over Portion 2 of Erf 20 in order to secure continuous and unhindered generation, storage and conveyance of electricity and water to the Scheme from the infrastructure constructed on Portion 2 of Erf 20.
- 13.6 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation:
- 13.6.1 Only a person that is a Member by virtue of being the registered owner of a property zoned for residential purposes within Aquavista Mountain Estate shall be entitled to acquire or become the registered owner of a Boat-locker.
- 13.6.2 Any Member disposing of his only or last Property zoned for residential purposes within Aquavista Mountain Estate, and such person also being the owner of a Boat-locker, shall only be entitled to so

dispose of the Property zoned for residential purposes simultaneously with the disposal of the Boat-locker in order to ensure that no person shall own a Boat-locker in the Scheme without also simultaneously being the registered owner of a property zoned for residential purposes..

13.6.3 If at the time of adoption of this Memorandum of Incorporation or any time thereafter, any person is the registered owner of a Boat-locker and not also the registered owner of Property zoned for residential purposes in Aquavista Mountain Estate, such person shall cease to be a Voting Member of the Company and shall only be entitled to dispose of and transfer such Boat-locker to a Member that is the registered owner of a Property zoned for residential purposes in Aquavista Mountain Estate.

14 GENERAL MEETINGS

14.1 The Company shall from time to time hold Annual General Meetings. Such meetings shall be held within not more than 9 (nine) months after the end of every ensuing financial year and within not more than 15 (fifteen) months after the date of the last preceding Annual General Meeting.

14.2 Members may only convene a General Meeting of the Company:

14.2.1 in compliance with the provisions of section 61(3)(b) of the Act; or

14.2.3 If so authorised in terms of an order of a competent court issued in terms of section 61(12) of the Act

14.3 The Directors:

14.3.1 May convene a General Meeting of the Company whenever they deem fit.

14.3.2 Shall convene a General Meeting if requisitioned in terms of the Act.

14.4 Subject to the provisions of the Act:

14.4.1 All General Meetings whether annual or otherwise; and

14.4.2 All adjourned General Meetings,

shall be held at such time and place, as the Directors shall appoint, provided that such venue is reasonably accessible to Members.

14.5 The Directors of the Company may, if a proposed resolution is received in time, include the proposed resolution in the notice of any meeting the Company has scheduled; or otherwise issue a copy of the proposed resolution to all Members by whatever convenient means, as quickly as possible, before the meeting, but within the period required for the notice or agenda to be circulated to Members.

15 NOTICE OF GENERAL MEETINGS

15.1 Not less than 15 (fifteen) clear days written notice shall be given of all Annual General Meetings or meetings called for the passing of a special resolution and not less than 10 (ten) clear days written notice shall be given of any other General Meeting:

15.1.1 in the manner set out in the Act, or in such other manner, if any, as may be prescribed by the Company in a General Meeting,

- 15.1.2 to such persons as are, in accordance with the provisions of The Memorandum read with the Act, entitled to receive notice of meetings from the Company.
- 15.2 The notice of a general meeting of Members must be in writing and must include-
 - 15.2.1 the date, time and place for the meeting, and the record date for the meeting;
 - 15.2.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a) of the Act, if applicable;
 - 15.2.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage voting rights that will be required for that resolution to be adopted;
 - 15.2.4 in the case of an annual general meeting of the Company-
 - 15.2.4.1 the financial statements to be presented or a summarised form thereof; and
 - 15.2.4.2 directions for obtaining a copy of the complete annual financial statements for the preceding financial year; and
 - 15.2.5 a reasonable prominent statement that-
 - 15.2.5.1 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member, or two or more proxies if the Memorandum of Incorporation of the Company so permits;
 - 15.2.5.2 a proxy need not also be a Member of the Company; and
 - 15.2.5.3 section 63(1) of the Act requires that meeting participants provide satisfactory identification.
- 15.3 Whenever notice of a meeting is given pursuant to this Clause, The Company shall forward a copy thereof to the auditors of The Company and to the Managing Agent.
- 15.4 Participation in General Meetings of the Company by electronic communication as provided for in Section 63 (2) of the Act will not be allowed.
- 15.5 An immaterial defect in the form or manner of giving 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 invalidate any action taken at the meeting.
- 15.7 Notice of meetings must be given or published in any manner or medium provided for in the Act or the Companies Regulations, 2011.

16. VERIFICATION OF RIGHT TO ATTEND MEETING

- 16.1 A person wishing to attend or participate in a Member's meeting (whether as a proxy or Representative or Member), must present reasonably satisfactory identification to the person presiding at the meeting before the time scheduled for the start of the meeting. The person presiding at the meeting must be reasonably satisfied that the right of the person to attend and vote has been reasonably verified. For the purposes of this Clause, the following forms of identification shall be reasonably satisfactory: a valid identity document, driver's license or passport (or a certified copy of any of these documents), and if the person attends as proxy, accompanied by a properly signed proxy form, power of attorney, letter of authority or other proper instrument appointing the proxy or person to attend the meeting on behalf of a Member.

- 16.2 In the event that the identification process is not completed by the time that the meeting is scheduled to begin, then the commencement of the meeting shall be delayed until the identification process is complete.

17. PROCEEDINGS AT GENERAL MEETINGS

- 17.1 The Annual General Meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors and the appointment and remuneration of an auditor.
- 17.2 The Annual General Meeting shall also deal with any other business laid before it only if such other business has been given proper notice of in the notice calling for the relevant meeting.
- 17.3 Subject to the provisions of Clause 17.8 below:
- 17.3.1 A general meeting of Members may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 10% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting, and, during the Development Period, the Developer is also presented at the meeting; and
- 17.3.2 A matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 10% 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, and, during the Development Period, the Developer is also presented at the meeting at such time.
- 17.4 No business shall be transacted at any General Meeting unless proper notice of such business has been given in the notice calling for the meeting and a quorum is present.
- 17.5 A corporate body, being a Member of the Company, and which is represented by a duly appointed representative, shall be deemed to be a Member personally present for the purpose of this Clause.
- 17.6 If:
- 17.6.1 within thirty minutes from the time appointed for the meeting: or
- 17.6.2 at or any time during the course of the meeting,
a quorum is not present; the meeting shall be adjourned.
- 17.7 an adjourned meeting shall stand adjourned to a date not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of the meeting as the Chairman may determine, and at the same time and place or, if not possible, at such other time and/or place as the Chairman of the meeting shall appoint.
- 17.8 If at such adjourned meeting a quorum is not present within 30 (thirty) minutes from the time appointed for holding the adjourned meeting, Members who are present in person or by way of proxy and are entitled to vote shall be a quorum and may transact the business for which the meeting was called.
- 17.9 The Chairman of the Board, or in his absence, the Deputy Chairman of the Board (if any) shall preside as Chairman at every General Meeting of the Company.
- 17.10 If at any general meeting neither the Chairman nor the Deputy Chairman of the Board is present within 15 (fifteen) minutes after the time appointed for the meeting, or if neither of them be willing to act as

- Chairman, The Directors present shall choose one of their number to act as such, but if one Director only is present, he shall preside as Chairman if he is willing to act.
- 17.11 In the absence of a Chairman in terms of Clause 17.9 or 17.10 above, the Voting Members present shall elect one of their number to act as Chairman.
- 17.12 The Chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by a majority vote of the meeting) adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting, except such business as may lawfully have been transacted at the meeting which was adjourned.
- 17.13 At a General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded:
- 17.15.1 by the Chairman of the meeting; or
 - 17.15.2 by a Director; or
 - 17.13.3 by not less than 3 Members having the right to vote at the meeting, either as a Voting Member or a proxy representing a Voting Member; or
 - 17.13.4 by a Voting Member or Voting Members representing not less than one-tenth of the total voting rights of all the Members present in person or by proxy and having the right to vote at the meeting.
- 17.14 Unless a poll be demanded, and the demand has not been withdrawn, a declaration by the Chairman of the meeting that a resolution has, on a show of hands, been passed or passed unanimously or by a particular majority, or rejected, an entry made to that effect in the minute book shall be conclusive evidence of that fact.
- 17.15 The result of a poll shall be deemed to be the resolution of the meeting at which the poll was held.
- 17.16 The Chairman of a meeting shall himself act, or appoint persons to act, as scrutineers for the purpose of checking the proxies received and for counting the votes at the meeting.
- 17.16.1 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution unless:
 - 17.16.1.1 it be brought to the attention of the Chairman at the meeting; and
 - 17.16.1.2 in the opinion of the Chairman of the meeting, it is of sufficient magnitude to vitiate the resolution.
 - 17.16.2 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised:
 - 17.16.2.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or
 - 17.16.2.2 at the meeting or adjourned meeting at which the result of the poll was announced, and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the Chairman of the meeting, whose decision shall be final and conclusive.
- 17.17. Even if he is not a Member:
- 17.17.1 any Director; or

- 17.17.2 the Company's attorney or auditor (or where such is a firm, any partner thereof); or
- 17.17.3 any advisor or consultant invited by The Directors to address the meeting on any issue on the agenda;
may attend and speak at any General Meeting, but may not vote unless he is a Voting Member or the proxy or representative of a Voting Member.

18. VOTES OF MEMBERS

- 18.1 At every General Meeting:
 - 18.1.1 Every Voting Member present in person or by proxy shall, subject to the provisions of Clause 6.2 above:
 - 18.1.1.1 on a show of hands, have 1 (one) vote; and
 - 18.1.1.2 on a poll, have 1 (one) vote in respect of each Property of which he is the registered owner;
- 18.2 Any corporate body, which is a Voting Member, may, by resolution of its Directors or other governing body, appoint a person to act as its representative at any General Meeting of the Company.
- 18.2.1 Such representative shall be entitled to exercise the same rights on behalf of the corporate body which he represents as that corporate body could exercise if it were an individual who was a Member of the Company.
- 18.2.2 The chairperson may, but shall not be obliged to require proof to his satisfaction of the appointment or authority of such representative.
- 18.3 The parent or guardian of a minor, the curator bonis of a mentally disturbed Voting Member, the liquidator of an insolvent Voting Member and the executor of the deceased estate of a Voting Member, may vote at any General Meeting in the same manner as if he was a Voting Member of the Company, provided that at least forty eight hours before the time of holding the meeting at which he proposes to vote, he shall satisfy the Directors that he is such parent, guardian, curator, liquidator or executor, or that the Directors have previously admitted his right to vote in respect of such Voting Member.

19. MEMBERS RESOLUTIONS

- 19.1 Every resolution of members is either an ordinary resolution or a special resolution.
- 19.2 For an ordinary resolution of Members to be approved, it must be supported by more than 50% of the voting rights exercised on the resolution.
- 19.3 For a special Resolution of Members to be approved, it must be supported by at least 61% of the voting rights exercised on the resolution.
 - 19.3.1 A special resolution is required to:
 - 19.3.1.1 Amend the Memorandum of Incorporation to the extent required by sections 16(1)(c) and 36(2)(b) of the Act.;
 - 19.3.1.2 Ratify a consolidated revision of the Memorandum of Incorporation as contemplated in section 18(1)(b) of the Act.;

- 19.3.1.3 Ratify actions by the Company or directors in excess of their authority, as contemplated in section 20(2) of the Act.;
- 19.3.1.4 Approve the voluntary winding up of the Company as contemplated in section 80(1) of the Act;
- 19.3.1.5 Approve the winding up of the company in circumstances contemplated in section 81(1) of the Act;
- 19.3.1.6 Approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Act.

20. PROXIES

- 20.1 The appointment of a proxy shall be in writing under the hand of the person making such appointment or his agent, duly authorised in writing.
- 20.2 If the appointee be a corporate body, the proxy shall be signed in the prescribed manner and by the person who binds that corporate body.
- 20.3 The agent under a proxy of a Member is entitled, if so authorised by the proxy, to vote on behalf of and represent such Member at any meeting of the Company.
- 20.4 A proxy need not be a Member of the Company.
- 20.5 The Directors may, if they think fit, send out with the notice of any meeting, forms of proxy for use at the meeting.
- 20.6 Every instrument of proxy, whether for a specified meeting or otherwise, shall be in the form or to the effect of the following, or in such other form as the Directors may approve, in either case under the heading of or referring to the Company's name:

AQUAVISTA HOME OWNERS ASSOCIATION (RF) NPC

"I/We,.....of.....
..... being a Member(s) [in respect of the
following
Property/ies:.....
.....]
of Aquavista Home Owners Association (RF) NPC hereby appoint
..... of
..... or failing him
.....
..... of or failing
him the Chairman of the meeting as my/our proxy to vote for me/us on my/our behalf at the
Annual General Meeting or General Meeting (as the case may be) of The Company to be

held on the day of and at any adjournment thereof as follows:			
	In Favour of	Against	Abstain
Resolution no.			
Resolution no.			
Resolution no.			

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

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

Signed this day of

Signature: _____

(Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a Member of The Company.)

Note:

- A Member entitled to attend and vote is entitled to appoint a proxy to attend and vote and speak in his/her stead. A proxy need not be a Member of the Company.
- The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be tabled at the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 months from the date of its execution.
- A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation had been received by the Directors at any time before a vote is taken in respect of which the proxy exercises such vote.
- No Member shall be permitted to attend the meeting if they do not produce upon request reasonable proof of their identity and authority to attend the meeting.
- The Member's attention is drawn to the Reproduction of Section 58 of the Companies Act, 2008, below.
- A certified copy of the documentation evidencing the Representative's power to execute this proxy form and his appointment is to accompany this proxy form.

Signed this day of 20.....

SIGNATURE

(NOTE: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a Member of the company.)

PLEASE NOTE THE FOLLOWING EXTRACT FROM THE COMPANIES ACT (as modified for a non-profit company in terms of section 10(4) of the Act):-

Member's right to be represented by proxy

58. (1) At any time, a member of a company may appoint any individual, including an individual who is not a member of that company, as a proxy to—

(a) participate in, and speak and vote at, a members meeting on behalf of the member;

or

(b) give or withhold written consent on behalf of the member to a decision contemplated in section 60, provided that the member may appoint more than one proxy to exercise voting rights attached to different voting rights held by the member.

(2) A proxy appointment—

(a) must be in writing, dated and signed by the member; and

(b) remains valid for—

(i) one year after the date on which it was signed; or

(ii) any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in subsection (4)(c), or expires earlier as contemplated in subsection (8)(d).

(3) Except to the extent that the Memorandum of Incorporation of a company provides otherwise—

(a) a member of that company may appoint two or more persons concurrently as proxies;

(b) a proxy may delegate the proxy's authority to act on behalf of the member to another person, subject to any restriction set out in the instrument appointing the proxy; and

(c) a copy of the instrument appointing a proxy must be delivered to the company, or to any other person on behalf of the company, before the proxy exercises any rights of the member at a members meeting.

(4) Irrespective of the form of instrument used to appoint a proxy—

(a) the appointment is suspended at any time and to the extent that the member chooses to act directly and in person in the exercise of any rights as a member;

(b) the appointment is revocable unless the proxy appointment expressly states otherwise; and

(c) if the appointment is revocable, a member may revoke the proxy appointment by—

(i) cancelling it in writing, or making a later inconsistent appointment of a proxy; and

(ii) delivering a copy of the revocation instrument to the proxy, and to the company.

- (5) The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the member as of the later of—
- (a) the date stated in the revocation instrument, if any; or
 - (b) the date on which the revocation instrument was delivered as required in subsection (4)(c)(ii).
- (6) If the instrument appointing a proxy or proxies has been delivered to a company, as long as that appointment remains in effect, any notice that is required by this Act or the company's Memorandum of Incorporation to be delivered by the company to the member must be delivered by the company to—
- (a) the member; or
 - (b) the proxy or proxies, if the member has—
 - (i) directed the company to do so, in writing; and
 - (ii) paid any reasonable fee charged by the company for doing so.
- (7) A proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent that the Memorandum of Incorporation, or the instrument appointing the proxy, provides otherwise.
- (8) If a company issues an invitation to members to appoint one or more persons named by the company as a proxy, or supplies a form of instrument for appointing a proxy—
- (a) the invitation must be sent to every shareholder who is entitled to notice of the meeting at which the proxy is intended to be exercised;
 - (b) the invitation, or form of instrument supplied by the company for the purpose of appointing a proxy, must—
 - (i) bear a reasonably prominent summary of the rights established by this section;
 - (ii) contain adequate blank space, immediately preceding the name or names of any person or persons named in it, to enable a member to write in the name and, if so desired, an alternative name of a proxy chosen by the member; and
 - (iii) provide adequate space for the shareholder to indicate whether the appointed proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting, or is to abstain from voting;
 - (c) the company must not require that the proxy appointment be made irrevocable; and
 - (d) the proxy appointment remains valid only until the end of the meeting at which it was intended to be used, subject to subsection (5).
- (9) Subsection (8)(b) and (d) do not apply if the company merely supplies a generally available standard form of proxy appointment on request by a member."

20.7 The instrument appointing a proxy to vote at a meeting of the Company shall be deemed also to confer authority to demand (or join in demanding) a poll, and for the purposes of The Act, a demand by a proxy shall be the same as a demand by a Member.

20.8 Any power of attorney and any 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 such power of attorney shall be deposited at the registered office or at such other place within South Africa as is specified for that purpose in the notice convening the meeting, not less than forty eight hours (excluding Saturdays, Sundays and public holidays) before the time appointed for holding the meeting or adjourned meeting at which the person named in such instrument proposes to vote.

- 20.9 If the power of attorney or other instrument of proxy is not deposited timeously, it shall not be treated as valid.
- 20.10 Unless specifically otherwise stated in the proxy, no instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date thereof.

21. DIRECTORS

21.1 Composition and Election or Appointment of the Board of Directors

- 21.1.1 This Memorandum does specify a higher number in substitution for the minimum number of directors required in terms of section 66(2) of the Act. The Board shall at all times consist of a minimum of 5 directors and shall at no time exceed 5 directors (in both instances excluding alternate directors).
[Sections 66(2) and 66(3)]
- 21.1.2 The Voting Members shall, subject to the provisions of Clauses 21.1.3.1 and 21.2 below, elect the directors in accordance with the provisions of section 68(1) of the Act. **[Section 66(1)]**
- 21.1.3 This Memorandum –
- 21.1.3.1 In terms of Clauses 21.1.3.1.1 and 21.1.3.1.2 below, does provide for the direct appointment or removal of directors. **[Section 66(4)(a)(i)]**
- 21.1.3.1.1 For the full duration of the Development Period, the Developer shall be entitled to directly appoint and remove 2 directors as envisaged in terms of section 66(4)(a)(i) of the Act. **[Section 66(4)(a)(i)]**
- 21.1.3.1.2 For the duration of the Development Period, 1 (one) director shall be appointed at each annual general meeting by consensus between the Developer and the majority (vote) of the Voting Members exercising votes at the said annual general meeting, from a choice of 4 (four) candidates, 2 (two) of which are nominated by the Developer and 2 (two) of which are nominated by the Voting Members (if the Voting Members nominate more than two candidates, they shall at such meeting first by way of majority vote elect their two final candidates) . If no such consensus can be reached at an annual general meeting, then the list of such 4 (four) nominees and candidates, together with their respective *curricula vitae*, shall be submitted by the Board to the then president of the Association of Residential Communities requesting him to elect in writing one of the 4 (four) candidates as the most suitable director in his sole and absolute discretion. Such written election by the president of the Association of Residential Communities of a director shall be final and binding on the Developer, all Members and the Company.
- 21.1.3.1.3 Does not provide for the appointment of any person as an *ex officio* director of the Company. **[Section 66(4)(a)(ii)]**
- 21.1.3.1.4 Does provide that during the Development Period, the 2 (two) directors not appointed in terms of Clauses 21.1.3.1.1 and 21.1.3.1.2 above, shall be elected by Voting Members at a general meeting of the Company. After the expiry of the Development Period, all of the directors of the Company shall be elected by Voting Members at a general meeting of the Company.

- 21.1.4 This Memorandum does not stipulate any additional qualifications or eligibility requirements other than those set out in the Act for a person to become or remain a director or a prescribed officer of the Company. **[Section 69(6)]**
- 21.1.5 Subject to the Act (*inter alia* sections 69 and 71 and item 5(1)(b) of Schedule 1 thereof) and this Memorandum, each director of the Company shall serve as such for an indefinite period, unless appointed for a specific period only.
- 21.1.6 This Memorandum specifically provides that the Board shall be prohibited from appointing any person to fill any vacancy and serve as a director on a temporary basis until the vacancy is filled by election or direct appointment in accordance with Article 21.1.3.1 above.
- 21.1.7 **For the full duration of the Development Period, this Clause 21.1 of this Memorandum of Incorporation shall not be altered or amended in any way whatsoever without the prior written approval of the Developer first having been obtained.**
- 21.2 Each of the Directors duly appointed or elected in terms of Clause 21.1 shall be entitled to appoint an alternate director (as envisaged in section 1 of the Act) to serve as a member of the board of the Company in substitution for the particular Director so appointing the alternate director. Such appointment shall be done in writing to the board and shall only take effect when the alternate director so appointed accepts the appointment in writing to the board. The Director so appointing an alternate director shall also be entitled at any time in writing to terminate the appointment of and remove such alternate director. Notwithstanding anything to the contrary herein contained, any person who is a supplier of goods or services to the Company, or a person who is related to or serves as director of or owns shares in such supplier of goods or services to the Company (save for the directors of the Developer), shall be automatically disqualified from serving as alternate director of the Company.
- 21.3 The Company shall have not less than 5 (five), or more than 5 (five) Directors (excluding alternate directors).
- 21.4 A Director need not be a Member of the Company.
- 21.5 On the expiry of The Development Period the Directors appointed by the Developer in terms of Clause 21.1.3.1.1 above shall remain Directors as if appointed and elected at an annual General Meeting until replaced at a further General Meeting.
- 21.6 Notwithstanding anything to the contrary herein contained, at least one third of directors elected by voting Members shall be elected each year **[Item 5(1)(b) of Schedule 1 to the Act]**.

22. REMUNERATION, DISQUALIFICATION AND INTERESTS OF DIRECTORS

22.1 Remuneration

- 22.1.1 This Memorandum does not limit, restrict or qualify the power of the Company to pay remuneration to its directors for their service as directors in accordance with the provisions of item 1(3) of Schedule 1 to the Act.

22.2 Vacation, removal and/or disqualification

22.2.1 Without prejudice to any contrary provisions in this Memorandum of Incorporation or the Act and subject to the provisions of Clause 21.1.3.1.1 above, the office of a Director shall be vacated in any of the following events:

22.2.1.1 if his estate is sequestrated or he assigns his estate or enters into a general compromise with his creditors;

22.2.1.2 if he is found to be or becomes of unsound mind;

22.2.1.3 if he is removed by a resolution of the Company in general meeting in terms of section 71(2) of the Act or by the Board in terms of section 71(3) of the Act and in full compliance with the provisions of section 71 of the Act.;

22.2.1.4 if he shall, pursuant to the provisions of the Act or any order made there under, be prohibited from acting as a Director;

22.2.1.5 if he resigns his office by notice in writing to the Company;

22.2.1.6 if:

22.2.1.6.1 he is absent from meetings of the Directors for three consecutive meetings without their leave of absence and otherwise than being away on the business of the Company, or fails to attend to the business of the Company for which he is responsible for more than three consecutive months; and

22.2.1.6.2 the Directors resolve that his office be, by reason of such absence, vacated, provided that the Directors shall have power to grant to any Director leave of absence for a definite or indefinite period.

22.2.2 A Director may hold any other office or position of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with his office of Director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.

22.2.3 A Director of the Company may be or become a director or other officer of, or otherwise own or control an interest in any other company and he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company.

22.3 Directors Personal Financial Interests

22.3.1 In this Clause the word "Director" shall include an alternate director; a prescribed officer and a person who is a member of a committee of the Board of the Company, irrespective of whether the person is also a member of the Company's Board; and "related person" when used in reference to a director, has the meaning set out in section 1 of the Act, but also includes a second company of which the Director or a related person is also a director, or a close corporation of which the Director or a related person is a member.

- 22.3.2 This provisions of Clause 22.3 does not apply to a Director of the Company in respect of a decision that may generally affect all of the Directors of the Company in their capacity as Director; or, a class of persons, despite the fact that the Director is one member of that class of persons, unless the only members of the class are the Director or persons related or inter-related to the director; or, in respect of a proposal to remove that Director from, office as contemplated in section 71 of the Act.
- 22.3.3 At any time a director may disclose any personal financial interest in advance, by delivering to the Board a notice in writing setting out the nature and extent of that interest, to be used generally for the purpose of this Clause until changed or withdrawn by further written notice from that Director.
- 22.3.4 If a director of the Company has a financial interest in respect of any matter to be considered at a meeting of the Board, or knows that a related person has a personal; financial interest in the matter, the director:
- 22.3.4.1 must disclose the interest and its general nature before the matter is considered at the meeting;
 - 22.3.4.2 must disclose to the meeting any material information relating to the matter, and known to the director;
 - 22.3.4.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other directors;
 - 22.3.4.4 if present at the meeting, must leave the meeting immediately after any disclosure contemplated in 22.3.4.1 and 22.3.4.2 above;
 - 22.3.4.5 must not take part in the consideration of the matter, except to the extent contemplated in 22.3.4.3 above;
 - 22.3.4.6 while absent from the meeting in terms of 22.3.4.4, is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and is not to be regarded as being present at the meeting for the purposes of determining whether a resolution has sufficient support to be adopted;
- 22.3.5 Must not execute any document on behalf of the company in relation to the matter unless specifically so requested or directed to do so by the Board.
- 22.3.6 If a director of the company acquires a personal financial interest in an agreement or other matter in which the company has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the company, the director must promptly disclose to the board the nature and extent of that interest, and the material circumstances relating to the director or related person's acquisition of that interest.
- 22.3.7 A decision by the Board, or a transaction or agreement by the Board is valid despite any personal financial interest of a director or person related to the director, only if:
- 22.3.7.1 it was approved following disclosure of that interest in the manner contemplated in this Clause 22.3; or
 - 22.3.7.2 despite having been approved without disclosure of that interest, it has subsequently been ratified by an ordinary resolution of the members following disclosure of that interest; or, has been declared to be valid by a court in terms of section 75(8) of the Act

23. RETIREMENT OF DIRECTORS

- 23.1 A Director retiring at a meeting shall retain office until the election of Directors at that meeting has been completed.
- 23.2 Retiring Directors shall be eligible for re-election.
- 23.3 No person, other than a Director retiring at the meeting shall, unless recommended by the Directors, be eligible for election to the office of a Director at any General Meeting, unless:
- 23.3.1 not more than fourteen, but at least seven clear days before the day appointed for the meeting, there shall have been delivered at the office a notice in writing by a Member duly qualified to be present and vote at the meeting for which such notice is given, and;
- 23.3.2 such notice sets out the Member's intention to propose a specific person for election as Director; and
- 23.3.3 notice in writing by the proposed person of his willingness to be elected is attached thereto.
- 23.4 Subject to the preceding Clause, the Company may at the meeting at which a Director retires, fill the vacated office by electing a person thereto and if no such election is made, the retiring Director, if willing to continue to act, shall be deemed to have been re-elected, unless:
- 23.4.1 it is expressly resolved at such meeting not to fill such vacated office; or
- 23.4.2 a resolution for the re-election of such Director shall have been put to the meeting and rejected.
- 23.5 The Board shall be entitled to appoint a suitable person as director for any casual vacancy that might occur on the board, which appointment shall be valid until the Company in General Meeting appoints a person as Director to fill such casual vacancy.

24. POWERS OF DIRECTORS

- 24.1 The management and control of the business and affairs of The Company shall be vested in The Directors who, in addition to the powers and authorities expressly conferred upon them by This Memorandum, may exercise all powers and authorities and perform all acts which may be exercised or done by The Company, and are not hereby or by The Act expressly reserved to The Company in General Meeting.
- 24.2 Such management and control may not be inconsistent with The Memorandum nor with the provisions of the Companies Act.
- 24.3 The general powers given by this Article shall not be limited or restricted by any special authority or power given to The Directors by any other Act.

25. DUTIES OF DIRECTORS TO KEEP MINUTES

- 25.1 The Directors shall cause minutes to be made of:
- 25.1.1 all appointments of prescribed officers made by the Directors;

- 25.1.2 the names of the Directors present at each meeting of the Directors;
 - 25.1.3 all resolutions and proceedings at each meeting of the Company;
 - 25.1.4 all resolutions passed by the Directors under Clause 26.10;
 - 25.1.5 all meetings of the Directors.
- 25.2 Minutes of any resolutions and proceedings mentioned in 25.1 appearing in one of the minute books of the Company, shall be proof of the facts therein stated if signed by:
- 25.2.1 any person purporting to be the Chairman of the meeting to which it relates; or
 - 25.2.2 any person present at the meeting and appointed by the Directors to sign in the Chairman's place; or
 - 25.2.3 the Chairman of a subsequent meeting of the Directors.
- 25.3 Any extracts from or copy of those minutes purporting to be signed by:
- 25.3.1 the Chairman of that meeting; or
 - 25.3.2 any Director; or
 - 25.3.3 the secretary,
- Shall be prima facie proof of the facts therein stated.

26. PROCEEDINGS OF DIRECTORS AND COMMITTEES

- 26.1 The Directors may meet for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, provided that such meetings are held at least quarterly.
- 26.2 Until otherwise determined by the Board, 3 (three) Directors shall form a quorum for a Board meeting.
- 26.3 Any Director may at any time convene a meeting of the Board.
- 26.4 The Board shall determine the number of days notice to be given for Board meetings, and the form of that notice, provided reasonable notice is always given.
- 26.5 The Board may elect a Chairman and a Deputy Chairman (to act in the absence of the Chairman) of their meetings;
- 26.6 If no Chairman or Deputy Chairman is elected, or if at any meeting the Chairman or Deputy Chairman is not present within ten minutes after the time appointed for holding the meeting, the Directors present shall choose one of their number to be Chairman at such meeting.
- 26.7 All questions arising at any meeting shall be decided by a majority of votes.
- 26.8 In case of any equality of votes, the Chairman shall not have a second or casting vote.
- 26.9 A meeting of the Directors at which a quorum is present shall be entitled to exercise all or any of the powers, authorities and discretions conferred by or in terms of the Memorandum of Incorporation, which are vested in or are exercisable by The Board generally.
- 26.10.1 Except to the extent that this Memorandum of Incorporation provides otherwise, a decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person or by electronic communication, provided that each Director has received notice of the matter to be decided.
- 26.10.2 A decision made in the manner contemplated in Clause 26.10.1 above is of the same effect as if it had been approved by voting at a meeting.

- 26.11 The meetings and proceedings of any committee consisting of three or more Directors, shall be governed by the provisions hereof in regard to meetings and proceedings of the Directors so far as the same are applicable thereto, but may be amended by any decision made by the Board when appointing such committee.
- 26.12 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a Member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or Member of such committee.
- 26.13 The Chairman and/or the Board shall be entitled to seek the advice and assistance of advisors and/or consultants to the Board from time to time and as the Chairman or Board, as the case may be, deem fit. For the purpose of providing such advice and assistance such advisors and/or consultants or any of them shall at the request of the Chairman or the Board as the case may be, be entitled to attend meetings of the Board and to participate therein, but not to vote on any issue considered thereat.

27. AUTHENTICATION OF DOCUMENTS

- 27.1 Any Director or any person appointed by the Directors for such purpose shall have power to authenticate:
- 27.1.1 this Memorandum;
 - 27.1.2 any resolutions passed by The Company or The Directors;
 - 27.1.3 any books, records, documents and accounts relating to the business of the Company, and to certify copies thereof or extracts there from as true copies or extracts.
- 27.2 Where any books, records, documents or accounts are elsewhere than at the registered office, the local Managing Agent or other officer of the Company or other person having the custody thereof shall be deemed to be a person duly appointed by the Directors for the abovementioned purpose.

28. BOOKS OF ACCOUNT AND ACCOUNTABILITY

- 28.1 The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Act, except to the extent contemplated in section 84(1)(c) of the Act.
- 28.2 The accounts of the Company must nevertheless be strictly audited, in accordance with standards to be determined by the Directors from time to time by resolution, but which may be no less than those imposed by IFRS Small Business Compliant auditing.
- 28.3 The financial year of the Company ends on the last day of February each year unless otherwise determined by the Directors.

29. MEMBERS RIGHTS TO INFORMATION

- 29.1 A Member has the right to inspect and make a copy of the following documents as contemplated in sections 24, 26 and 85 of the Act: and this Memorandum (as amended);
- 29.1.1 the record of Directors and the members register;
 - 29.1.2 reports presented at an Annual General Meeting;
 - 29.1.3 annual audited financial statements;
 - 29.1.4 minutes of all Members meetings; and
 - 29.1.5 written communications sent generally by the Company to all Members.

30. SERVICE OF NOTICES AND LEGAL PROCESS

- 30.1 Any notice or other document may be served by the Company upon any Member at his nominated address by:
- 30.1.1 delivering it to him personally; or
 - 30.1.2 despatching it by electronic mail or telefacsimile or post in a prepaid envelope addressed to such Member at his relevant address notified to the Company.
- 30.2 A Member shall be bound by every notice given to him in terms of Clause 30.1.
- 30.3 Each Member of The Company shall notify the Company in writing of his physical and postal address within the Republic of South Africa, and/or an electronic mail and/or telefacsimile address, any of which shall be his nominated address within the meaning of the last preceding Clause. The Company shall be entitled, but not obliged, to give notice to any Member who has not notified the Company of the addresses contemplated in the Clause, by publication thereof in a newspaper circulating in the area of Bronkhorstspuit.
- 30.4 No person other than a registered Member, alternatively such Member's executor, curator, trustee, liquidator or other legally appointed representative, as the case may be, whose address appears in the Register of Members shall be entitled to receive notice of General Meetings from the Company.
- 30.5 Any notice or other document, if served by post, shall be deemed to have been served on the third day after posting, and in proving such service, it shall be sufficient to prove that the notice or document was properly addressed, stamped and posted.
- 30.6 Any notice or other document, if served by hand, shall be deemed to have been served on the date of delivery.
- 30.7 Any notice or other document, if served by electronic mail, telefacsimile or other medium, shall be deemed to have been served on the day of transmission thereof.
- 30.8 Save as otherwise expressly provided, where a given number of days notice, or notice extending over any period is required to be given, the day of service shall not be counted in the number of days or other period.

30.9 All legal process may be served by or on behalf of the Company upon any Member at the address of any erf owned by him unless the register of Members has an alternate physical address as provided for in Clause 30.3. Such physical address, whether at his erf or at the address set out in the register, shall be a Member's nominated domicilium citandi et executandi. Each Member shall, upon request by the Company, furnish or confirm an email address for such member. If a Member has not confirmed or provided another email address within 7 (seven) business days of a request in writing by the Company, the address specified by the Company in its request shall be deemed to be the Member's domicilium email address.

30.10 For the purpose of this Memorandum, the Company chooses legal address for service, or domicilium citandi et executandi ("domicilium") as follows:

14 Long Street, 22 Versterpark Bronkhorstspruit 1020; P O Box 1462 Bronkhorstspruit 1020; Tel (013) 93 21815;

Fax. (013) 93 2294; Email: aquavista@penta-net.co.za

30.11 The Company or a member may change its domicilium at any time by notice in writing, provided that the new domicilium is in the Republic of South Africa and is a physical address at which process can be served.

31. INDEMNITY TO DIRECTORS

31.1 This Memorandum does not limit, restrict or qualify the ability of the Company to advance expenses to a director to defend any legal proceedings arising from his service to the Company, or to indemnify a director against such expenses if the proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director in terms of sections 78(5) and 78(6) of the Act. **[Section 78(4)]**

31.2 This Memorandum does not limit, restrict or qualify the power of the Company to indemnify a director, former director, alternate director or prescribed officer in respect of any liability arising out of the director's service to the Company to the fullest extent permitted under the provisions of section 78 the Act, provided however that, subject to the provisions of sections 78(4) to (6) of the Act, any provision of an agreement, this Memorandum of Incorporation or Rules of the Company, or a resolution adopted by the Company, whether express or implied, is void to the extent that it directly or indirectly purports to relieve a Director of a duty contemplated in section 75 or 76 of the Act; or liability contemplated in section 77 of the Act; or negate, limit or restrict any legal consequences arising from an act or omission that constitutes wilful misconduct or wilful breach of trust on the part of the Director. **[Section 78(5)]**

31.3 This Memorandum does not limit, restrict or qualify the power of the Company to purchase insurance to protect a director against any liability or expenses for which the Company is permitted to indemnify a director in terms of the Act and this Memorandum of Incorporation, or the Company against any contingency. **[Section 78(7)]**

32. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY

- 32.1 The income and property of the Company, howsoever derived, shall be applied solely towards the promotion of its main object and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any person who is or was an incorporator of the company, or who is a Member or director, or person appointing a director of the Company or to its controlling or controlled company; provided that nothing herein contained shall prevent payment in good faith of reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company; or as payment of an amount due and payable by the company in terms of bona fide agreement between the Company and that person or another; or as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or in respect of any legal obligation binding on the Company and not inconsistent with the provisions of this Memorandum of Incorporation.
- 32.2 For the purposes of Clause 33.1, the investment of Surplus profit shall be permissible, provided that any profits occurring on such investments are applied solely towards the promotion of the main object of the Company.
- 32.3 Funds available for investment may only be invested with a financial institution as defined in section 1 of the Financial Services Board Act, No 97 of 1990, and in any listed securities as defined in section 1 of the Financial Markets Act, No 19 of 2012.

33. WINDING UP

Despite any provision in any law or agreement to the contrary, upon the winding-up, de-registration or dissolution of the Company, no past or present Member or director of the Company, or person appointing a director of the Company, is entitled to any part of the net value of the company after its obligations and liabilities have been satisfied; and the entire net value of the Company must be distributed to one or more non-profit companies, registered external companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to the main object of the Company, and as determined in terms of this Memorandum of Incorporation, or by the Members of the Company or its directors, at or immediately before the time of its dissolution, or by the court, if this Memorandum of Incorporation or the Members or the directors fail to make such a determination.

34. DONATIONS AND DISTRIBUTION OF FUNDS

- 34.1 The Company may only make donations to other non-profit companies, voluntary associations or non-profit trusts having a main object similar to The Company's main objects.
- 34.2 The Company is not permitted to distribute its funds to any person other than a non-profit company, voluntary association or non-profit trust with main objects similar to those of the Company.

35. ALTERATION OF MEMORANDUM OF INCORPORATION

- 35.1 Save for Clauses 3.1.7, 3.1.16, 7.18, 13.5.1 and 21.1 of this Memorandum of incorporation, which require the prior written approval of the Developer for the amendment thereof, this Memorandum of Incorporation may be amended only if the proposed amendment is approved by a Special Resolution passed at a properly convened and constituted meeting of Members.
- 35.2 If this Memorandum of Incorporation is amended then the Board must file a Notice of Amendment of the Memorandum of Incorporation in accordance with the Act and the amendment will take effect on the date the Notice of Amendment is filed with the Companies and Intellectual Property Commission or such later date as is specified in the Notice of Amendment.
- 35.3. The Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in a manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by providing written notice of the proposed alteration to each Member. If none of the Members raise any objection to the proposed alteration to the effect that the proposed alteration exceeds the authority provided for in this Clause 36 within 5 (five) Business Days of receiving the notice of the proposed alteration, the Board may file the required Notice of Alteration. If any Member objects to the proposed alteration on the grounds aforesaid, the proposed alteration must be preceded by a Special Resolution.
- 35.4 The Board must publish a copy of the relevant alteration or amendment to the Memorandum of incorporation to each Member.
- 35.5 Any amendments to this Memorandum of incorporation shall be submitted to the South African Revenue Services.

36 GENERAL INDEMNIFICATION

- 36.1 It is recorded that:
 - 36.1.1 The Company constitutes a non-profit entity serving the communal interest of the Members in respect of their interests in the Aquavista Mountain Estate.
 - 36.1.2 The services to be rendered to the Members by the Company are essential and necessary services effectively rendered by the Company to the Members for the benefit of the Members and effectively at the cost of the Members as a whole.
 - 36.1.3 The company may from time to time supply some of the services to members itself or contract the supply of such services to independent third party contractors.

- 36.3 In order to protect the greater interests of the Members as a whole, it is provided that any unintentional or accidental or *bona fide* breach of the duties of the Company towards the Members or failure of any of the services supplied by the Company (or a contractor on behalf of the Company), shall not entitle any member to claim damages or compensation of any nature from the Company, save where *dolus*, dishonesty, *male fides* or intentional or deliberate misconduct by the Company or its representatives has given rise to such breach or failure to supply services resulting in material and financial damage.
- 36.4 Without affecting the generality of Clause 36.3 above, each member shall be responsible for the supply of adequate and proper security to his Property within the Aquavista Development and to procure the safety and well being of all persons (including family, guests and workers) allowed by him to enter the Aquavista Development.
- 36.5 Each Member hereby indemnifies and holds harmless the Company and its Board against any risk and liability in respect of any damage or loss not specifically provided for in this Memorandum, suffered by such member (or his family, guests or workers) resulting from any unintentional, incidental or accidental failure of services rendered by the company or its contractors in terms of this Memorandum of Incorporation.