

## **MEMORANDUM OF INCORPORATION**

of

### **SIMBITHI ECO-ESTATE HOMEOWNERS' ASSOCIATION NPC**

which is referred to in the rest of this Memorandum of Incorporation as “the Association”.

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

To provide, protect and advance the interests of owners of immovable property in the Estate (as defined herein), to protect, promote and maintain the essential services, security, amenities and activities in relation to the said property, to regulate the environment in the Estate and to control and co-ordinate development in the Estate with special regard to upholding of aesthetic standards which enhance the attractiveness of the Estate as a whole and which shall include but not be limited to:

1. To promote the development and maintenance of all properties within Simbithi Eco-Estate to ensure that all such properties are developed, maintained and managed in such a way as to derive benefit therefrom for the whole community of Simbithi Eco-Estate;
2. To enforce the provisions of the development and architectural controls for Simbithi Eco-Estate. In particular, and in no way detracting from the generality of the aforesaid, to ensure that all buildings and other structures erected within Simbithi Eco-Estate, as well as any external fixtures or fittings attached thereto, comply with the aforesaid controls and generally to ensure that the external appearance of all buildings and other structures and all gardens and other areas in Simbithi Eco-Estate, comply with the standards set out in the aforesaid document;
3. To promote, advance and protect the interests of members generally and to co-operate with the local authority, provincial government and all other appropriate authorities for the benefit of the Association and its members;
4. To represent the interests of members and to endeavour to provide a united voice by which such interests may be expressed or protected;
5. To collect levies and other contributions towards funds for the Association for the attainment of the objectives of the Association including the Simbithi Country Club;

6. To maintain and manage open spaces, internal roads and other common areas within Simbithi Eco-Estate, which the Association may own or may otherwise be responsible for, and to make and enforce regulations governing the use thereof by the members;
7. To manage, protect and enhance the natural environment, vegetation and fauna on Simbithi Eco-Estate and the biodiversity within the Estate;
8. To regulate the right to keep animals within Simbithi Eco-Estate;
9. To regulate the placing of movable objects outside buildings within Simbithi Eco-Estate and the storing of flammable and other harmful substances within Simbithi Eco-Estate;
10. To regulate the conduct of any person within Simbithi Eco-Estate and to promote harmonious relations on the Estate;
11. To impose financial penalties and other penalties upon members disobeying the Memorandum of Incorporation or the Rules made in terms thereof
12. To apply the provisions of the Memorandum of Incorporation and the Rules as between the Association and the members and between the members inter se.

**INDEX****PAGE NO**

1	INTERPRETATION	4
2	MEMBERSHIP	7
3	GENERAL MEETINGS	11
4	INSPECTION OF MINUTES	17
5	DIRECTORS (TERMS OF OFFICE)	17
6	REIMBURSEMENT OF DIRECTORS	18
7	POWERS AND DUTIES OF DIRECTORS	19
8	MINUTES (DIRECTORS)	23
9	DISQUALIFICATION OR RESIGNATION OF DIRECTORS	23
10	PROCEEDINGS AT MEETINGS OF DIRECTORS	24
11	DELEGATION OF POWERS OF DIRECTORS	26
12	SECTIONAL TITLE, SHAREBLOCK & TIMESHARE SCHEMES	26
13	FINANCE	27
14	ACCOUNTING RECORDS	31
15	ANNUAL FINANCIAL STATEMENTS	32
16	AUDITOR	32
17	NOTICES	32
18	WINDING-UP OF ASSOCIATION	34
19	DESIGN REVIEW COMMITTEE	34
20	REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE ESTATE	34
21	ENFORCEMENT OF OBLIGATIONS OF OWNERS	38
22	DISCLAIMER OF RESPONSIBILITY	38
23	PROHIBITION AGAINST THE SUB-DIVISION AND CONSOLIDATION OF ANY PROPERTY	39
24	ENVIRONMENTAL MANAGEMENT PLAN	39
25	LADLAU FAMILY PROPERTY	39
26	SIMBITHI COUNTRY CLUB	40
27	AMENDMENT TO MEMORANDUM OF INCORPORATION	40

The Memorandum of Incorporation is as follows:

## 1. INTERPRETATION

- 1.1. In this Memorandum of Incorporation, unless the context otherwise requires -
- 1.1.1. “Act” means the Companies Act No. 71 of 2008 as amended from time to time;
- 1.1.2. “Association” means the Simbithi Eco-Estate Homeowner’s Association NPC Registration Number 2004/009153/08;
- 1.1.3. “Board” means the Board of Directors of the Association for the time being;
- 1.1.4. “Body Corporate” means a body corporate as defined in Section 1 of the Sectional Titles Act;
- 1.1.5. “Common Use Areas” means all property including but not limited to, open spaces, roads, community facilities, water-ways and dams and other common areas of the Estate registered in the name of the Association;
- 1.1.6. “Design Review Committee” means the committee as provided for in clause 19 hereof;
- 1.1.7. “Development Controls” means the design guidelines and other controls of and applicable to the Association and/or any of its members, a copy of which is available from the offices of the Association, which may be amended, from time to time, subject to the provision of this Memorandum of Incorporation;
- 1.1.8. “Development Site” means a piece of property on which more than one dwelling unit may be erected in terms of the Scheme;
- 1.1.9. “the Estate” means the Simbithi Eco-Estate, the boundaries of which are shown on the plan attached hereto marked **Annexure “K”** and includes the Simbithi Country Club;
- 1.1.10. “Directors” means the directors of the Association for the time being;

- 1.1.11. “Environmental Management Plan” means both:
- 1.1.11.1. the Environmental Management Plan for construction prepared by G Nicolson dated 29 March 2004 approved by the environmental authorities; and
- 1.1.11.2. the Operational Environmental Management Plan to be approved of by the Board, for the ongoing protection and management of the environment on the Estate and which may be amended from time to time by the Board),
- copies of which are available from the offices of the Association.
- 1.1.12. “individual ownership” means ownership by a natural or juristic person or persons;
- 1.1.13. “Initial AGM” means the Annual General Meeting at which this Memorandum of Incorporation was first approved of, and adopted by, Members;
- 1.1.14. “property” means any land in the Estate, including any subdivision capable of individual ownership, whether such land is improved or not, or a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established on any such land or the right to extend a sectional title scheme by the erection of a unit (as contemplated in Section 25 of the Sectional Titles Act) where a sectional title scheme has been established on any such land;
- 1.1.15. “General Manager” means the person, corporation or association appointed by the Association, from time to time, to undertake the management of the Estate;
- 1.1.16. “Member” means an Owner;
- 1.1.17. “Memorandum of Incorporation” means the Memorandum of Incorporation for the time being of the Association;

- 1.1.18. “Municipal Services” means water, electricity, sewage, refuse removal, telecommunications and such other utilities and services as may be provided by the Local Authority or other service provider to the Estate, from time to time;
- 1.1.19. “office” means the registered office of the Association for the time being;
- 1.1.20. “Owner” means any person who is the registered owner of property or an undivided share in property;
- 1.1.21. “Property Time-Sharing Scheme” means a property time-sharing scheme as defined in the Property Time Share Control Act No. 75 of 1983 as amended and any regulations in force thereunder from time to time;
- 1.1.22. “roads” means all roads in the Estate, which roads are privately owned and controlled by the Association;
- 1.1.23. “Rules” mean the rules made by the Board in accordance with the provisions of clause 7.5 hereof as well as any regulations, guidelines, controls and protocols relating and/or ancillary thereto either adopted by the Board or its Design Review Committee from time to time or imposed by any competent authority;
- 1.1.24. “Scheme” means the applicable land use management and/or town planning scheme to which property in the Estate is subject;
- 1.1.25. “Sectional Titles Act” means the Sectional Titles Act No. 95 of 1986 (as amended) and any regulations in force thereunder from time to time;
- 1.1.26. “Services” means security, administration, maintenance of the Common Use Areas and such other utilities or services as may be provided by the Association from time to time;
- 1.1.27. “Share Blocks Control Act” means the Share Blocks Control Act No. 59 of 1980 (as amended) and any regulations in force thereunder from time to time.
- 1.2. Words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act.

- 1.3. Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include the others of such genders; and words importing persons shall include bodies corporate, and vice versa in each instance.
- 1.4. The heading above any of the clauses is intended for reference purposes only and shall not influence the interpretation of the Memorandum of Incorporation.
- 1.5. Where an expression has been defined and such definition contains provisions conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in this Memorandum of Incorporation.

## **2. MEMBERSHIP**

### **2.1. Membership of Association**

- 2.1.1. Membership of the Association shall be obligatory for an Owner.
- 2.1.2. No Owner shall transfer property unless it is a condition of such transfer that the transferee, in a manner acceptable to the Association, agrees to become a Member and is admitted as a Member in terms of clause 2.2. Membership shall commence with effect from any person becoming an Owner.
- 2.1.3. In order to procure compliance with the provisions of this Memorandum of Incorporation, it shall be registered as a Condition of Ownership of property that no property shall be alienated without the written consent of the Association first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a Member of the Association and the transferor has complied with all his obligations to the Association (including but not limited to the payment of any monies due to the Association by such transferor). For the purposes of this clause “alienate” means to alienate any property or part thereof, and in no way detracting from the generality of the aforesaid, includes by way of sale, exchange, donation, deed, intestacy, will, cession, mortgage, assignment, court order or insolvency, irrespective as to

whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition. In the case of an artificial person, such as a company, close corporation or trust, the material change in the “beneficial ownership” or in the “controlling interest” thereof, shall be deemed to constitute an alienation for the purposes of this Memorandum of Incorporation and, in the event of there being any dispute as to whether there has been a material change in “beneficial ownership” or in the “controlling interest”, such matter shall be referred to the Association’s Auditors whose decision shall be final and binding.

2.1.4. In the event of any property being owned in undivided shares by more than one Owner such co-owners shall nominate one of them to be the Member for the purposes of this Memorandum of Incorporation provided that all joint owners shall be bound by this Memorandum of Incorporation as if they were Members. Such nomination shall be made in writing to the Association within 7 (Seven) days of such co-owners becoming Members of the Association in terms of this Memorandum of Incorporation. In the event of any co-owners failing to make the aforesaid nomination, then in that event, the Association shall presume, until notified otherwise by the co-owners in question in writing, that the owner listed first on the title deed to the property in question is the party nominated by the co-owners for all purposes of this Memorandum of Incorporation.

2.1.5. A Member may not tender resignation of his membership of the Association.

## 2.2. **Admission of Members**

2.2.1. The Members of the Association shall be those persons who, from time to time, become Members in accordance with the provisions of this Memorandum of Incorporation.

2.2.2. The right to determine admission to membership of a proposed acquirer of property is hereby conferred upon the Board. In this regard, the Board shall not be entitled to decline to admit to membership an applicant in the event of the applicant having undertaken, in writing, to comply with this Memorandum of Incorporation and the party from whom the applicant is taking transfer of



property, has complied with this Memorandum of Incorporation and the Rules (and in no way detracting from the generality of the aforesaid), has made payment of any amounts due by such transferor to the Association.

### 2.3. **Rights and duties of Members**

2.3.1. Subject to the rights of membership as prescribed by the Act, membership of the Association shall confer upon a Member, unless otherwise stipulated, the following rights:

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

2.3.1.2. the right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for such copy, the information contained in the records of the Company as listed in Section 26 of the Act, which it is recorded includes the following, namely:

2.3.1.2.1. the Company's Memorandum of Incorporation and any amendments to it and any Rules made by the Company;

2.3.1.2.2. the records in respect of the Company's directors;

2.3.1.2.3. the reports to annual meetings and annual financial statements;

2.3.1.2.4. the notices and Minutes of annual meetings and any communications to the members and

2.3.1.2.5. the register of members;

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

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

2.3.1.5. should Members holding between them, in aggregate, not less than 10% (Ten Percent) of the voting rights in the Association, collectively so decide, they shall have the right to requisition the convening of a general meeting in terms of Section 61(3) of the Act.

2.3.2. No Member shall, by reason of membership of the Association, be entitled to share in or receive any profit of the Association.

## 2.4. **Cessation of Membership**

2.4.1. Membership of the Association shall cease:

2.4.1.1. upon a Member ceasing to be an Owner;

2.4.1.2. upon the issue of a final order of sequestration or liquidation of the Member concerned; or

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

2.4.2. In the event of a Member ceasing to be a Member in terms of clause 2.4.1.2 or 2.4.1.3 the legal representative of such Member shall, for all purposes, be recognised and be bound as the Member under this Memorandum of Incorporation.

## 2.5. **Liability of each Member**

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

## 2.6. **Register of Members**

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

## 3. **GENERAL MEETINGS**

### 3.1. **Annual General Meeting**

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

### 3.2. **Notice of General Meeting**

Any general meeting, including a meeting calling for the passing of a special resolution, shall be called by not less than 21 (Twenty One) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it was given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in a general meeting, to such persons as are, under this Memorandum of Incorporation, entitled to receive such notices from the Association; provided that a meeting of the Association shall, notwithstanding the fact that it is called by shorter notice than that specified in this Memorandum of Incorporation, be deemed to have been duly called if it is so agreed by all the Members having a right to attend the meeting.

### 3.3. Proceedings at General Meetings

#### 3.3.1. Business

The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the audited annual financial statements, a decision on the number of Directors; and election of Directors when such decision is required in accordance with the provisions of this Memorandum of Incorporation, and the appointment of an auditor, and any other business of which due notice has been given. All business laid before any other general meeting shall be considered special business.

#### 3.3.2. Quorum

##### 3.3.2.1. A quorum for:

3.3.2.1.1. a general meeting, shall be Members holding between, in aggregate, not less than 10% (Ten Percent) of the voting rights in the Association, present, in person or by proxy, and entitled to vote

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

3.3.2.2. If within half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to a date not earlier than 7 (Seven) days and not later than 21 (Twenty One) days after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person shall be a quorum. Members must be given notice of the adjourned meeting.

### 3.3.3. **Chairman**

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

3.3.3.2. The chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. Members must be given notice of the adjourned meeting.

### 3.3.4. **Voting**

3.3.4.1. At a general meeting an ordinary resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (at any time before or on the declaration of the result of the show of hands) demanded by the Chairman or by:

3.3.4.1.1. at least 5% (five percent) of the persons present who have the right to vote on that matter, either as a Member or a proxy representing a Member; or

3.3.4.1.2. a person who is, or persons who together are, entitled, as a Member or proxy representing a Member, to exercise at least 10% (Ten Percent) of the voting rights entitled to be voted on that matter.

3.3.4.2. A declaration by the Chairman that a resolution has, on a show of hands, been carried or not carried, and an entry to that effect in a book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of votes recorded in favour of or against such resolution.

- 3.3.4.3. A demand for a poll may be withdrawn. If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting in which the poll was demanded. Scrutineers shall be elected to determine the result of the poll.
- 3.3.4.4. On a show of hands, any person who is present at the meeting whether as a member or as proxy for a member and entitled to exercise voting rights has one vote, irrespective of the number of votes held in terms of clause 3.3.6. On a poll any person who is present at the meeting whether as a member or as proxy for a member, has the number of votes conferred in terms of clause 3.3.6. In the case of equality of votes, whether on a show of hands or on a poll, the Chairman of a meeting at which a show of hands took place, or at which a poll is demanded, shall be entitled to a second or casting vote.
- 3.3.5. **Proxy**
- 3.3.5.1. The instrument appointing a proxy shall be signed by the appointer. A pro-forma copy of such instrument which meets the Associations requirements in terms of this Memorandum of Incorporation, must be circulated by the Association with the notices calling for any general meeting of the Association.
- 3.3.5.2. The instrument appointing a proxy shall be deposited at the office of the Association or with the Chairman of the meeting, before the commencement of the meeting at which the person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless the proxy otherwise provides.
- 3.3.5.3. The instrument appointing a proxy shall be in the form determined by the Board from time to time.
- 3.3.5.4. A vote in accordance with the terms of an instrument of proxy shall be valid

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

3.3.6. **Votes of Members**

Each Member present at a meeting of the Association, in person or by proxy, shall be entitled to one vote for each piece of property which such Member (or the Owner of which he is the nominee) owns.

3.3.7. **Resolutions of Members**

3.3.7.1. For an ordinary resolution to be approved of by Members, it must be supported by more than 50% (Fifty Percent) of the voting rights exercised on the resolution.

3.3.7.2. For a special resolution to be approved of by members, it must be supported by at least 75% (Seventy Five Percent) of the voting rights exercised on the resolution.

3.3.7.3. An ordinary resolution in writing signed by the holders of more than 50% (Fifty Percent) of the voting rights which may be exercised on the resolution and a special resolution in writing signed by the holders of at least 75% (Seventy Five Percent) of the voting rights which may be exercised on the resolution, within 20 (twenty) business days after the resolution was submitted to them, has the same effect as if it had been approved by voting at a meeting of Members. The written resolution may be signed in counterparts.

3.3.7.4. For the purposes of clause 3.3.7.3, “in writing” includes a resolution voted on electronically.

3.3.7.5. Within ten business days after the adoption of a resolution in the manner provided for in clause 3.3.7.3, the Association must deliver a statement describing the results of the vote to every Member who was entitled to vote on the resolution.

- 3.3.7.6. In addition to those matters listed in section 65(11) of the Act which require a special resolution, and any other provision of this Memorandum of Incorporation requiring a special resolution, none of the following actions may be taken or done or allowed to be taken and done and the Association and its Members must procure that none of the following actions are taken or done with respect to the Association and whether by the Board or Members without a special resolution of the Members:
- 3.3.7.6.1. any variation, amendment or alteration to the Memorandum of Incorporation;
  - 3.3.7.6.2. the issue of any debt instruments as contemplated in section 43 of the Act;
  - 3.3.7.6.3. the voluntary liquidation of the Association;
  - 3.3.7.6.4. the de-registration of the Association;
  - 3.3.7.6.5. the commencement of business rescue proceedings in respect of the Association by any means;
  - 3.3.7.6.6. the formation, incorporation, acquisition or disposal by the Association of any subsidiary;
  - 3.3.7.6.7. the change in the basis of accounting or accounting policies used during the immediately preceding financial year;
  - 3.3.7.6.8. any change in the financial year of the Association;
  - 3.3.7.6.9. the incurring of any capital expenditure by the Association exceeding R2 000 000 (Two Million Rand) in aggregate;
  - 3.3.7.6.10. the adoption by the Association of any tax schemes not in the ordinary and regular course of business of the Association;



- 3.3.7.6.11. the approval of any investment outside the ordinary and regular course of business of the Association; or
- 3.3.7.6.12. the acquisition or disposal of immovable property by the Association.

#### 3.4. **Electronic Participation in Members Meetings**

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

### 4. **INSPECTION OF MINUTES**

The minutes kept of every general meeting and annual general meeting of the Association under Section 24 of the Act, may be inspected and copied as provided in Section 26 of the Act.

### 5. **DIRECTORS (TERMS OF OFFICE)**

- 5.1. The number of Directors and the election thereof shall be determined from time to time by the Members in a general meeting provided that there shall be a minimum of 6 (SIX) Directors and a maximum of 9 (NINE) Directors.
- 5.2. A retiring Director shall be eligible for re-election, save:
  - 5.2.1. as is set out in clause 9 and
  - 5.2.2. as otherwise decided upon by Members at a general meeting, each Director shall hold such office for a period of 2 (Two) years after which, each Director shall be deemed to have retired from office as such but shall be eligible for re-election to the Board at such meeting; provided that at least one third of the Board members are elected each year as required in terms of Schedule 1, Item 5(1) (b) of the Act.

- 5.3. If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Board shall act promptly to bring the number of Directors up to the requisite level. The validity of any resolutions taken or acts performed by the Directors during a period when the number falls short of that provided in 5.1 above shall not be prejudiced by such shortfall.
- 5.4. The appointment by the Board of any Director to fill any vacancy for whatever reason, shall be made within 45 (Forty Five) days of the date upon which such vacancy occurs and Members notified accordingly. Directors so appointed by the Board will retire at the next Annual General Meeting and be eligible for re-election.
- 5.5. The Board shall have the power to co-opt advisors to the Board for the purposes of assisting the Directors in carrying out any of their functions. Any person so co-opted shall not be entitled to vote on any matter which comes up for consideration by the Board.
- 5.6. The Chairman and Deputy Chairman shall be elected by the Board at their first meeting after the Annual General Meeting of the Association which meeting shall take place within 14 (FOURTEEN) days of the Annual General Meeting pending which one of the continuing Directors will act as Interim Chairman.
- 5.7. For the purposes of this clause 5, a year shall mean the period between consecutive Annual General Meetings.
- 5.8. The appointment or election of alternate directors is not permitted in terms of this Memorandum of Incorporation.

## **6. REIMBURSEMENT OF DIRECTORS**

- 6.1. Nothing in this Memorandum of Incorporation shall prohibit a Director from:
- 6.1.1. receiving payment per month in respect of anticipated incidental expenses incurred by a Director in the execution of his duties (including but not limited to petrol, cellular telephone and data and other expenses) equal to the greater of R500 (Five Hundred Rand) or 25% (Twenty Five Percent) of the equal monthly

levy contribution (excluding special levies or other amounts which may be debited to an Owners levy account in specific instances arising from the provisions of the Memorandum of Incorporation or Rules, for example, financial penalties and costs attributable to any particular property) payable by Members pursuant to clause 13.3;

- 6.1.2. receiving payment from the Association equal to the amount of the levy contribution (excluding special levies or other amounts which may be debited to an Owners levy account in specific instances arising from the provisions of the Memorandum of Incorporation or Rules, for example, financial penalties and costs attributable to any particular property) payable by Members in accordance with clause 13.3 for his services as a director of the Association, the intention being to grant Directors a (ordinary) levy holiday;
- 6.1.3. receiving a discount of 10% (Ten Percent) in addition to the existing 15% (Fifteen Percent) members discount for all restaurant and bar purchases at the Simbithi Country Club,
- for the duration of his term of office as Director.

## **7. POWERS AND DUTIES OF DIRECTORS**

- 7.1. The business of the Association shall be managed by the Board who may on behalf of the Association, exercise all such powers of the Association that are not required by the Act, or by this Memorandum of Incorporation, to be exercised by the Association in a general meeting.
- 7.2. Without in any way affecting the generality of clause 7.1 the Board shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this Memorandum of Incorporation.
- 7.3. The Board may, pursuant to their rights, obligations and duties in terms of this Memorandum of Incorporation and as provided for and contemplated under this Memorandum of Incorporation, incur such expenditure as is necessary and/or requisite and howsoever arising to enable them to give proper effect to the provisions of this Memorandum of Incorporation.

7.4. The Association in a general meeting, shall have the right to limit and restrict the powers of the Board, provided that no resolution of the Association shall invalidate any prior act of the Directors which was valid at the date of the act.

7.5. **Rules**

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

7.5.2. In no way detracting from the generality of the aforesaid, the Board may from time to time make rules, applicable within the Estate, specifically in regard to:

7.5.2.1. the preservation of the natural environment;

7.5.2.2. vegetation and flora and fauna in the Estate;

7.5.2.3. the storing of flammable and other harmful substances;

7.5.2.4. the conduct of any persons within the Estate and the prevention of nuisance of any nature to any owner of immovable property in the Estate;

7.5.2.5. the use of Common Use Areas;

7.5.2.6. the imposition of financial penalties to be paid by Members of the Association and persons appointed to do work on the Estate;

7.5.2.7. the management, administration and control of the Common Use Areas and the Simbithi Country Club;

- 7.5.2.8. the erection of all buildings and other structures on the Estate (including, but in no way limited to, service connections to buildings);
- 7.5.2.9. levels of service and appointment criteria of contractors, consultants, architects and other service providers employed to carry out work or perform any services on the Estate;
- 7.5.2.10. the establishment, installation and maintenance of gardens, both public and private (including prescribing the levels of service and appointment criteria of landscape architects, landscape contractors and garden maintenance personnel);
- 7.5.2.11. the use by owners or their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings,
- 7.5.2.12. the right to keep any animals;
- 7.5.2.13. the use of recreation and entertainment areas and amenities and the right to charge a reasonable amount for such use;
- 7.5.2.14. the control of business activities in the Estate and the use of property within the Estate;
- 7.5.2.15. the sale and letting of property on the Estate and the levels of service and appointment criteria of estate agents and letting agents, to sell and let property on the Estate
- 7.5.2.16. the appointment of managing agents to manage sectional title schemes on the Estate.

and generally in regard to any other matter which the Board from time to time considers appropriate.

- 7.5.3. The Board must publish any proposed Rule to be made in terms of this clause 7.5 by

way of notice to all Members within a reasonable time and any Rule proposed by the Board will take effect on the date specified in the notice.

- 7.5.4. Any Rule that takes effect as contemplated in clause 7.5.3 above will remain binding on an interim basis until put to a vote at the next general meeting of the Association and will become permanently binding if ratified by ordinary resolution of the Members.

## 7.6. **Enforcement of Rules**

- 7.6.1. The Board may take or cause to be taken such steps as they may consider necessary to remedy the breach of any Rules of which the Member may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member to the Association. In addition, the Board may impose a system of fines or other penalties. The amounts of such fines and/or penalties shall be determined by the Board from time to time.
- 7.6.2. In the event of any breach of the Rules by any tenant or occupier of any property owned by the Member, or any person who enters the Estate by virtue of the Member's rights thereto, such breach shall be deemed to have been committed by the Member and the Board shall be entitled to take such action as they deem fit against the responsible Member.
- 7.6.3. Notwithstanding the foregoing, the Board, may in the name of the Association enforce the provisions of any Rules by an application in a Court of competent jurisdiction and for this purpose may appoint such attorneys or counsel as they may deem fit.
- 7.7. Any Rules made by the Board shall reasonably be in the interests of the Association.
- 7.8. The Rules made by the Board from time to time in terms of the powers granted to them shall be binding on all Members.
- 7.9. Notwithstanding the provisions of clause 10, the Development Controls may only be amended from time to time by a two-third majority of the full Board and such

amendments shall be subject to the requirements for notice contained in clause 7.5.3 and ratification by members contained in clause 7.5.4.

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

## **8. MINUTES**

- 8.1. The Board shall in terms of the Act cause Minutes to be kept:
- 8.1.1. of all appointments of officers;
- 8.1.2. of names of Directors present at every meeting of the Association and at every meeting of the Board; and
- 8.1.3. of all proceedings at all meetings of the Association and/or the Board.
- 8.2. Such Minutes once they are approved as a true record of proceedings, shall be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the following meeting.

## **9. DISQUALIFICATION OR RESIGNATION OF DIRECTORS**

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

- 9.1. ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provision of the Act or this Memorandum of Incorporation; or
- 9.2. resigns his office by notice in writing to the Association; or

- 9.3. becomes insolvent or assigns his estate for the benefit of or compromises with his creditors; or
- 9.4. is mentally incapacitated; or
- 9.5. is absent for three consecutive regular meetings of the Board without obtaining prior leave of absence; or
- 9.6. if compelled to do so by any provision of the Act (and in particular, Section 69 of the Act).

## **10. PROCEEDINGS AT MEETINGS OF DIRECTORS**

- 10.1. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit but shall meet at least 4 (Four) times during a financial year.
- 10.2. A Director may, on 7 (Seven) days' written notice to all other Directors at any time, summon a meeting of the Directors.
- 10.3. The quorum necessary for the transaction of the business of the Directors shall be at least 50% (Fifty Percent) of the total number of Directors.
- 10.4. If at a meeting neither the Chairman nor the Deputy Chairman is present within 10 (Ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman for that meeting.
- 10.5. Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person. Each Director shall be entitled to exercise 1 (One) vote. Subject to the aforesaid, in the event of an equality of votes the Chairman shall have a second or casting vote.
- 10.6. All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any person acting as a Director, notwithstanding that it



be afterwards discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such person acting as Director in a meeting of Directors or a committee of Directors had been duly appointed and had qualified to be a Director.

10.7. A resolution signed by all of the Directors shall be a valid resolution of the Board notwithstanding that such resolution may not have been passed at a meeting of Directors.

#### 10.8. **Committees**

10.8.1. The Board may delegate any of their powers to committees consisting of such persons as they think fit, the chairman of which committees may be appointed by the Board. Any committee so formed shall be in an advisory capacity to the Board and in relation to its powers delegated and shall report to and be responsible to the Board and in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Board.

10.8.2. Should the Board not appoint the chairman of a committee, the members of that committee shall elect a chairman of its meetings. If at any meeting the chairman is not present within 10 (Ten) minutes after the time appointed for holding the same, the committee members present may elect one of their number to be chairman for that meeting.

10.8.3. A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee members present and in the event of an equality of votes the chairman shall have a second or casting vote.

#### 10.9. **Limitation of Liability of Directors**

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

- 10.9.2. The authority of the Association to advance expenses to a director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78(4) is not limited, restricted or extended by this Memorandum of Incorporation.
- 10.9.3. The authority of the Association to indemnify a director in respect of liability, as set out in section 78(5) is not limited or restricted by this Memorandum of Incorporation.
- 10.9.4. The Association shall procure sufficient insurance to protect the Association, and its directors, as set out in section 78(7).

## **11. DELEGATION OF POWERS OF DIRECTORS**

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

## **12. SECTIONAL TITLE, SHAREBLOCK & TIMESHARE SCHEMES**

- 12.1. The Association shall carry out all the functions and assume all powers as provided for in the Sectional Titles Act (and in particular Sections 37 and 38 thereof) as the Association may require to be delegated to it by the relevant Body Corporate in relation to any Sectional Title Scheme on the Estate. In addition to the foregoing any Body Corporate of any Sectional Title Scheme on the Estate, shall assign such powers and functions to the Association as may be required of it by the Association.
- 12.2. The rules of any Sectional Title Scheme on the Estate, must be aligned with and at all

times be subservient to, and shall in no way conflict with, this Memorandum of Incorporation and any Rules of the Association.

- 12.3. It shall be the responsibility of each Sectional Title Scheme on the Estate to immediately, and on an on-going basis, furnish the Association with its current and any updated versions of their applicable Management and Conduct Rules, as well as Management accounts and latest Annual Financial Statements.
- 12.4. No Shareblock or Property Time-Sharing Scheme/s shall be permitted within the Estate.
- 12.5. Where obligations are imposed on any Body Corporate of any Sectional Title Scheme on the Estate in terms of this Memorandum of Incorporation or any Rules, the relevant Owners comprising that Body Corporate shall be jointly liable as members of the Body Corporate to give effect to such obligations.

### **13. FINANCE**

- 13.1. The Board shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Estate including but not limited to the provision of security services for the Estate, garden maintenance services, Association insurance premiums, the payment of rates and taxes and other charges on the property owned by the Association levied by the local or any other authority, any charges for Municipal Services and any other services to the Estate including any matter arising from the provisions of clause 13, and any services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association, and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligation of the Association (provided that nothing in this Memorandum of Incorporation shall be construed as obliging the Association to pay service charges due by Owners to the relevant authority).
- 13.2. All levies due by Members shall be payable to the Association immediately same become due and owing without deduction, demand or set-off.

- 13.3. Members shall contribute to the levy fund in equal proportions on the basis that the costs relating to the Estate generally shall be assigned to Owners of property equally but subject to the following:
- 13.3.1. if an Owner owns more than one piece of property, he shall be deemed to be a separate Owner in respect of each piece of property he owns for the purposes of this clause and, provided further, that if an Owner owns the right to extend any Sectional Title Scheme on the Estate by the erection of more than one unit, he shall be deemed to be a separate Owner in respect of each unit he has the right to extend the Sectional Title Scheme by, for the purposes of this clause. Therefore, purely by way of example, if there are 100 (One Hundred) pieces of property, and an Owner owns two pieces of property, he shall effectively be assigned 2% (Two Percent) of those costs relating to the Estate generally, in terms of this clause;
- 13.3.2. if an Owner owns a Development Site on which a sectional title register has not yet been opened or a sub divisional diagram approved, the levy payable by such Owner shall be determined by the Board having regard to all circumstances prevailing at the time and to equity;
- 13.3.3. the Board may distinguish the services rendered by the Association to a particular Body Corporate for a particular type of Sectional Title Scheme, taking into account the nature and the extent of the Services rendered to that Body Corporate and the owners of that Body Corporate, and subject to an ordinary resolution passed by Members at a general meeting, the Board may, in any case where they consider it equitable to do so, assign to all Owners within any particular Sectional Title Scheme any greater or lesser share of the costs as may be reasonable in the circumstances.
- 13.4. All contributions received from Members shall forthwith be deposited in a separate account which the Association shall open and keep with a registered financial institution.
- 13.5. The monies in the levy fund shall be utilised to defray the expenses referred to in this clause 13.1 and elsewhere in this Memorandum of Incorporation above.

- 13.6. Notwithstanding any person ceasing to be a Member, all levies attributable to any period whilst such person was a Member, shall continue to be of full force and effect and recoverable from such person.
- 13.7. Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this Memorandum of Incorporation, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date of payment at a rate of interest equal to that charged by the Standard Bank of South Africa Limited at its prime overdraft rate plus 3 (Three) percentage points. Such interest shall be calculated and compounded monthly.
- 13.8. Subject to a special resolution of the Members being obtained, the Board shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure and shall determine how such levies are to be paid in accordance with the principles set out in clause 13.3.
- 13.9. All contributions levied under the provisions of this Memorandum of Incorporation shall be due and payable by Members on the passing of a resolution to that effect by the Board and may be recovered by the Association by action in any Court (including any Magistrates Court) of competent jurisdiction from the persons who were Members at the time when such contributions became due. Save for special levies and levy stabilisation fund contributions all contributions levied under the provisions of this Memorandum of Incorporation shall be levied on an annual basis and recoverable from Members on such basis as shall be determined by the Board from time to time.
- 13.10. The Association shall establish a levy stabilisation fund for the purposes of meeting any extraordinary expenditure and expenditure of a capital nature to be incurred by the Association in carrying out its main objects and the provisions of this Memorandum of Incorporation. In the event of any property being sold, alienated or otherwise disposed of, the new owner shall be obliged to pay the levy stabilisation fund contribution applicable at that time and the ex-owner shall not be entitled to a refund of the levy stabilisation fund contribution paid by him. In the case of deemed alienation of property by artificial persons (see clause 2.1.3 above), a further contribution to the levy stabilisation fund shall, upon alienation, become due by the

artificial person, notwithstanding that the artificial person remains the Owner of the property. The object, in this regard, shall be to ensure that where a material change in the beneficial ownership or controlling interest of the artificial person (for example, by the members of a close corporation selling their interest to 1 (one) or more persons or by the beneficiaries of a trust ceding their interest to 1 (one) or more persons) the artificial person shall become liable for a further contribution to the levy stabilisation fund on the same basis that would have applied if the artificial person had become a “new owner” of the property. Notwithstanding the above, a change in ownership or material change in the beneficial ownership or controlling interest of an artificial person shall not attract a levy stabilisation fund contribution should such change in ownership or material change in the beneficial ownership or controlling interest of an artificial person arise as a result of:

- 13.10.1.           testate or intestate succession;
- 13.10.2.           divorce or dissolution of a marriage or union and the property or share therein is acquired by a “spouse” as defined in the Transfer Duty Act No. 40 of 1949;
- 13.10.3.           a joint owner of property acquiring a defined portion of any property allotted to him upon partition of the property or who acquires the sole ownership in the whole or a portion of the property;
- 13.10.4.           any other transaction which the Board in its sole and absolute discretion agrees to exempt from the payment of the levy stabilisation fund contribution.
- 13.11.           The Simbithi Country Club “joining fee” and SEEHOA “resale levy” more fully referred to in clause 13.16 shall also be waived in those instances referred to in clause 13.10.1 to 13.10.4 above.
- 13.12.           Should a Member be more than 60 (Sixty) days in arrears with the payment of any levies due in terms of this clause or any other amount of any nature whatsoever due to the Association by such Member (including by not limited to any fine that may be imposed by the Association on any such Member) and remain in arrears notwithstanding demand for payment by the Association, then in that event such

Member shall not be entitled either in person or by proxy to speak or vote at a meeting of Members of the Association. A letter addressed to the Chairman of a meeting of Members of the Association by the Board, dated not more than 14 (Fourteen) days prior to any such meeting, shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting.

- 13.13. In the event of there being a dispute as to the amount of any levy due by the Member, such dispute shall be referred to the Association's Auditors for a decision, whose decision shall be final and binding on the parties.
- 13.14. The Association shall not be entitled to borrow money, save in accordance with a Special Resolution of Members.
- 13.15. Although the obligation to pay the aforesaid levy to the Association shall rest with the individual Member it shall, if the Association so chooses, be the responsibility of the Body Corporate of any Sectional Title Scheme laid out on property, to collect the aforesaid levy due to the Association, from the Body Corporate's members, on the Association's behalf, and to pay same over to the Association timeously.
- 13.16. Members selling property shall be liable to pay a 1% (one) percent fee of the total selling price to the Association ("the resale levy"). This fee shall be subject to adjustment by way of a special resolution of members passed at a general meeting. This is a contribution towards the costs of attending to the Association's formalities in respect of the transfer of the property and the general enhancement and promotion of the Estate by the Association which amount shall be payable by the selling Member to the Association on the date of registration of transfer.

#### **14. ACCOUNTING RECORDS**

- 14.1. The Board shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.

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

## **15. ANNUAL FINANCIAL STATEMENTS**

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

- 15.2. A copy of the audited financial statements shall be laid before the Association's Annual General Meeting for consideration and adoption with or without amendment. A summary of the aforesaid audited financial statements shall, not less than 21 (Twenty One) days before the date of such meeting, be sent to every Member of the Association: provided that this clause shall not require copies of documents to be sent to any person of whose address the Association is not aware.

## **16. AUDITOR**

An auditor shall be appointed in accordance with the Act.

## **17. NOTICES**

- 17.1. A notice may be given by the Association to any Member either electronically, as contemplated in the Act, or by printed media advertisement or by hand or by sending it by registered post addressed to such Member at his chosen registered address, or if he has no registered address in the Republic, at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him. The print medium of any notice which may be given by advertisement shall be inserted in such medium as the Board may from time to time determine.

- 17.2. Notice of every general meeting shall be given in any manner authorised by the Board:



- 17.2.1. to every Member of the Association. If a Member has not supplied the Association with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the Association to serve notice at the address of the property owned by the Member;
- 17.2.2. to the auditor, for the time being, of the Association.
- 17.3. No other person shall be entitled to receive notice of general meetings.
- 17.4. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day the notice was advertised and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 17.5. The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.
- 17.6. Notwithstanding anything contained herein or elsewhere, the sending of any notice or other communication to a Member at an electronic mail address, nominated by such Member for these purposes in writing to the Association, shall be deemed to be good and proper services of such notice or other communication, in terms of this Memorandum of Incorporation, and shall be deemed to have been received by the Member on the date that such communication or other notice was sent.
- 17.7. Each Member appoints as his/her/its domicilium citandi et executandi for purposes of service of legal processes (other than notices issued by the Association as hereinbefore provided) the address of any property owned by the Member within the Estate provided that each Member shall be entitled from time to time to change his/her/its domicilium address provided that any new domicilium selected shall be situated within the Republic of South Africa and that the change shall only be effective on receipt of written notice thereof by the Association.

## **18. WINDING-UP OF ASSOCIATION**

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

## **19. DESIGN REVIEW COMMITTEE**

19.1. The Design Review Committee shall be appointed by the Board.

19.2. The Design Review Committee shall, inter alia, act as an aesthetics committee with a view to ensuring any development within the Estate is in accordance with the Development Controls, and an architectural theme which will enhance the attraction of the Estate as a whole (it being specifically recorded however, that the Design Review Committee shall not be responsible for dealing with any structural issues in respect of any dwelling or other buildings constructed on property nor shall it be required to enforce the provisions of the Scheme).

19.3. The Board shall ensure that the Design Review Committee carries out all the functions and duties entrusted to it so as to give proper effect to the provisions of the Development Controls. The Chairman of the Design Review Committee may be appointed by the Board prior to the Design Review Committee's first meeting in the financial year of the Association.

19.4. The Committee shall meet a minimum of 4 (Four) times during the Association's financial year.

## **20. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE ESTATE**

### **20.1. Buildings and improvements**

20.1.1. In order to procure compliance with the nature and amenity of the Estate nothing shall be placed on or attached to a building or any other structure,

visible from outside of the building or such other structure without the consent of the Design Review Committee and no building, extension or alteration to an existing building or other structure shall be built or erected on any property, other than in accordance with the Scheme, the Development Controls and plans approved by the Design Review Committee and the relevant local authority. The Design Review Committee's approval shall be in writing and signed by a duly authorised representative of the Design Review Committee. Before giving such approval, the Committee shall require, *inter alia*, that there be lodged with them such documentation as the Design Review Committee, in its sole and absolute discretion, may require.

- 20.1.2. Any approval as contemplated herein may be subject to such conditions as the Design Review Committee may deem fit. In the event of any building or other structure being erected on property, save in accordance with the plans approved of by the Design Review Committee as set out in this clause, then in that event, the Association shall be entitled to demand that the Owner make such amendments to such building or other structure in order to procure compliance with building plans approved of by the Design Review Committee and in default thereof to do so itself and recover the costs of such alterations from the relevant Owner of the property in question which amount shall be deemed to be part of the levy due by the Owner to the Association. This clause shall in no way alter or supersede any requirements of or obligations to the relevant local authority.
- 20.1.3. Members shall ensure that their property is kept in a neat and tidy state at all times to the reasonable satisfaction of the Association.

20.2. **Landscaping**

All landscaping on the Estate shall be undertaken in accordance with the Association's Landscaping Protocols, Controls and garden design plan, drafted in accordance with the requirements of the Association, by a landscape contractor appointed in terms of the Rules (at the cost of the owner of the property). Landscaping of any property shall not commence until such time as the aforesaid landscape plan has been approved by the Association in writing. The maintenance of all landscaping shall be in accordance

with such Rules as the Board may lay down from time to time (including, but in no way limited to, any Rules the Board may lay down, in respect of the levels of service and appointment of persons authorised to maintain such garden areas).

### 20.3. **Provision of Services**

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

### 20.4. **Maintenance of Buildings**

Save where such work is carried out by the Association, the exterior of every building shall be maintained and kept in a clean, tidy and neat condition. No Owner shall be entitled to apply paint or any similar material to any exterior part of his building without the prior written consent of the Design Review Committee which consent shall not unreasonably be withheld. An Owner shall, on receipt of a notice given by the Design Review Committee, undertake such work as may be specified in such notice relative to such Owner's building. Should an Owner fail to carry out any work as required by the Design Review Committee, after the Design Review Committee has given the Owner notice, which the Design Review Committee deems reasonable in the circumstances, so to comply, the Board shall be entitled to carry out such work and to recover the reasonable cost thereof from the Owner concerned which amount shall be deemed to be part of the levy due by the Owner to the Association.

### 20.5. **Occupation of Building**

Occupation and use of a building shall, at all times, be in compliance with the Scheme, this Memorandum of Incorporation and the Rules. No Member shall use any building on any property or allow any other person to use such building for purposes not permitted by the Scheme or this Memorandum of Incorporation or the Rules. No Member shall occupy any building on any property or allow any other person to occupy such building until an as-built certificate has been issued by the Design Review Committee and the relevant local authority has issued its relevant certification authorising occupation.

20.6. **Services**

Inasmuch as the provision, establishment, maintenance and repair of Services may be required to take place in the Estate, Members shall be obliged to accept the laying out and installation of such Services across their property, in such places as the Board determines, from time to time. The Board or persons authorised by it, shall be entitled to enter upon such property for the purpose of providing, establishing, maintaining and/or repairing the Services, provided that such work shall be carried out with as little inconvenience to the affected party as reasonably possible.

20.7. **Security of the Estate**

The Association shall provide such security in the Estate as it deems appropriate, from time to time. The Association or persons authorised by it, shall be entitled to enter upon any property for the purposes of maintaining the security perimeter fence of the Estate, for the purposes of maintaining any other security apparatus or for the purposes of patrolling the Estate for security purposes.

20.8. **Maintenance of Common Use Areas, and Municipal Services**

The Association shall be responsible for the maintenance, upkeep and repair of amongst others, any open spaces, roads or other Common Use Areas. Further, in the event of the relevant local authority, or any other service provider, not having the means or being unwilling to maintain or provide the services normally provided by a local authority or, in the event of the local authority or any other service provider not maintaining the services normally provided by a local authority to a standard acceptable to the Association, then in that event, the Association shall provide and maintain such services.

20.9. **Roads and Common Use Areas**

- 20.9.1. Members and their invitees shall be entitled to use all Common Use Areas including roads on the Estate subject to the Rules, provided that at all times Owners shall have vehicular and pedestrian ingress and egress to and from the Estate.

- 20.9.2. No resolution for the winding up of the Association shall be passed prior to the rights of vehicular and pedestrian ingress and egress above referred to being secured by way of servitudes registered against the title deeds of all property in the Estate or the transfer of such accesses to a local authority, as public roads.

## **21. ENFORCEMENT OF OBLIGATIONS OF OWNERS**

Should any Owner or any lessee of an Owner fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the Association shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the Association, necessary and/or requisite to procure compliance. The costs thereby incurred by the Association shall be a debt due by the Owner concerned, which shall be payable on demand. The Owner shall be obliged to bring to the attention of any lessees, the Rules. In addition, an Owner shall utilise its best endeavours to ensure that any invitee of the Owner who goes upon the Estate complies with the Rules. This in addition to and without prejudice to clause 7.5. Any breach of this Memorandum of Incorporation or the Rules by any member of an Owners household, his lessees, employees, agents or invitees going upon the Estate shall be deemed to have been committed by the Owner.

## **22. DISCLAIMER OF RESPONSIBILITY**

- 22.1. The Association shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Estate regardless of the cause thereof nor shall the Association be responsible for any theft of property occurring within the Estate. Members shall not, under any circumstances, have any claim or right of action whatsoever against the Association for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.
- 22.2. The Association and/or its agents shall not be liable to any Member or any of the Member's lessees, or their respective employees, agents or invitees or any member of

the public dealing with the Member or any lessee for any injury or loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.

22.3. Members shall indemnify the Association and its employees, servants and agents and lawful invitees and hold them harmless against all claims by any person arising from any injury or loss or damage as contemplated in this clause 22.

22.4. The exclusions of liability and indemnity in this clause will not apply in respect of any loss suffered by a person which is directly attributable to the criminal acts or gross negligence of the Association or any person acting for or controlled by the Association, if the Consumer Protection Act 68 of 2008 applies for the benefit of that person.

**23. PROHIBITION AGAINST THE SUB-DIVISION AND CONSOLIDATION OF ANY PROPERTY**

No property shall be sub-divided or consolidated without the consent of the Association, which consent the Association may in its sole and absolute discretion grant or refuse.

**24. ENVIRONMENTAL MANAGEMENT PLAN**

Members shall at all times adhere to the provisions of the Environmental Management Plan. In particular, but in no way detracting from the generality of the aforesaid, each Member shall ensure that the provisions of the Environment Management Plan are adhered to in respect of property owned by such Member.

**25. LADLAU FAMILY PROPERTY**

25.1. Notwithstanding anything contained herein or elsewhere while Rosemary Kathleen Ladlau is in occupation of the existing farmhouse on Portion 2 of Erf 1 Simbithi, as shown on sub divisional diagram SG No. 2626/2003, no levy shall be payable to the

Association in respect of the aforesaid farm house (it is recorded that this exemption does not extend to any other units that may be erected on the aforesaid Portion 2 of Erf 1 Simbithi).

- 25.2. It is recorded that there shall be no obligation on the owner of the aforesaid farm house to alter such farmhouse to ensure it complies with the requirements of the Association. However any alteration to the aforesaid farm house and any other dwelling or other structure erected on Portion 2 of Erf 1 Simbithi shall comply with the Association's Memorandum of Incorporation in every respect.

## **26. SIMBITHI COUNTRY CLUB**

- 26.1. The Board shall also function as the management committee of the Simbithi Country Club as is more fully provided for in the Simbithi Country Club Constitution. The said Constitution shall not be in conflict with the Memorandum of Incorporation and Rules of the Association. As such the Board shall manage the business and affairs of the Simbithi Country Club in accordance with the powers conferred on it by the Simbithi Country Club Constitution.

- 26.2. Any amounts due to the Simbithi Country Club by Residential Members of the Association, may be debited to the levy accounts of Residential Members and recovered by the Association on behalf of the Simbithi Country Club in accordance with the provisions of clause 13.

## **27. AMENDMENT TO MOI**

This Memorandum of Incorporation may only be amended or varied by way of a special resolution of Members.