Companies and Intellectual Property Commission

Republic of South Africa

Memorandum of Incorporation

of

BISHOPS COURT HOMEOWNERS ASSOCIATION NPC

Registration number 1999/002644/08

INDEX

Article 1 - Incorporation and Nature of the Company

In this Memorandum of Incorporation–

(a) Words and expressions used in the Memorandum but not defined above shall have the meaning, if any, as defined by the Companies Act, 2008, henceforth referred to as the Act.

(b) A reference to a section by number refers to the corresponding section of the Companies Act, 2008.

(c) Unless the context otherwise requires, any word importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other gender and vice versa.

(d) Subject as aforesaid, any words or expressions defined in the Companies Act or any statutory modification thereof in force at the date on which these presents become binding on the Company shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

(e) The headnotes to the clauses in this Memorandum of Incorporation are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.

1.1 Incorporation and Nature of the Company Incorporation

(1) The Company is incorporated as from 08/02/1999 as a Non Profit Company, as defined in the Companies Act 2008.

(2) The Company is incorporated in accordance with and governed by –

(a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit Companies;

(b) the alterable provisions of the Companies Act, 2008, that are applicable to Non Profit Companies subject to the limitations, extensions, variations or substitutions set out in this Memorandum; and

(c) the provisions of this Memorandum of Incorporation and any Rules adopted by its members. If any conflict exists between this memorandum and the Rules adopted by the Company from time to time, this memorandum (as may be validly amended) shall receive preference.

1.2 Objects and Powers of the Company

The objects of the Company are to promote, advance and protect the communal interests of the owners and occupiers of the properties in the development known as Bishops Court which shall specifically include the maintenance of the fauna and flora of the common property.

It also includes in particular the promoting of communal interests to provide and maintain essential and community services, particularly water, sewerage, electricity reticulation, road and storm water drainage, as well as amenities, security, access and activities within any property administered by the Company.

(1) The Company is subject to certain provisions contemplated in section 15 (2) (b) or (c), as set out in Part B of Schedule 1.

(2) Upon dissolution of the Company, its assets must be distributed in the manner determined in accordance with –

(a) Item 1(4)(b) of Schedule 1 of the Companies Act , 2008 and

(b) The provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

(3) The Company —

(a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in its Memorandum; and

(b) subject to paragraph (a), may —

(i) acquire and hold securities issued by a profit Company; or

(ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

(4) The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless whether the income or asset was derived, 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, except—

(a) as reasonable —

(i) remuneration for goods delivered or services rendered to, or at the direction of, the Company; or

(ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

(b) as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;

(c) 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

(d) in respect of any legal obligation binding on the Company.

1.3 Memorandum of Incorporation and Company rule

(1) This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in sections 16, 17 or 15 (2)(b).

(2) The authority of the Company's board of directors ("the board") to make rules for the Company, as contemplated in section 15 (3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.

(3) The board must publish any rules made in terms of section 15 (3) to (5) by circulating same by way of e-mail to all its members who have provided e-mail addresses and/or per registered post, alternatively, paste same on the entrance to Bishops Court for a period o f two weeks.

(4) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) in accordance with the method as set out in paragraph (3) above.

1.4 Application of optional provisions of Companies Act, 2008 DO NOT APPLY

The Company elects, in terms of section 34(2), to comply voluntary with the requirements of Chapter 3 of the Act, to the following extent only:

In accordance with section 84, the Company shall appoint a person to serve as auditor, in the manner and for the purpose set out in Part C of Chapter 3. The said Part C of Chapter 3, as well as the applicable provisions of section 85, shall apply to the Company.

However, as the Company is a pre-incorporated Company under the previous Companies Act, 1973, which act already required the Company to have an appointed auditor, the Company need not formally appoint a new auditor once the (new) Memorandum has been registered and the currently appointed auditor will be deemed to have been appointed in compliance with this obligation of the Company.

1.5 Members of the Company

(1) Non-voting members would include all members in arrears with their monthly levy payments and the arrears will constitute one month's levy in arrears and/or one month's arrears on any services provided to the owner as levied per statement for services rendered and/or any fines and expenses or damages debited to the levy account, shall not be entitled to vote at any meeting.

(2) The Company has members who are in either of two classes, being voting and non-voting members, respectively.

(3) When a person becomes a registered owner of a property or erf in Bishops Court, he, she or it will *ipso facto* become a member of the Company and when he, she or it ceases to be an owner thereof, will *ipso facto* cease to be a member of the Company.

(4) Where more than one person or a juristic entity is the owner of a property or erf in Bishop's Court, then one representative only shall be given or have voting powers at any meeting of the Company.

(5) Any member who wishes to lease his, her or its property shall ensure that any lease agreement concluded shall, in writing, record that any such lessees are subject to the provisions of this memorandum and the rules of the Company, failing which any such member shall be personally liable for any costs incurred to enforce any of the provisions of this memorandum or the Rules of the Company against such lessees.

(6) A member shall be jointly and severally liable with any lessee for any fine imposed upon such a lessee by the board for any expenses incurred or damages incurred as a result of any conduct of a lessee in breach of this memorandum or the rules of the Company. The members of the Company acknowledge that the only security that the Company holds to ensure that its objects are complied with is the rights of the Company that may be enforced through this memorandum and the rules of the Company and acknowledge the necessity of this provision.

(7) All members of the Company who have paid up all levies, fines or expenses or damages debited to their levy accounts shall be entitled to vote at any meeting of the Company. Any member who has any amounts exceeding one month's levy outstanding or any levies, fines, expenses or damages debited against her, his or its levy account, shall not be entitled to vote at any meeting. The quorum of the Company shall be adjusted *pro rata* for voting members.

(8) No member shall let or otherwise part with occupation of any portion in the scheme, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of any such portion as stipulatio alteri in favour of the Company that such occupier shall be bound by all the terms and conditions of the Memorandum of Incorporation of the Company, and such written agreement is lodged with the directors prior to the proposed occupier taking occupation of the portion in question.

(9) A registered owner of any portion in the scheme may not resign as a member of the Company.

(10) The rights and obligations of a member shall not be transferable and every member shall:

10.1 to the best of his ability, further the objects and interest of the Company;

10.2 observe all rules made by the Company;

10.3 sign all documents and do all things necessary to enable the registration of whatever servitudes over or in favour of the access portion or any other portion in the scheme, which servitudes may be required for any services, whether and including the provision of security facilities;

(11) Provided that nothing contained in this Memorandum shall prevent a member from ceding his rights in terms of this Memorandum as security to the mortgagee of that member's land.

Article 2 – Rights of Members

2.1 Member's Authority to Act

If, at any time, every member of the Company is also a director of the Company, as contemplated in section 57(4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2 Member's Right to Information

In addition to the rights to access information set out in section 26(a), a member of the Company has the further rights to information, if any, set out in Part B of Schedule 2 of this Memorandum of Incorporation

2.3 Representation by Concurrent Proxies

The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58(3) (a) mutatis mutandis is not limited, restricted or varied by this Memorandum of Incorporation.

2.4 Authority of Proxy to delegate

The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58(3) (b) is not limited, Restricted or varied by this Memorandum of Incorporation

2.5 Requirement to deliver Proxy Instrument to the Company

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members' meeting, as set out in section 58(3) (c) is not varied by this Memorandum of Incorporation. The Company requires that a proxy must be delivered 48 (forty eight) hours prior to the AGM meeting and/or all general meetings to the domicilium citandi et executandi of the Company and/or may be handed to the Chairperson prior to the commencement of the meeting.

2.6 Deliberative Authority of Proxy

The authority of a member's proxy to decide without discretion from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in section 58(7) is not limited, or restricted by this Memorandum of Incorporation.

2.7 Record Date for Exercise of Members' Rights

If, at any time, the Company's board of directors fails to determine a record date, as contemplated in Section 59, the record date for the relevant matter is as determined in accordance with section 59(3).

Article 3 – Members' Meetings

3.1 Requirement to hold meetings

The Company is not required to hold any members' meetings other than those specifically required by the Companies Act, 2008.

3.2 Members' right to requisition a meeting

The right of members to requisition a meeting, as set out in section 61 (3), may be exercised by at least 35% of the voting members

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3.3 Location of members' meetings

The authority of the Company's board of directors to determine the location of any members' meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

3.4 Notice of members' meetings

The minimum number of days for the Company to deliver a notice of a meeting to the members will constitute 21 (twenty one) working days. This is an increase in the requirement set by section 62 and is as provided for in section 62 (1).

3.5 Electronic participation in members' meetings

The authority of the Company 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 is not limited or restricted by this Memorandum of Incorporation.

3.6 Quorum for members' meetings

(1) The quorum requirement for a members' meeting to begin shall be 5% of the members eligible to vote.

(2) The time periods allowed in section 64 (4) and (5) apply to the Company without variation

(3) The authority of a meeting to continue to consider a matter, as set out in section 64 (9) is not limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of members' meetings

The maximum period allowable for an adjournment of a members' meeting is as set out in section 64 (13), without variation.

3.8 Members' resolutions

(1) For an ordinary resolution to be adopted at a members' meeting, it must be supported by the holders of at least 50% of the voting rights of those voting members present exercised on the resolution, as provided in section 65 (7).

(2) For a special resolution to be adopted at a members' meeting, it must be supported by the holders of at least 75% of the voting rights of those voting members present exercised on the resolution, as provided in section 65 (9).

(3) A special resolution adopted at a members' meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11), or elsewhere in the Act.

3.9 Acquiescence

If, for any reason whatsoever, any meeting of the Company is held and the formal requirements in respect of notice or the adoption of a resolution is not met, but no complaint is raised in respect thereof within a period of a month after the publication of the following meeting at which the aforementioned meeting's minutes were approved, then all the members of the Company shall be bound by whatever resolutions or decisions were adopted at that meeting.

3.10 No general item on agenda and requirements for members to place matters on the agenda

If a matter is requested to be discussed under the item, "Miscellaneous or General" on the agenda as set by the board of directors, unless 2 (two) members wish to place the matter on the agenda, same shall not be tabled for discussion.

Article 4 - Directors and Officers

4.1 Composition of the Board of Directors

(1) The board of directors of the Company comprises a minimum of three directors. The maximum number of directors to be appointed will be determined at the Annual General Meeting.

(2) Every elected director serves from the date of his appointment until the Annual General Meeting next following his appointment, at which meeting each director shall be deemed to have retired from office, but will be eligible for re-election to the board at such meeting. The Company has no directly appointed directors, *ex officio* directors or alternate directors as envisaged in section 66(4) and all directors shall be elected as described hereunder.

(3) In addition to the elected directors there are no appointed or *ex officio* directors of the Company, as contemplated in section 66(4).

(4) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director or a prescribed officer of the Company, a person need not satisfy any further eligibility requirements or qualifications.

(5) Each appointed director of the Company serves for a year, which term is automatically renewed unless such person notifies the Chairperson of the annual general meeting or a special meeting of the members of the Company that he or she is not willing to serve as a director any longer. A director may also resign in writing at any time, which resignation is to be addressed to the managing agents (who shall notify the other directors of the Company thereof) appointed by the Company, and failing any such appointment, to the other directors of the Company, but may be removed by a majority of a special meeting of members or at the annual general meeting of the members of the Company.

(6) If, for any reason, the board reduces to less than 3 directors, the remaining director(s) may co-opt directors so that the board consists of no more than three directors until the next annual general meeting is held or a special meeting is called.

4.2 Authority of the Board of Directors

(1) The authority of the Company's board of directors to manage and direct the business and affairs of the Company (including the adoption and enforcement of rules), as set out in section 66 (1) is not limited or restricted by this Memorandum of Incorporation.

(2) The directors shall within 14 (fourteen) days after each Annual General Meeting appoint from their number a Chairperson and a Deputy-Chairperson, provided that the office of Chairperson or Deputy-Chairperson shall ipso facto be vacated by a director holding such office upon his ceasing to be a director for any reason. No one director shall be appointed to more than one of the

aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the board shall immediately appoint one of their number as a replacement in such office.

(3) Except as otherwise herein provided, the Chairperson shall preside at all meetings of the board and, in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Deputy-Chairperson shall act in his stead or, failing the Deputy-Chairperson, a Chairperson appointed by the meeting.

(4) A Chairperson so appointed shall hold office and shall be elected by the board from the date of appointment as per the appointment of the board at the Annual General Meeting.

4.3 Directors' Meetings

(1) The authority of the Company's board of directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation.

(2) The right of the Company's directors to requisition a meeting of the board, as set out in section 73 (1), may be exercised by at least two of the directors, despite any other provisions of that section.

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

(4) The authority of the Company's board of directors to determine the manner and form of providing notice of its meetings, as set out in section 73 (4) is not limited or restricted by this Memorandum of Incorporation.

(5) The authority of the Company's board of directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) is not limited or restricted by this Memorandum of Incorporation. Notice of the meeting shall be given by way of e-mail and unless the contrary is proved on a balance of probabilities, notice shall be deemed to have been duly so given if a record is produced by the Company's secretary which indicates that same was sent to the board.

(6) The quorum requirement for a directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are as set out in section 73 (5), without variation.

4.4 Indemnification of Directors

(1) The authority of the Company 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.

(2) The authority of the Company 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.

(3) The authority of the Company to purchase insurance to protect the Company, or a director, as set out in section 78 (7) is not limited, restricted or extended by this Memorandum of Incorporation.

4.5 Officers and Committees of the Board

(1) The board may appoint any officers it considers necessary to better achieve the objects of the Company.

(2) The authority of the Company's board of directors to appoint committees of directors, and to delegate to any such committee any of the authority of the board, as set out in section 72 (1), and to include in any such committee persons who are not directors, as set out in section 73 (2) (a) is not limited or restricted by this Memorandum of Incorporation.

(3) The authority of a committee appointed by the Company's board of directors, as set out in section 72 (2) (b) and (c) is not limited or restricted by this Memorandum of Incorporation.

Article 5 - General Provisions
The attached addendum entitled "Conduct Rules" is incorporated, authorised and enforceable as described under General Provisions and further defined in the Conduct Rules

1. Definitions

1.1 In these Articles the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

1.1.1 "the Act" means the Companies Act, 2008 as amended or any Act which replaces it.

1.1.2 "Architectural Guidelines" means the design guidelines promulgated by the Company from time to time.

1.1.3 "Architectural Review Committee" means the committee appointed by the board of directors from time. to time to ensure that the plans submitted to the Company comply with the Architectural guidelines.

1.1.4 "Auditors" means the Auditors of the Company

1.1.5 "Common Property" means all property situated in the Development which is registered in the name of the Company;

1.1.6 "Erf/Erven/Unit" means any Erf, Erven and/or Unit which forms part or which is situated in the Development known as Bishop's Court as more fully described in the Company's Memorandum of Incorporation above (and hereinafter referred to as "the Estate").

1.1.7 "Rules", "Regulations" or "Conduct Rules" means regulations governing the conduct and affairs of the Company, its members and persons present at the Estate.

1.1.8 *"The managing agent"* means any person or juristic entity appointed by the Company as an independent contractor to manage any function of the Company.

1.2 Unless the context otherwise requires, any word importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other gender and vice versa.

1.3 Subject as aforesaid, any words or expressions defined in the Act or any statutory modification thereof in force at the date on which these presents become binding on the Company shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

1.4 The headnotes to the clauses in this Memorandum of Incorporation are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2. Conduct Rules, Architectural Guidelines and other Regulations

2.1 Members, their guests and their tenants and any person entering the Estate, shall be subject to this Memorandum of Incorporation, the Conduct Rules, Architectural Guidelines, Domestic rules and other regulations made from time to time.

2.2 **Regulations shall govern, inter alia:-**

2.2.1 the Members' rights of use, access to, occupation and enjoyment of the Common Property;

2.2.2 the control of pets and other animals at Bishops Court;

2.2.3 the external appearance of and the maintenance and use of the Common Property and the buildings and improvements erected thereon;

2.2.4 the standards and guidelines for the design of all site-work buildings, structures, installations and projections on the erven on the Property, including aerials, pergolas, side walls, swimming pools, awnings, jacuzzis, carports, paved pathways and landscaping features and works;

2.2.5 the placing or fixing of ornamentation or embellishments upon the outside of buildings including the power to remove such objects;

2.2.6 the external appearance and maintenance of buildings and other improvements and structures erected in Bishops Court, architectural and aesthetic style and design criteria, the type of plants and maintenance of gardens;

2.2.7 the execution of building work within Bishops Court;

2.2.8 the rules governing builders, contractors and owners wishing to execute building work within Bishops Court;

2.2.9 the access to and egress from any of the erven on the Property;

2.2.10 the conduct of members or any persons within the Property for the prevention of nuisance of any nature to any member;

2.2.11 security within Bishops Court;

2.2.12 disputes and disciplinary measures relating to members and others having access to Bishops Court in relation to matters affecting Bishops Court including the determination and imposition of fines, which shall become a debt owing to the Company;

2.2.13 the furtherance and promotion of the affairs of the Company;

2.2.14 the management of the affairs of the Company;

2.2.15 any matter that may assist the Company and its representative organs in administering and governing the activities of the Company generally.

2.3 **The Company may by Ordinary Resolution in General Meeting:**

2.3.1 make any regulation, or

2.3.2 cancel or modify any regulation.

2.4 Members shall be obliged to inform the members of their individual households, their guests, employees, invitees and tenants of the Regulations then in force and the Company shall be entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and tenants, in addition to the member, for any breach. The members shall be responsible and liable for the acts and omissions of their guests, employees, invitees and tenants and each member indemnifies the Company accordingly.

2.5 The Architectural Review Committee shall be appointed by the directors and shall consist of at least one director, a practicing qualified architect or architectural technologist and such other suitably qualified persons as the directors from time to time decide.

3. Members' Obligations

3.1 Each member undertakes to the Company that he shall comply with:-

3.1.1 the provisions of this Memorandum of Incorporation;

3.1.2 all Rules;

3.1.3 any agreements entered into by the Company which imposes obligations on the member.

3.2 Members shall be liable for any costs incurred by the Company in the enforcement of any of these provisions or the Rules on an attorney and own client scale and further agree that any such costs may be debited against their levy accounts. The members further agree that any shortfall between attorney and own client costs or any other expenses or disbursements which may be taxed off may, notwithstanding such a taxation, be debited to their levy accounts for which they will remain liable.

3.3 Members acknowledge that they have freely purchased property in an estate which provides a unique character with its gardens and the waterway and the fauna and flora associated therewith and thus accept the promotion, maintenance and improvement thereof.

3.4 All members shall be responsible for the pavement outside of their properties and the clusters in the Estate shall have the same obligation in respect of pavement in from of such clusters. A member or cluster (or their tenants or guests) may not remove any flora, including grass or trees, from any of the common property, including pavements without permission of the board and shall restore the *status quo* of such flora, at such member's costs. Any proposed material amendment to any pavement of a member or cluster shall first be submitted to the board for approval.

4. Levy Fund

4.1 The directors shall establish and maintain a levy fund for the purpose of meeting all the expenditure which the Company has properly incurred or which they reasonably anticipate the Company will necessary or reasonably incur for the control, management, maintenance and administration of Bishops Court Homeowners Association which includes but is not limited to: -

4.1.1 security;

4.1.2 rates and taxes, as well as other municipal charges and levies on assets of the Company

4.1.3 maintenance and upkeep of assets, the gardens, the waterway, dams and bridges, including security systems, guard houses and the perimeter;

4.1.4 transportation;

4.1.5 administration fees;

4.1.6 electricity and water consumed on the Common Property;

4.1.7 security fences, walls and entrances;

4.1.8 employment of security personnel;

4.1.9 such other purposes as this Memorandum of Incorporation may prescribe.

The levies charged for each Erf and each Unit shall be the same notwithstanding the size and/or value of such Erf or Unit. Whilst no justification is required therefor, the members all have equal access to and rights in respect of the common property. This clause may not be amended without an 80 percent majority vote at a meeting of the Company.

4.2 The directors shall table a budget within 4 (four) months of the end of each financial year and deliver to each member to his chosen address as indicated by the member as his domicilium citandi et executandi an estimate of the amount required by the Company to meet the expenses during the following financial year and shall include in such estimate an amount to be held in reserve to meet the anticipated expenditure not of an annual nature.

4.3 The estimate in 4.2 above shall specify the contribution payable by that member to such expenses and reserve funds.

4.4 The directors may from time to time impose special levies upon the members which are not included in the estimate made in terms of clause 4.2 above and may in imposing such levies determine the terms of payment thereof.

4.5 Levies shall be due and payable by no later than the 7th day of a calendar month, provided that where such a day falls on a weekend or public holiday, any such amount shall be paid the following business day. Allowance is given for payments made from different banks, provided that proof of payment on the day upon which payment is to be made is given to the Company.

4.6 Any amount due by a member in regard to arrear levies and interest shall be a debt by such member to the Company. Notwithstanding that a member ceases to be a member the Company shall still have the right to recover arrear levies and interest from such member. Any members whose levies are outstanding for more than 60 days will automatically be levied a monthly penalty levy equal to the monthly levy until his/her account is settled. In addition interest may be levied to all outstanding amounts at such a rate as determined by the board from time to time or as allowed to be recouped in law.

4.7 No erf or property of a member may be transferred to a third party if or unless any outstanding balance on the member's levy account is reduced to zero prior to or simultaneously with any such envisaged transfer. If the balance is to be reduced to zero with the transfer, this shall only happen if the transferring attorneys ensure that such funds are paid to the Company upon transfer and give an undertaking to that effect. If the undertaking is not complied with the Company shall be entitled, notwithstanding any other remedy it may have in law, to claim any such balance from the new member or to have the sale and transfer set aside.

4.8 Any owner wishing to sell or transfer his, her, or its erf or property shall ensure that the provisions of this memorandum are incorporated into any sale agreement which the Company *ipso facto* accepts.

5. Functions and Powers of the Board of Directors

The directors shall and be obliged to manage and control the business and affairs of the Company and such shall have all powers which are necessary to attend to the same including but not limited to the right of appointment and dismissal of the Managing Agents and shall exercise all powers of the Company and do such acts on behalf of the Company as may be exercised and done by the Company other than those which are required to be done by the Company in General or Special Meeting or which are restricted in terms of the Act. Without limiting the generality of the aforesaid, the board has the powers, obligations and rights:-

5.1. to do all that is necessary and appropriate to ensure that the objects of the Company are performed and fulfilled;

5.2 to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as directors but shall not be entitled to any other remuneration in respect of such duties. Any such expenses shall be disclosed as a separate item in the income statement of the Company;

5.3 to appoint the Architectural Review Committee;

5.4 to impose fines;

5.5 to impose special levies not in excess of R2 000.00 once in any financial year. For any additional special levies, same must be approved by a majority of the members at a meeting of the Company.

6. Other Professional Officers

Save as specifically provided otherwise in this Memorandum of Incorporation, the board shall at all times have the right to engage on behalf of the Company, and for its benefit, the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional persons and any other employees whatsoever, for any reasons thought necessary by the board and on such terms as the directors may decide subject to the provisions of this Memorandum of Incorporation. All members of the Company are obligated to ensure that all agents appointed on their behalf, whether being letting agents or selling agents or appointment of a tenant via a lease agreement or any other agreement will ensure that the agent or tenant signs an addendum agreement with the Homeowners Association stipulating that the tenant and/or agent will ensure that all prospective buyers or tenants will be notified of the contents of the MOI and the Conduct Rules. The Addendum will ensure that the tenant and/or proposed purchaser will be bound by the MOI and the Conduct Rules, which will be enforceable by the board of the Homeowners Association.

7. Indemnity

Insofar as it is permitted in terms of the Act, the Company indemnifies every director, servant, agent and employee of the Company against all losses of whatsoever nature incurred out of any *bona fide* act or deed performed by him or jointly and severally with the other directors, servants, agents and employees of the Company and in the discharge of his duties.

8. Agenda at Annual General Meeting

In addition to any other matters required by this Memorandum of Incorporation and the Act to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

8.1 the consideration of the Chairperson's report;

8.2 the consideration of the financial statements of the Company for the financial year of the Company preceding the date of such meeting;

8.3 the consideration of the report of the Auditors;

8.4 the consideration of the budget and the total levy payable pursuant thereto for the relevant calendar year;

8.5 the consideration and fixing of the remuneration of the Auditors for the financial year of the Company preceding the Annual General Meeting and the appointment of Auditors or Accountants for the ensuing year;

8.6 the election of the board of directors;

8.7 the consideration of any resolutions of which due notice has been given and the voting upon any such resolutions;

8.8 the consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.

9. General Provisions relating to Levies

9.1 The board shall prepare and approve the budget and the levies payable by members at the Annual General Meeting;

9.2 The levies shall be payable monthly in advance, provided that they may be paid in instalments on terms and conditions determined by the board;

9.3 A member's successor in title to an Erf or Unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that Erf or Unit, to pay the levy attributable to that Erf or Unit. No member shall transfer his Erf or Unit unless the member has at the date of transfer fulfilled all his financial obligations to the Company;

9.4 The levies due by a member of the Company shall be paid without deduction or set-off, free of exchange at the offices of the Company or such place as it may specify in writing from time to time;

9.5 A member shall not be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum which shall be due and payable to the Company in respect of his membership thereof and the Company shall be entitled to discontinue rendering services supplied by the Company to any applicable Erf and/or Unit 7 (seven) days after notice requiring payment, which notice may be as provided for as set out in the Memorandum of Incorporation. The board shall also be entitled to "name and shame" any member who has been in arrears with amounts owing to the Company for a period longer than 3 months, irrespective if any dispute is declared or exists in respect of such amounts. The members shall have no claim against the board in respect of any naming or shaming, whatsoever.

10. Accounts

At each Annual General Meeting the board shall lay before the Company a proper income statement and, where appropriate, a statement of source and application of funds for the immediately preceding financial year of the Company together with a proper balance sheet made up as at the last financial year end of the Company. The financial statements referred to shall be accompanied by full and proper reports of the board and the Auditors, or Accountant, together with a budget for income and expenditure for the next financial year, and there shall be attached to the notice sent to the members convening each Annual General Meeting, copies of such accounts, balance sheet, reports and budget and other documents required by law to accompany the same.

11. Cessation of Membership

A member ceasing to be a member of the Company for any reason shall not, nor shall any such member's executor, curator, trustee or liquidator, have any claim upon the interest in the funds or other assets of the Company. The provisions for this clause shall be without prejudice to the rights of the Company to claim from such member or his estate any arrears of levies or other sums due from him to the Company at the time of his ceasing to be a member.

12. Disputes

Breach

12.1 The board may, in its discretion, investigate any suspected or alleged beach by any member or director of this Memorandum of Incorporation or the Rules, in such reasonable manner as it shall decide from time to time.

12.2 Should any member fail to pay on the due date any amount payable to the Company or breach any other provision of this Memorandum of Incorporation or the Rules and fail to remedy the same within a period of 10 (ten) days after written notice calling upon him, her or it (or his, her or its tenants) to remedy such breach, the board, on behalf of the Company, shall be entitled and obliged (in addition to any other rights which they have in terms of this Memorandum of Incorporation or in law or otherwise):-

12.2.1 to institute action in a Court of Law to recover such monies or to force the member to remedy such breach; and

12.2.2 to take such steps that they may consider necessary to remedy the breach of this Memorandum of Incorporation and to debit the costs of remedying such breach to such member which amount shall be deemed to be a debt payable by the member to the Company; and

12.2.3 deny the member concerned the benefits of membership of the Company and suspend his right to vote. In such event the member shall nonetheless remain bound to perform his obligations in terms of this Memorandum of Incorporation;

12.2.4 the provisions of paragraph 4.5 above shall apply *mutatis mutandis;*

12.2.5 Notwithstanding anything to the contrary contained herein, the Company shall at the sole discretion of the board, be entitled to institute legal proceedings in any court having jurisdiction for any relief to which it is entitled under the provisions of this Memorandum of Incorporation or the Rules including but not limited to the recovery of arrear levies;

12.2.6 In addition to the other rights of the Company referred to in this Memorandum of Incorporation the board may impose a system of fines or other penalties to be paid by any person breaching the provisions of this Memorandum of Incorporation.

12.3 The members shall not be entitled to rely on any conduct or lack thereof to constitute an estoppel against the board or the Company, nor shall the failure to take any action against any member, or tenants of a member constitute a waiver, election or acquiescence of any nature whatsoever, nor shall the a member have a legitimate expectation that any decision, action or omission by the board or the Company, shall take place or persisted with or may not be revoked, reconsidered to applied against a member.

13. Domicilium

13.1 Unless a member shall have nominated an alternative domicilium, being a physical address in the Republic of South Africa, by written notice delivered to the Company, a member's domicilium citandi et executandi for all purposes in terms hereof and the serving of any legal process shall be at any Erf or Unit owned by the member.

13.2 The directors shall from time to time determine the domicilium citandi et executandi of the Company.

13.3 Any notice, acceptance, demand or other communication properly addressed by the Company to the member's domicilium or e-mail address or other methods as provided for in terms hereof or for the time being as may be amended shall be deemed to be received by the latter on the 4th (fourth) day after notice has first been sent or erected. The provision shall not be construed as precluding the utilization of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used.

13.4 A member shall not be entitled to have notices served upon him at any address outside the Republic of South Africa.

13.5 It shall be competent to give notice by telefax or email where the member's telefax number or email address is recorded with the Company.

14. Bank Account

All funds received by the Company shall be deposited into a bank account opened by the directors on behalf of the Company. The funds not regularly required for disbursements may be invested in a savings or similar account approved by the directors from time to time. No cheques shall be drawn on any account unless the same is signed by at least two directors.

15. Rights of and Provisions imposed by the Local Authority

15.1 Each and every owner in Bishops Court shall have free access to a public road.

15.2 The local authority's engineering services department and its emergency services are guaranteed 24 hours access to Bishops Court to maintain the local authority's installations and provide services to the residents in the Estate.

15.3 The local authority shall not be liable for the malfunctioning or the surfacing of the access way and the storm water drainage system as well as any essential services which are not transferred to the local authority.

15.4 The Company shall have the full responsibility for the functioning and proper maintenance of the Common Property and the essential services within the Estate and the attenuation systems on the Estate, all to the satisfaction of the local authority.

15.5 The Company shall not apply for deregistration at CIPC without the written consent of the local authority first having been obtained.

15.6 The Company shall properly and clearly display the street name and street numbers allocated to the properties in Bishops Court and shall maintain such to the satisfaction of the local authority.

15.7 The Company shall be responsible for the functioning and property maintenance of the Common Property of the Estate.

15.8 The properties may be subject to servitude for municipal services in favour of the local authority.