



ATLANTIC BEACH  
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Memorandum of Incorporation of  
Atlantic Beach Homeowners'  
Association NPC

*24 April 2013*



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Companies and Intellectual Property Commission  
Republic of South Africa

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Memorandum of Incorporation of Atlantic Beach Homeowners'  
Association  
NPC  
Registration number: 1999/000213/08

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*which is referred to in the rest of this Memorandum of Incorporation as “the Company” and which is incorporated in terms of the provisions of the Companies Act, 2008, hereinafter referred to as “the Act”.*

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

**The main business** which the Association is to carry on is:

- 1.1 To promote, advance and protect the communal interests of the owners and occupiers of Atlantic Beach Golf Estate, Melkbosch Strand, as depicted on the general plan No 4286/98 or any extension thereof or addition thereto relating to Atlantic Beach Golf Estate (“the Estate”) and in particular to ensure acceptable aesthetic, architectural and environmental standards on the land, and to promote and maintain recreational facilities available to the said owners and occupiers.
- 1.2 To ensure that owners and occupiers of erven in the Estate are entitled to the use of the Club House and recreational facilities subject always to compliance by such owners and occupiers with these rules and regulations to be formulated for such use.
- 1.3 To implement and maintain security measures and systems for controlled access to the Estate.
- 1.4 To prescribe measures for the landscaping, development of erven and conditions of occupation in the Estate, and for the architectural design and building of improvements on erven in the Estate and the control of the exterior alterations, changes of colour finishes of design of all buildings erected on erven within the Estate so as to ensure an harmonious and aesthetic development of the Estate; and to prescribe measures for maintenance of the Estate and of the common areas within



the Estate; and to prescribe and implement all administrative functions in connection therewith.

- 1.5 To grant and register in favour of the local authority service servitudes over the Estate whether in respect of separate erven, common property or common use areas, for the maintenance of sewers, water, electricity supplies or other facilities.
- 1.6 To acquire erven in the Estate for the purposes of road access to and within the Estate; to acquire and hold servitudes in the Association's favour or procure the grant of servitudes in favour of the local authority or individual erven in the Estate over other erven for the maintenance and upkeep of the supply of certain services.
- 1.7 To control and maintain buildings, services and amenities arising from all subdivisions of the Estate, and to control improvements, zoning, subdivisions and consolidations within the Estate.
- 1.8 To maintain and repair the private roads and private open spaces within the Estate and all amenities or improvements which may be erected thereon, in particular the cleaning, sweeping, upkeep, maintenance, improvements (if any) and control of the landscaped areas of the private roads and private spaces;
- 1.9 To maintain, service and repair verges, sidewalks and all other private open areas within the Estate;
- 1.10 To acquire and take transfer of all private roads and private open spaces within the Estate as and when the same are depicted as such on the relevant general plan; except such as may be specifically reserved to the developer, the local authority, Eskom or any other designated parastatal body.
- 1.11 To apply for and to hold in its name or in the name of its nominee all permissions, licences and authorities for the proper and lawful conduct by it of any business undertakings appropriate to the activities of the Association, on an erf or erven within the Estate.
- 1.12 To outsource all or part of its functions and duties as set out above to appropriate professional managers, operators or subcontractors for the provision of specialised services in connection with or relating in any way to the occupation of erven within the Estate. Including the right to



outsource or to subcontract to, and to enter into service agreements with, the local authority or any appropriate body or individual or company for the performance of any such services or the provisions of supplies or expertise or facilities for the benefit and enjoyment of such owners and occupiers.

**The main objects of the Association are :**

- 2.1 To manage and promote the communal interests of the owners and occupiers of the Estate and in particular to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members shall from time to time be liable; and
- 2.2 To carry out the following functions and duties in terms of the Land Use Planning Ordinance (Cape Ordinance) No. 15 of 1985 namely:
  - 2.2.1 the exercise of control over and maintenance of buildings, services and amenities arising from all subdivisions of the Estate as set out in 1.7 above; and
  - 2.2.2 to ensure that all owners of erven arising from the subdivision concerned shall be members of the Association and as such shall be jointly liable for expenditures incurred by the local authority in connection with the Association as contemplated in Section 29(4) of the Ordinance.



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### **Adoption of Memorandum of Incorporation**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13(1) of the Act, as evidenced by the following signatures made by each of them, or on their behalf.

<b>Name of Incorporator</b>	<b>Identity Number</b>	<b>Signature</b>	<b>Date</b>
Lucienne Claudette Fild	700408 0005 080		
Wouter Malan Pentz	700615 5148 083		
Nicolaas Erasmus Van der Walt	720515 5177 080		
David Eric Lotz	680514 5046 088		
Donald Arderne Boyce	640510 5169 085		

#### **In this Memorandum of Incorporation –**

- (a) a reference to a section by number refers to the corresponding section of the Act;
- (b) words that are defined in the Act bear the same meaning in this Memorandum as in that Act.

#### **Definitions**

In this Memorandum of Incorporation the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:

- (1) “ABM” Atlantic Beach Management (Proprietary) Limited, a company duly incorporated in terms of the Company Laws of South Africa having its principal place of business at the Atlantic Beach Golf Estate, Melkbosch Strand;



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- (2) “The Act” the Companies Act, 71 of 2008;
- (3) “Alienate” the alienation of any erf or part thereof whether by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, court order, insolvency or otherwise, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and means the alienation of any erf or part thereof alienation shall have a corresponding meaning;
- (4) “Association” Atlantic Beach Homeowners’ Association;
- (5) “Auditors” the auditors of the Association;
- (6) “Business day” means any day other than a Saturday, Sunday, or officially recognised public holiday in South Africa;
- (7) “Chairman” the Chairman of the Board of Directors appointed in terms of 17.5 below;
- (8) “The Club” the Golf Course and Club House to be established by the developer or its nominee on the Estate;
- (9) “The Club House” the communal buildings serving the Golf Course;
- (10) “Common areas” that part or parts of the Estate not subject to an exclusive right of use by a member;
- (11) “The constitution of the Association” or “the constitution” the Memorandum of Incorporation of the Association;
- (12) “Developer” Johnnic Property Developments Limited, or its successors-in-title, or assigns;
- (13) “development period” the period from the date of incorporation of the Association until the developer notifies the Association that the development period is at an end, or until the registration of the transfer of the last saleable erf within the Estate, whichever shall occur first;
- (14) “Directors” the Directors of the Board as more fully set out in section 17 below.



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- (15) “Erf” any residential erf resulting from the subdivision of the Estate, including consolidated erven, and also including any sectional title unit and the exclusive use area(s) linked thereto;
- (16) “Estate” Atlantic Beach Golf Estate, Melkbosch Strand, being erf 3186 Melkbosch Strand as depicted on the General Plan No 4286/98 and any further general plans approved in respect of any subdivisions thereof; or any extension thereof or addition thereto; or any extension thereof or addition thereto relating to Atlantic Beach Golf Estate;
- (17) “Estate management agreement” that agreement concluded or to be concluded between the Association and ABM;
- (18) “Financial year” the financial year of the Association which shall run from the first day of July each year until the last day of June in the following year;
- (19) “Golf Course” the Golf Course being developed and constructed on the Estate;
- (20) “Levies” the levies referred to in 3.3 below;
- (21) “Local authority” the local authority namely the City of Cape Town Municipality or its successors in title within whose jurisdiction the Estate is situated;
- (22) “Maintenance” the upkeep and/or repair of the services which shall be the responsibility of the Association except where otherwise provided in the Estate management agreement or in the services agreement;
- (23) “Member” a member of the Association. During the development period membership shall be divided into two classes of members namely A members and the B member, the rights and duties of such classes being as set out in this Memorandum;
- (24) “Occupier” any person in occupation or in possession of an erf or physically upon an erf for any reason whatsoever





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and whether that person is lawfully or unlawfully so in possession or occupation or otherwise thereon, and for any purpose whatsoever;

- (25) “Owner” the registered owner from time to time of an erf registered as such in the relevant deeds office;
- (26) “Private areas” all erven identified as private roads and private open spaces on the Estate;
- (27) ”Recreational facilities” the two tennis courts and swimming pool and any other associated buildings erected or constructed by the developer for the use and enjoyment of the members on the Estate;
- (28) “Services” the roads, verges, parking bays, water supply, sewerage pipes, storm water pipes and drains, electricity cables and all other services within the common areas or in respect of the erven;
- (29) “Services agreement” the agreement to be concluded between the developer and the Association jointly and the local authority relating to the maintenance of the services installed or to be installed on the Estate;
- (30) “Subcontractors” any person or body of persons or bodies selected by the Directors and appointed by them as independent professional contractors or subcontractors or agents or managing agents to undertake all or any of the functions or obligations of the Association;
- (31) Unless the context otherwise indicates, any words importing the singular shall also include the plural and *vice versa*, words importing any one gender shall include the other or others, and any reference to a person shall include a company incorporated or registered as such under any law, any body of persons corporate or unincorporated and any trust whether testamentary or *inter vivos*.
- (32) The headings to the respective articles are inserted for reference purposes only and shall not be taken into account in the interpretation of this Memorandum.



- (33) If an erf is registered in the name of two or more persons then they shall be jointly and severally liable *in solidum* for all the obligations of the owner of that erf in terms of this Memorandum.

## **SCHEDULE 1 – INCORPORATION AND NATURE OF THE ASSOCIATION**

**Part A – Incorporation and Objects and Powers of the Association**

**Part B – Not Applicable to Atlantic Beach**

**Part C – Conditions of the Association**

**Part D – Memorandum of Incorporation and Rules**

**Part E – Membership**

### **Part A**

#### **1. Incorporation, Objects and Powers of the Company**

1.1 The Company is incorporated as a Non Profit company, as defined in the Act.

1.2 The Company is incorporated in accordance with, and governed by-

1.2.1 the unalterable provisions of the Act that is applicable to Non Profit companies;

1.2.2 the alterable provisions of the Act that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum ; and

1.2.3 the provisions of this Memorandum of Incorporation.

#### **1.3 The Company :-**

1.3.1 must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation.

1.3.2 may, subject to 1.3.1 above, acquire and hold securities issued by a profit company; or directly or indirectly alone or with another



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person, carry on business, trade or undertaking consistent with or ancillary to its stated objects.

- 1.3.3 may not amalgamate or merge with, or convert to, a profit company; or dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, *except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the non-profit company and such an action is submitted to the members for approval and voting.*
- 1.3.4 must not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of the manner in which 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 of the Company, except as reasonable –
- 1.3.4.1 remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
  - 1.3.4.2 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;
  - 1.3.4.3 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
  - 1.3.4.4 in respect of any legal obligation binding on the Company.



## **Part B**

Not applicable

## **Part C**

### **2. Conditions**

- 2.1 The income and property of the Association derived from whatever source shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise howsoever to the members of the Association; provided that nothing herein contained shall prevent the payment in good faith of a reasonable remuneration or fee to any officer or servant of the Association or to any member thereof in return for services actually rendered to the Association.
- 2.2 Upon its winding-up, deregistration or dissolution the assets of the Association remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or institutions having objects similar to its main objects and which are also exempt from income tax in terms of Section 10(1)(e)(iii) of the Income Tax Act, 58 of 1962, to be determined by the determination, by a Court of competent jurisdiction.
- 2.3 Those profits or gains of the Association which are derived solely from transactions with or on behalf of its individual members may not be distributed to any persons other than the members with whom or on whose behalf the transaction took place. No person shall be entitled to any benefit other than benefits accruing to that person from transactions with or on behalf of that person except as regards any receipt or accruals from investments of the Association including the letting of property to non-members.
- 2.4 The members will be obliged to contribute by way of subscriptions and/or levies toward the funds of the Association, and the Association will be entitled to enforce payment of and to collect and receive from members such contributions and/or levies, including interest on all amounts in arrear.
- 2.5 The Association shall be entitled to enforce compliance with its Memorandum of Incorporation in such manner as it may deem fit and in particular by means of a system of fines or such other penalties as it may see fit to prescribe.
- 2.6 Funds available for investment shall only be invested with registered financial institutions as defined in Section 1 of the Financial Institutions (Investment of



Funds) Act 1984, and in securities listed on a stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985.

### **Liability**

- 2.7 There shall during the development period (as defined in the Memorandum of Incorporation) be two classes of member of the Association, namely A members and the

B member, the rights, entitlements and obligations of which shall be as set out in the Association's Memorandum of Incorporation. On the termination of the development period the B class of membership shall cease to exist and the remaining class will be redesignated as members.

- 2.8 Each member undertakes to contribute to the assets of Association in the event of it being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the Association contracted before he ceases to be a member, and of the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required; provided that during the development period the liability of the A members in this regard shall be limited to R1 per member, whilst the liability of the B member in this regard shall be limited to R2 000. On and after the termination of the development period the liability of members in this regard shall be limited to R1 per member.

### **Management and control of the Association**

- 2.9 Each member of the Association acknowledges and agrees that for the duration of the development period (as defined in the Memorandum of Incorporation) the management and control of the Association and its affairs shall vest entirely in the hands of the developer, namely, Johnnic Property Developments Limited ("Johnnic"), or its successors in title or assigns or in the hands of professional managers, operators or sub-contractors as may from time to time be appointed by Johnnic or its successors in title.
- 2.10 During the development period, the A members shall have no right to appoint Directors to the Board of Directors of the Association, and voting control at all meetings of members of the Association will for that period vest with the developer.
- 2.11 After the development period the responsibility for managing and carrying out the day to day functions of the Association shall in all respects be delegated, subject to such limitations and restrictions as may from time to time be imposed



by the Directors of the Association, to the Chief Executive Officer of the Association or to such other person or persons as determined by the Directors to be appropriate.

## **Part D**

### **3.**

#### **3.1 Memorandum of Incorporation**

3.1.1 All and any amendments or variations or additions to this Memorandum of Incorporation will require the approval on a poll of at least 66.67% of the total number of votes of the members of the Association, given at a general meeting convened specifically for such purpose, and also in the case of any amendments, variations or additions to the main objects and purposes of the Company and the definitions, as well as the provisions of 4, 8, and 3.8, 3.2.8 and 3.1 of this Memorandum of Incorporation the prior written approval of the local authority. Furthermore, no amendment, variation or addition to any of the provisions of 3.3.9 or 3.8 below will be valid unless it shall have received the prior written approval of the developer as provided in 3.8 below.

3.1.2 The notice of such meeting shall, in addition to complying with 12.5 and 12.6 below, set out in specific terms the proposed amendment variation or addition to this Memorandum of Incorporation.

#### **3.2 General rules**

3.2.1. Whenever they consider that the appearance or condition of any erf or building on any erf is such as to be unsightly or injurious or constitute a nuisance to the surrounding area or the Estate generally, the Directors may serve notice on such owner to take such steps as may be specified in the notice to eliminate such nuisance or unsightly or injurious condition. Should the owner fail within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the erf or buildings concerned and take such steps as may be necessary to address and cure the situation, and recover the costs thereof from the owner concerned, which costs shall be deemed to be a debt owing by the owner to the Association.



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

- 3.2.2 It shall be the duty of all members to acquaint themselves and to comply with the provisions of all laws, regulations, by-laws and the like insofar as they may apply to the ownership or occupation of erven, and each member shall indemnify and hold harmless the Association and the Directors jointly and severally against all and any financial loss or damage or costs or expenses incurred by them or any of them in consequence, directly or indirectly, of the failure to so comply with any such laws, regulations, by-laws and the like.
- 3.2.3 The provisions of this Memorandum of Incorporation shall be binding upon all members and, also on all persons occupying any erf by, through or under any member or by virtue of any actual or implied permission or consent given by any member, whatever the nature of such occupation.
- 3.2.4 No person ceasing to be a member of the Association for any reason whatsoever shall (nor shall such person's executors, curators, Directors or liquidators or any person claiming through or under such person) have any claim upon or interest in or right to the funds or any Estate of the Association.
- 3.2.5 The Association may claim from any member or his Estate any arrear levies and interest or other sums due by him to the Association at the time of his ceasing to be a member.
- 3.2.6 Any person using any of the services, Estate, facilities or sports amenities of the Association or held by the Association under lease, grant or other permission does so entirely at his own risk.
- 3.2.7 Neither the Association nor the Directors shall be responsible or may be held liable for any loss, damage or injury, including direct or indirect consequential loss or damage suffered by or caused to any person or property anywhere on or about the Association's Estate, property or premises, whether or not such loss, damage or injury is occasioned by any act or omission of the Association or the Directors or anyone else for whose actions they or any of them would be liable in law, or by reason of *vis major*, *casus fortuitous*, rain or other water, riots, strikes, theft or burglary with or without forcible entry, or by reason of any condition on or



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in or of any part of the Association's Estate, property or premises or building structures, or any defective facilities of the Association, or caused by any sporting activity carried out on the Estate or the Golf Course or by any other cause of whatsoever nature and howsoever arising; and each member hereby indemnifies the Association and the Directors and holds it and them harmless in respect of all or any such claims for loss, injury or damage of whatsoever nature and howsoever arising whether made by that member or himself or by any member of his family, or by any occupier.

- 3.2.8 It is recorded that the owners are and will be jointly liable to reimburse the local authority for expenditure incurred by it in relation to any steps taken by it to rectify any failure by the Association to meet any of the Association's obligations under Section 29(2) read with Section 29(4) of the Land Use Planning Ordinance (Cape Ordinance) No. 15 of 1985.

### **3.3 Levies**

- 3.3.1 The Directors may from time to time impose levies upon the members for the purpose of meeting all the expenses in relation to the provision of services and the general maintenance and upkeep of the recreational facilities, and for the payment of all expenses necessarily or reasonably incurred in connection with the management and operations of the Association and its affairs.
- 3.3.2 The Directors may, from time to time, impose special levies upon members in respect of all such expenses as are mentioned in article 3.3.1 and the amount of such levies and the manner of payment thereof by members shall be as determined by the Directors. The provisions of 3.3.4, 3.3.5 and 3.3.6 below shall *mutatis mutandis* apply to special levies.
- 3.3.3 In consideration of the undertakings given by the developer's subsidiary ABM in the Estate management agreement, the developer will not be required during the development period to pay levies in respect of erven remaining registered in the developer's name. From and after the date of termination of the development period the developer will pay the same levies attributable to each of the erven (if any) as remain registered in its name, as are payable in respect of each of the remaining erven.





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- 3.3.4 Any amount due by the member by way of a levy shall be a debt due by him to the Association. The obligation of a member to pay a levy shall cease upon his ceasing to be a member of the Association, without prejudice to the Association's right to recover arrear levies from such members. No levies paid by a member shall under any circumstances be repayable by the Association upon his ceasing to be a member. A member's successor-in-title to an erf shall be liable, as from the date upon which he becomes a member pursuant to the transfer of that erf into his name, to pay the levy attributable to that erf.
- 3.3.5 In calculating the levy payable by each member, the Directors shall, subject to the provisions of 3.3.3 above, so far as reasonably practical apportion the costs relating to the Estate generally to the owners of all erven equally. Provided, however, that the Directors may in any case where they consider it equitable so to do, assign to any member a greater or lesser share of the costs as the Directors may consider reasonable in the circumstances. The Directors may further in their discretion rebate levies for consolidated erven, and may impose different levies for sectional title units and linked exclusive use areas, or for the erven held under any other scheme for common use or ownership.
- 3.3.6 The Director's decision in calculating the levy shall be final and binding on all the members.
- 3.3.7 No member shall be entitled to any of the privileges of membership including without limitation the use of the Club or Clubhouse or any of the recreational facilities and the same shall be suspended, until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 3.3.8 No member shall be entitled to be appointed or to remain in office as a Director of the Association unless he shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 3.3.9 The Association shall in perpetuity pay to the Club on a monthly basis an amount of 25%, or such lesser amount as shall be determined by the developer in its sole discretion from time to time, of all income received by the Association in the form of



levies from members, towards the subsidisation of the maintenance and operation of the Club.

### **3.4 Costs**

A member shall be liable for and pay all costs, including legal costs as between attorney and own client, collection commission, expenses and all other charges incurred by the Association in recovering any arrear levies or other amounts due and owing by such member to the Association including interest thereon. This includes enforcing compliance with any rules issued by the Association from time to time.

### **3.5 Estate Rules**

3.5.1 Subject to this Memorandum of Incorporation and to any condition imposed by the local authority in approving the rezoning and subdivision of the Estate, the Directors may from time to time, but shall not be obliged so to do, make rules and vary or modify those rules all of which shall be binding on the members, *inter alia*, in relation to:

3.5.1.1 the standards and guidelines for the architectural designs of all buildings and out-buildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any such buildings, out-buildings or structures erected or to be erected on the Estate, and in particular to control the design and colour of the exterior of such buildings and out-buildings, structures, and the materials to be used on such exteriors to ensure an attractive and aesthetically pleasing and harmonious character to all buildings on the Estate;

3.5.1.2 the sitings of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts, and all additions and alterations to any thereof, and the imposition of controls for safety purposes in respect of all or any of the aforesaid;

3.5.1.3 the preservation of the natural environment, vegetation and flora and fauna on the Estate including the right to control, and if necessary, order the removal of, vegetation, the right to prohibit and/or



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- control the erection of fences, and walls whether upon or within the boundaries of any erven, and the right to prohibit any interference with the Estate landscaping, including the indigenous vegetation planted on any sidewalk;
- 3.5.1.4 the right to allow ABM or any of its servants access to and to make use of, domestic water supplies for the maintenance of the sidewalk of any erf;
- 3.5.1.5 the right to prohibit, restrict or control the keeping of any animal which the Directors may regard as dangerous or a nuisance;
- 3.5.1.6 the conduct of any persons on the Estate for the prevention of nuisance of any nature to any member;
- 3.5.1.7 the use of services and recreational facilities, including the right to charge a reasonable fee for the use thereof;
- 3.5.1.8 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interest of the members and/or the occupiers of erven;
- 3.5.1.9 the maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the Estate;
- 3.5.1.10 the regulation of the number of occupiers permitted on any one erf;
- 3.5.1.11 the imposition of sanctions or penalties on owners who fail to commence construction or improvements thereon or fail to complete the same within the time limits if any prescribed by the Association, or this Memorandum of Incorporation, including the right to require the owner at his cost to clear the site and to plant grass or other vegetation and thereafter to maintain the same in good order and condition so as



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- not to detract from the aesthetic appearance of the Estate;
- 3.5.1.12 the right of admission of any person onto the Estate, and the eviction of any person not entitled to be thereon;
- 3.5.1.13 the conditions under which persons may enter upon the Estate or participate in any activity on the Estate;
- 3.5.1.14 for the prevention of the conduct of any business activity whatsoever on any erf except as may be permitted by the Association; and
- 3.5.1.15 the control without limitation of all construction activities on any erf.
- 3.5.2 The rules shall not be in conflict with any condition imposed by the developer upon any member or purchaser of any erf in terms of the deed of sale whereby the member acquires an erf.
- 3.5.3 For the enforcement of any of the rules made by the Directors in terms of this article, or of any of the provisions of this Memorandum of Incorporation generally, the Directors may:
- 3.5.3.1 give notice to the member concerned requiring him to remedy any breach of the rules within such period as the Directors may determine; and/or
- 3.5.3.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be a debt owing by the member concerned to the Association; and/or
- 3.5.3.3 take such action against a member including the imposition of a fine, or proceedings in court, as they may deem fit.
- 3.5.4 Should the Directors institute any legal proceedings against any member or occupier on the Estate for the enforcement of any of the rights of the Association in terms hereof, the Association shall



be entitled to recover all legal costs so incurred from the member or occupier concerned, as between attorney and client, including tracing fees and collection commission.

- 3.5.5 Should any member of a member's household, or any of his guests or lessees or occupiers or invitees or licensees breach the rules, such breach shall be deemed to have been committed by the member himself; but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 3.5.6 If any member disputes the fact that he has committed a breach of any of the rules, a committee appointed by the Chairman shall adjudicate upon the issue at such time and in such manner and according to such procedures (provided that natural justice and equity shall be observed) as the Chairman may direct.
- 3.5.7 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Association enforce the provisions of any rules by civil proceedings or action or application to any court of competent jurisdiction, and for this purpose may appoint attorneys and counsel as they may deem fit.
- 3.5.8 The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the Directors from time to time.
- 3.5.9 All rules must be reasonable and must apply equally to all owners of erven put to substantially the same use.

### **3.6 The Club**

- 3.6.1 The Club is owned by the local authority and will be leased to the developer until 31 December 2048 and a further period of 49 years thereafter.
- 3.6.2 In terms of the lease referred to in 3.6.1 above the Club is to be managed by the developer or its nominee.
- 3.6.3 Should the developer or its nominee at any time appoint the Association to manage and control the Club then the Association shall be empowered and authorised to:



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- 3.6.3.1 appoint professional subcontractors for the management and control of the whole or any part or parts of the Club upon such terms and subject to such conditions as may be determined by the Directors;
- 3.6.3.2 let out or hire all or any part of the Estate upon which the Club may be situate or all or any part of any buildings pertaining to the Club, all upon such conditions and terms as the Directors may deem appropriate in their discretion;
- 3.6.3.3 prescribe all rules and regulations governing the use by members, occupiers or the general public of the Club, and the management and upkeep of the Club.

### **3.7 Recreational Facilities**

- 3.7.1 The recreational facilities shall be owned by the Association.
- 3.7.2 In terms of the Estate management agreement the recreational facilities shall be managed by ABM or its nominees or assigns.
- 3.7.3 Should the Association at any time take over management and control of the recreational facilities, then the Association shall be empowered and authorised to:
  - 3.7.3.1 appoint professional subcontractors for the management and control of the whole or any part or parts of the recreational facilities upon such terms and subject to such conditions as may be determined by the Directors;
  - 3.7.3.2 let out or hire all or any recreational facilities or all or any part of the Estate upon which the recreational facilities may be situate, or all or any part of any building pertaining to the recreational facilities, all upon such conditions and terms as the Directors may deem appropriate in their discretion;



- 3.7.3.3 prescribe all rules and regulations governing the use by members, occupiers or the general public of all or any of the recreational facilities, and the management and upkeep of those facilities.

### **3.8 Entrenched Provisions**

The developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to guarantee the success of the development of the Estate. Accordingly, none of the provisions of 3.3.9 above nor the following provisions of this provision 3.8 may be deleted or altered or varied in any way in terms of 3.1 above, without the prior written consent of the developer (which consent shall be required both before, during and after the development period):

- 3.8.1 All members of the Association shall for so long as they remain members be entitled to make use of the Club House or recreational facilities upon such terms as may be prescribed from time to time in relation to such use.
- 3.8.2 The Association shall ensure and procure that the right to utilise the Golf Course, Club House and recreational facilities is extended to unaccompanied paying guests at any hotel or hotels to be established by the developer or its successors or assigns on the Estate, subject in all such cases to the payment of green fees in respect of golf and fees for the use of other recreational facilities on the basis then in force.
- 3.8.3 The developer shall during the development period:
  - 3.8.3.1 have the right to hold golf tournaments or other events at the Club;
  - 3.8.3.2 be entitled to allow its unaccompanied guests to use the Club and recreational facilities.
- 3.8.4 The management and development of the flora on the Estate, as well as the establishment of a fire management contingency plan, shall at all times accord with the Environmental Management Plan and Environmental Contract dated 2 October 1998 between the developer and the local authority.



- 3.8.5 The Association shall, subject to 3.8.4 above, be entitled to order the removal of alien vegetation, as well as water absorbing vegetation, from any erf, and shall itself be obliged to do so on areas that are neither common areas or over which a servitude operates in its favour.
- 3.8.6 The Association may register, where necessary, service servitudes over the Estate in favour of the local authority, and whether in respect of any separate erven, roads or the common areas; and may accept such servitudes in its favour or in favour of any portion of the Estate to enable the Association to carry out all or any maintenance or services which it may have undertaken to perform.

### **3.9 Optional provisions of the Act apply**

The Company elects, in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Section 90 of the Act as described below:

- 3.10 The Directors shall cause such accounting records as are prescribed by section 28 of the Act to be kept. Proper accounting records shall be deemed not to have been kept if they do not fairly present the state of affairs and business of the Association and adequately explain the transactions and financial position of the trade or business of the Association.
- 3.11 The accounting records shall be kept at the registered office of the Association or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.
- 3.12 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Association or any of them shall be open to inspection by members not being Directors, and no member who is not a Director shall have any right of inspecting any records or documents of the Association except as conferred by the Act or may be authorised by the Directors.
- 3.13 The Directors 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 referred to in section 30 of the Act.





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- 3.14 A copy of the annual financial statements which are to be laid before the Association in annual General meeting shall, not less than 21 days before the date of the meeting, be sent to every member of the Association and the Registrar of Companies: provided that this article shall not require a copy of those documents to be sent to any person of whose address the Association is unaware.
- 3.15 An auditor shall be appointed in accordance with section 90 of the Act.
- 3.16 The financial year of the Association will commence on the first day of July and end on the last day of June in each year.

**Part E**

**4. Membership**

- 4.1 Membership of the Association shall be limited to the developer in its capacity as such and to all other persons who are owners.
- 4.2 During the development period membership shall be divided into two separate classes of member namely A members and the B member. The developer shall be the sole B member and shall continue as such for the development period.
- 4.3 Every owner shall *ipso facto* be and become a member of the Association upon registration of transfer of the erf into his name and shall remain a member of the Association and be entitled to use the Club House and recreational facilities until he ceases to be an owner. During the development period such owners shall be classified as A members.
- 4.4 When an erf is owned by more than one person, all the registered owners shall together be deemed to be one member of the Association and shall have the rights and obligations of a single member of the Association and the provisions of 12.15 below shall apply as to voting by such persons.
- 4.5 Upon the termination of the development period:



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- 4.5.1 the developer shall cease to be a B member and the B class of member shall thereupon cease to exist, and
  - 4.5.2 the A members shall henceforth be re-designated as members;
  - 4.5.3 the developer shall be a member as long as it is the registered owner of a property in the Estate.
- 4.6 A reference herein to the members of the Association shall during the development period include both A and the B members, or if so required by the context, only one of such classes.
- 4.7 During the development period the developer shall be entitled without relinquishing its membership as a B member to cede and assign all or part of its rights and obligations in terms of this Memorandum of Incorporation to a person or persons nominated by it.

**5. Termination of Membership**

- 5.1 When a member ceases to be an owner he shall *ipso facto* cease to be a member of the Association.
- 5.2 On termination of the development period the developer shall *ipso facto* cease to be a B member of the Association and that class of membership shall cease to exist.

**6. Alienation**

- 6.1 A member shall not in any manner alienate an erf and any purported alienation thereof shall be of no force or effect, unless:
  - 6.1.1 the Association has given its prior written consent thereto and has issued a clearance that all amounts owing to the Association by such member have been paid, and
  - 6.1.2 the proposed transferee has acknowledged that upon the registration of transfer of the erf into his name he shall *ipso facto* become a member of the Association, subject to all the rights, obligations and duties of a member.
- 6.2 The provisions of this article shall *mutatis mutandis* apply to any alienation of an undivided share in an erf.



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- 6.3 This Memorandum of Incorporation shall also bind all persons occupying an erf and no member shall let or otherwise part with the occupation or possession of his erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this Memorandum of Incorporation in all respects. The owner shall however always remain bound by this Memorandum of Incorporation and be required to ensure due and proper compliance therewith by an occupier.
- 6.4 An owner may not at any time resign as a member of the Association.
- 6.5 Restrictions will be registered against all the erven in order to give effect to the terms of this article. The members shall be bound by this article whether or not such restrictions are registered.

**7. Obligation to build**

- 7.1 Owners of each residential erf (but not including the sectional title units) shall be obliged within 2 years after the date of registration of the first transfer of that erf to commence with the erection of a dwelling house and to complete such dwelling house (as evidenced by the issue of a certificate of occupation by the local authority) within 12 months thereafter.
- 7.2 Should an owner fail for any reason whatsoever to comply with the provisions of 7.1 above, then at any time after such failure to comply, the Association shall have the right to impose sanctions or penalties on owners.
- 7.3 Notwithstanding 7.1 and 7.2 hereof, the developer shall not to be obliged at any stage to develop, or construct a dwelling on, any residential erf registered in its name.

**8. Alienation of private areas**

Neither the whole nor any portion of the private areas may be:

- 8.1 sold, let, alienated, otherwise disposed of, subdivided or transferred; or
- 8.2 mortgaged; or



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8.3 subjected to any rights, whether registered in a deeds registry or not, of use, occupation or servitude other than servitudes in favour of the local authority for services;

without the sanction of a special resolution of the Association and the prior written consent of the local authority.

**SCHEDULE 2 – RIGHTS OF MEMBERS**

**Part A – Not applicable to Atlantic Beach**

**Part B – Not applicable to Atlantic Beach**

**Part C – Proxies**

**Part D – Record Date**

**Part A and Part B**

Not applicable

**Part C**

**10. Proxies**

10.1 A member may be represented at a general meeting by a proxy, who must also be a member of the Association.

10.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority or resolution under which it is signed, must be lodged with the Association at least 24 hours before the commencement of the meeting or adjourned meeting concerned, but the Directors may from time to time determine that such documents:

10.2.1 are to be lodged at a particular place, or

10.2.2 are to be lodged a certain number of hours, not exceeding 48 in all, before the meeting, or

10.2.3 may be lodged at any time before or during the meeting.



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Notwithstanding the foregoing the Chairman of the meeting may in his absolute discretion agree to accept a proxy tendered at any time before or during the meeting.

10.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.

10.4 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

**ATLANTIC BEACH HOMEOWNERS ASSOCIATION**

(Non Profit Company)

("the Association")

**P R O X Y**

I, \_\_\_\_\_ of \_\_\_\_\_ being

a member of the Association hereby appoint \_\_\_\_\_

of \_\_\_\_\_ or failing him, \_\_\_\_\_

of \_\_\_\_\_ or failing him, \_\_\_\_\_

of \_\_\_\_\_ as my proxy to vote for me on my behalf at the

annual general meeting (as the case may be) of the Association to be held on the

\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof as follows:

	In Favour of	Against	Abstain
Resolution No. ....			
Resolution No. ....			
Resolution No. ....			

(Indicate instructions to proxy by way of a cross in space provided above)

Unless otherwise instructed, my proxy will vote or abstain as he thinks fit.



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Signed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

(NOTE: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead. Such proxy must also be a member of the Association. Where a member is a corporate body, this proxy must be accompanied by an appropriate mandate or resolution.)

\_\_\_\_\_  
SIGNATURE

A proxy shall be valid for any adjournment of the meeting to which it relates unless otherwise indicated on the proxy.

**Part D**

**11. Record date for the exercise of member rights**

The Company's Board of Directors shall determine a record date, as contemplated in section 59, for the relevant notice periods, delivery of documents and convening of meetings.

**SCHEDULE 3 – MEMBERS' MEETINGS**

**Part A** – General Meetings of the Association

**Part B** – Location of Members' Meetings

**Part C** – Electronic participation

**Part D** – Quorum

**Part E** – Adjournment

**Part F** – Resolutions

**Part A**

**12. General meetings of the Association**

12.1 The Association shall within 6 months after the end of the financial year hold a general meeting as its annual general meeting in addition to any other general meetings during that year, and shall specify the meetings as such in the notices given in terms of section 62 of the Act.

12.2 Such annual general meeting shall be held at such time and place as the Directors shall decide from time to time.



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- 12.3 All meetings other than annual general meetings shall be called general meetings.
- 12.4 The Directors may, whenever they think fit, convene a general meeting. A general meeting may also be convened by the Directors on a requisition made in terms of section 61 of the Act, or should the Directors not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.

**Notices of meetings**

- 12.5 An annual general meeting and a general meeting called for the passing of a special resolution shall be called by not less than 21 clear days' notice in writing. Any other general meeting shall be called by not less than 15 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 is given, and shall specify the place, the day and the time of the meeting and shall be given in the manner, if any, as may be prescribed by the Association in 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 is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by not less than 95% of the members having the right to attend and to vote at the meeting.
- 12.6 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, the consideration of the annual financial statements, the noting of the levy for the financial year during which such annual general meeting takes place, the appointment of the auditor and, after the development period, the election of Directors, and may also deal with any resolutions of which notice may have been given by the members under section 62 of the Act.

**Service of Notices**

- 12.7 Notices may be given by the Association to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address, or at the address (if any) within the Republic supplied by him to the Association for the



giving of notices to him. This address shall be deemed the member's *domicilium citandi et executandi*.

12.8 Notice of every general meeting shall be given:

12.8.1 to every member of the Association;

12.8.2 to the secretary for the time being of the Association.

No other person shall be entitled to receive notices of general meetings.

12.9 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, 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.

12.10 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.

12.11 When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

### **Voting rights of Members**

12.12 Members shall be entitled to vote only on the matters before the meeting concerned.

12.13 At every general meeting during the development period:

12.13.1 each A member, present in person or by proxy and entitled to vote, shall have 1 vote for each erf registered in his name;

12.13.2 the B member present in person or by proxy shall have 2 000 votes, and in addition shall have 1 vote as an A member for each erf registered in its name.

12.14 At every general meeting after the termination of the development period, each member present in person or by proxy and entitled to vote shall have 1 vote for each erf registered in his name.





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- 12.15 If an erf is registered in the name of more than one person, then all such co-owners shall jointly have only 1 vote.
- 12.16 Save as expressly provided for in this Memorandum of Incorporation, no person other than a member who shall have paid every levy and other sum, if any which shall be due and payable to the Association in respect of or arising out of his membership and who is not suspended, shall be entitled to be present and to vote, either personally or by proxy, at any general meeting.
- 12.17 Voting at general meetings shall take place by way of a show of hands unless on or before the declaration of the result of the show of hands a poll is demanded in accordance with the provisions of the Act.
- 12.18 All resolutions shall be passed by simple majority vote, save with respect to amendments of this Memorandum of Incorporation as provided for in 3.1 above, hereof.
- 12.19 If a poll is duly demanded it shall be taken in such a manner as the Chairman of the meeting may direct either immediately or after an interval or adjournment.
- 12.20 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter, such difficulty or dispute is to be determined by the Chairman whether or not scrutineers have been appointed to count the votes, and his decision shall be final and conclusive.
- 12.21 A vote cast under a proxy, power of attorney or other authority which has been revoked shall nevertheless be valid unless:
- 12.21.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 12.21.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 12.22 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast, and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall



be referred to the Chairman of the meeting, whose decision shall be final and conclusive.

- 12.23 A declaration made in good faith by the Chairman of the general meeting to the effect that, either on a show of hands or on a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed as the case may be.

### **Part B and Part C**

#### **13. Location of Members' Meetings and Electronic Participation**

- 13.1 Annual General Meetings shall be held at such time and place as the Directors shall decide from time to time as further set out below.
- 13.2 The Directors may decide to send notices via electronic format but all meetings shall be held in person.

### **Part D**

#### **14. Quorum for Members' Meetings and Time Periods**

- 14.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, a quorum shall consist of 10% of the total number of members, present in person or by proxy at the meeting; provided that during the development period one of such persons must be the representative of the B member, provided further that there shall always be at least three members present in person.
- 14.2 If within 15 minutes after the time appointed for the commencement of a general meeting or within such extended period as the Chairman of the board or, in his absence, the deputy Chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the Chairman may determine. If a



quorum is not present at such adjourned meeting, the members present shall constitute a quorum, provided that during the development period one of such persons must be the representative of the B member.

## **Part E**

### **15. Adjournment**

The Chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment:

15.1 No notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for 30 days or more in which event notice is to be given in the same manner as for the original meeting);

15.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting;

## **Part F**

### **16. Members' resolutions**

16.1 An ordinary resolution, including a resolution for the removal of a director, shall be adopted by a simple majority of votes.

16.2 A special resolution shall be adopted by 66.67% of the voting rights exercised on the resolution.

16.3 Apart from the provisions set out in section 65(11), a special resolution shall also be necessary as per 3.1 above.



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## SCHEDULE 4 – DIRECTORS AND OFFICERS

**Part A – Composition of the Board of Directors**

**Part B – Not applicable to Atlantic Beach**

**Part C – Not applicable to Atlantic Beach**

**Part D – Powers and Duties of Directors**

**Part E – Board of Directors' Meetings**

**Part F – Proceedings of Directors**

**Part G – Expenses and Indemnity of Directors**

### **Part A**

#### **17. Composition of the Board of Directors**

- 17.1 During the development period there shall be two Directors of the Association, and after the development period this number shall increase to 5 Directors of the Association who shall jointly be solely and exclusively responsible and authorised and obliged to manage and control the entire business, affairs and undertakings of the Association in whatever form, and/or to appoint appropriate professional managers, operators and subcontractors to undertake these functions.
- 17.2 During the development period the B member shall be solely entitled to appoint, remove and replace all the Directors and the A members shall have no rights in this regard.
- 17.3 On the termination of the development period all the Directors then in office shall resign and shall be replaced by Directors nominated and elected by the members in accordance with this Memorandum of Incorporation.
- 17.4 A Director shall be an individual who shall not necessarily be a member of the Association. A Director, by accepting his appointment to office, shall be bound by all the provisions of this Memorandum of Incorporation.
- 17.5 The Directors shall appoint one of their number to act as Chairman for such term as they think fit, but not for longer than such person's tenure as a Director.
- 17.6 After the development period the responsibility for managing and carrying out the day to day functions of the Association shall in all



respects be delegated, subject to such limitations and restrictions as may from time to time be imposed by the Directors of the Association, to the Chief Executive Officer of the Association or to such other person or persons as determined by the Directors to be appropriate.

### **Removal and rotation of Directors**

- 17.7 Save as set out in 17.2 above, each Director shall continue to hold office as such from the date of his appointment to office until the annual general meeting following his said appointment, at which meeting each Director shall be entitled to elect whether to retire from office or to renew his position as Director until the next annual general meeting. At the next annual general meeting each Director who has elected to extend his term of office for a further period of one year as aforesaid shall be deemed to have retired from office as such but will be eligible for re-election to the board of Directors at such meeting.
- 17.8 A Director shall be deemed to have vacated his office as such upon:
- 17.8.1 his having become disqualified to act as a director in terms of the provisions of the Act;
  - 17.8.2 his being removed from office as provided in the Act;
  - 17.8.3 his becoming disentitled as a member of the Association to exercise a vote in terms of 12.16 above;
  - 17.8.4 his Estate being sequestrated, whether provisionally or finally;
  - 17.8.5 the commission by him of any act of insolvency;
  - 17.8.6 his conviction for any offense involving dishonesty;
  - 17.8.7 his becoming of unsound mind or being found lunatic; or
  - 17.8.8 his resigning from office in writing, provided that anything done in good faith, in the capacity as a Director, by a person who has ceased to be a Director, shall be valid until the fact that he is no longer a Director has been recorded in the Director's minute book.
- 17.9 Subject to 17.2 above, upon any vacancy occurring in the Directors prior to an annual general meeting, the vacancy in question shall be filled by a person nominated by the remaining Directors who shall hold offices as set out in 17.7 above.



## **Part B and Part C**

Not applicable

## **Part D**

### **18. Powers of Directors**

- 18.1 Subject to the express provisions of this Memorandum of Incorporation, including the provisions of article 17.6 above, the Directors shall manage and control the entire business and affairs of the Association and shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any subcontractor, and may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association in general meeting, subject however to such rules as may have been made by the Association in general meeting or as may be made by the Directors themselves from time to time.
- 18.2 The Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners managing agents, subcontractors or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors on such terms as the Directors shall decide.
- 18.3 The Directors shall further have the power:
- 18.3.1 to require that any construction of any sort on the Estate shall be supervised to ensure that the provisions of this Memorandum of Incorporation and the Estate rules are complied with and that all such construction is performed in a proper and workmanlike manner; and
- 18.3.2 to issue an architectural, landscape and environmental manual in respect of the Estate, and to ensure that such manual is complied with at all times.
- 18.4 The Directors shall have the right to vary, rescind or modify their decisions or resolutions from time to time.
- 18.5 The Directors shall be entitled to appoint committees or a suitably qualified person or persons consisting of such number of their



members and such outsiders, including a subcontractor, as they may deem fit to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

- 18.6 The Directors may appoint an architectural review committee or a suitably qualified person, to exercise the powers set out above in 18.3 above which committee or person may, but shall not necessarily, consist of or be:
- 18.6.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
  - 18.6.2 one Director; and
  - 18.6.3 such other person as the Directors may determine;
- 18.7 Members of the architectural review committee shall not be required to be members of the Association.
- 18.8 Except for any buildings, out-buildings, structures, additions or alterations to be erected or effected by the developer, all plans for buildings, out-buildings, structures, additions and alterations on the Estate shall be approved by the Directors, or any person designated by them for the purpose which, after the development period, shall include the architectural review committee, should one have been appointed.
- 18.9 In the execution of their duties the Directors shall be entitled to enter into a services agreement or agreements for upkeep and maintenance purposes.

## **Part E and Part F**

### **19. Board of Directors' Meeting and Proceedings of Directors**

- 19.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Memorandum of Incorporation.
- 19.2 The quorum necessary for the holding of all meetings of the Directors shall, during the development period be 2 Directors



present personally or after the development period, 3 Directors. If no quorum is present within 5 minutes after

the time for commencement of the meeting then it shall stand adjourned for 7 days, or if that is not a business day, then to the next business day thereafter, and those Directors present at the adjourned meeting shall constitute a quorum.

- 19.3 All resolutions of the Directors shall be carried by a simple majority of votes cast. In the case of an equality of votes for and against a resolution, the Chairman of the Directors shall have a second or casting vote.
- 19.4 The Directors shall cause minutes to be kept of every Directors' meeting, which minutes shall without undue delay after the meeting has closed, be reduced to writing and certified as correct by the Chairman. All minutes of the Directors' meetings shall, after certification, be placed in a Directors' minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of companies. The Directors' minute book shall be open for inspection at all reasonable times by any Director and the auditors.
- 19.5 A resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a properly convened meeting of the Directors.

## **Part G**

### **20. Directors Indemnity and Expenses**

- 20.1 All the Directors and the auditors shall be and are hereby indemnified by the Association against all liabilities *bona fide* incurred by them in their respective capacities, in the defence or institution of any proceedings, civil, criminal or otherwise.
- 20.2 Every Director, servant, agent and employee of the Association, and the auditors, shall be and is hereby indemnified by the Association against (and it shall be the duty of the Directors out of the funds of the Association to pay) costs, losses and expenses (including travelling expenses) which such person or persons may incur or for which they may become liable by reason of any contract entered into, or any act or deed done, by such





person or persons in the discharge of any of his/their respective duties.

- 20.3 Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as Directors.
- 20.4 Directors shall be entitled to remuneration in respect of the performance of their duties as may be determined by the Association in a general meeting.



ATLANTIC BEACH  
ESTATE

ATLANTIC BEACH HOMEOWNERS ASSOCIATION NPC

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BOARD OF DIRECTORS: *N. Van Der Walt, L. Fild, D Boyce A. Keet, D Lotz*

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