

**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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**Atlantic Beach Homeowners' Association NPC ("the Company") is a non-profit company (NPC) with Members *incorporated in terms of the provisions of the Companies Act, 2008, ("the Act").***

Capitalised terms in this Memorandum of Incorporation will have the meanings ascribed to them in the Definition clause below.

The objectives of the Company are to:

1. Promote, advance and protect the communal interests of the Owners and Occupiers of Atlantic Beach Estate, Melkbosch Strand, as depicted on the general plan No 4286/98 or any extension thereof or addition thereto relating to Atlantic Beach Estate ("the Estate").
2. Act in accordance with the collective mutual interests of the Members.
3. Control, administer and manage the private open space, private streets and other services and amenities and buildings on the Estate for the benefit of all Members.
4. Retain ownership of the private open spaces, private streets and internal engineering services comprising the Estate.
5. Enforce the conditions of subdivisional approval and management plans listed in the conditions of subdivisional approval for the development of the Estate.
6. Control, administer and manage design guidelines for buildings and landscaping on the land comprising the Estate.
7. Ensure acceptable aesthetic, architectural and environmental standards on the Estate, and to promote and maintain Recreational Facilities available to the Owners and Occupiers.

8. Ensure that Owners and Occupiers of the Estate are entitled to the use of the Club House and Recreational Facilities subject to compliance by such Owners and Occupiers with the rules and regulations formulated for such use.
9. Implement and maintain security measures and systems for controlled access to the Estate.
10. Prescribe conditions of occupation for the Estate.
11. Ensure a harmonious and aesthetic development of the Estate by prescribing rules for (and implementing measures to enforce the same):
  - the landscaping and development of Erven
  - the architectural design of houses on the Estate
  - the building of improvements on Erven in the Estate
  - the control of the exterior alterations and changes of colour finishes to buildings erected on Erven within the Estate
  - maintenance of the Estate and of the Common Areas
  - all administrative functions in connection with the above.
12. Grant and register in favour of the Local Authority service servitudes over the common property or common use areas of the Estate, for the Maintenance of sewers, water, electricity supplies or other facilities.
13. Acquire and retain ownership in Erven for the purposes of road access to and within the Estate; to acquire and hold servitudes in the Company's favour or procure the grant of servitudes in favour of the Local Authority over Erven for the Maintenance and upkeep of the supply of Municipal services.
14. 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.
15. Maintain, repair and ensure the upkeep of Private Areas and all amenities or improvements erected thereon, as well as any landscaped areas.
16. Acquire, take transfer and retain ownership of all Private Areas as and when the same are depicted as such on the relevant general plan; except such as may be specifically reserved in favour of the Local Authority, Eskom or any other designated parastatal body.
17. 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 Company, on an Erf or Erven.

18. Outsource all or part of its functions and duties as set out above to appropriate Subcontractors for the provision of specialised services in connection with or relating in any way to the occupation of Erven. 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.
19. 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 be liable.
20. Carry out the following functions and duties in terms of the By Law, namely:
  - a. the exercise of control over and Maintenance of buildings, services and amenities arising from all subdivisions of the Estate; and
  - b. to ensure that all Owners of Erven and Bodies Corporate in the Estate shall be Members of the Company and as such shall be jointly liable for expenditures incurred by the Local Authority in connection with the Company as contemplated in Section 61(5)(d) of the By Law.

## Index

<b><u>Provision:</u></b>	<b><u>Page:</u></b>
Adoption of the Memorandum of Incorporation	5
Definitions	5
<u>Schedule 1 – Incorporation and Nature of the Company:</u>	9
Incorporation, Objects and Powers of the Company	9
Conditions	10
Liability	11
Management and Control of the Company	11
Memorandum of Incorporation	11
General Rules	12
Levies	13
Costs	14
Estate Rules	15
The Club	17
Recreational Facilities	18
Entrenched Provisions	19
Optional Provisions	19
Membership	20
Termination of Membership	21
Alienation	21
Obligation to Build	22
Alienation of Private Areas	22
Dispute Resolution	22
Certificate of Indebtedness	24
Notices and Domicilia	24
<u>Schedule 2 – Rights of Members</u>	25
Proxies	25
Record date	27
<u>Schedule 3 – Members’ Meetings</u>	27
General meeting of the Company	27
Notices of meetings	28
Service of Notices	28
Voting rights of Members	29
Location of Members’ meetings and Electronic Participation	30
Quorum for Members’ meetings and Time Periods	30
Adjournment of Members’ meetings	31
Members’ resolutions	31
<u>Schedule 4 – Directors and Officers</u>	31

Composition of the Board	32
Removal and rotation of Directors	36
Powers of the Board	37
Board Meetings and Proceedings	38
Indemnity and expenses	39

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

- (a) a reference to a section by number refers to the corresponding section of the Act, unless indicated otherwise by the context;
- (b) unless specifically defined herein, words that are defined in the Act, shall bear the same meaning in this Memorandum of Incorporation 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) “The Act” means the Companies Act, 71 of 2008;
- (2) “Alienate” means in relation to any Erf or Unit or part thereof whether by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, irrespective of whether such alienation is subject to a suspensive or resolute condition and “**Alienation**” shall have a corresponding meaning;
- (3) “Association” means the Company. The words “Association” and “Company” are used interchangeably;
- (4) “Auditors” means the auditors of the Company;
- (5) “Board” means the board of Directors of the Company from time to time;
- (6) “Body Corporate” means a body corporate of any Sectional Title Scheme falling within the Estate;
- (7) “Business Day” means any day other than a Saturday, Sunday, or officially recognized public holiday in South Africa;
- (8) “Business Unit” means any Erf or Unit zoned for commercial or business purposes or which is used for business purposes with the consent of the Local Authority and the Company;
- (9) “By Law” means the City of Cape Town Municipal Planning By Law, 2015

- (10) “Chairman” means the chairman of the Board appointed in terms of 17.4 below;
- (11) “The Club” means the Golf Course and Club House;
- (12) “The Club House” means the communal buildings serving the Golf Course;
- (13) “Common Areas” means—
- in the case of an Erf on which a Sectional Title Scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a member in terms of that Sectional Title Scheme;
  - the land registered in the name of the Company, including, but not limited to, Private Areas;
  - any portion of the Estate which is not subject to an exclusive right in favour of a Member;
- (14) “Company” means Atlantic Beach Homeowners’ Association NPC, registration number: 1999/000213/08;
- (15) “Deeds Registries Act” means the Deeds Registries Act No 47 of 1937, as amended;
- (16) “Developer” means Johnnic Property Developments Limited, or its successors-in-title, or assigns;
- (17) “Directors” means the Directors of the Board as more fully set out in clause 17 below.
- (18) “Erf” means any erf on the Estate, including consolidated Erven, and on which is established or may be established, *inter alia* but not limited to, residential dwellings, Sectional Title Schemes and Business Units, and includes immovable property transferred or to be transferred in accordance with the provisions hereof to the Company;
- (19) “Estate” means Atlantic Beach 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 Estate;
- (20) “Estate Rules” means the rules made in respect of the Company from time to time, as contemplated in clauses 15(3) and (5) and clause 3.5 hereof;

- (21) “Financial year” means the financial year of the Company which shall run from the first day of July each year until the last day of June in the following year;
- (22) “Golf Course” means the Golf Course developed and constructed on the Estate;
- (23) “Levies” means the levies referred to in 3.3 below;
- (24) “Local Authority” means the local authority namely the City of Cape Town Municipality or its successors in title within whose jurisdiction the Estate is situated;
- (25) “Maintenance” means the upkeep and/or repair of the Services which shall be the responsibility of the Company;
- (26) “Member” means a member of the Company, being –
- all Owners of any Erf and all Owners of a subdivision of an Erf; and
  - in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate thereof,

it being recorded that if a Member consists of more than one person, such persons shall be jointly and severally liable *in solidum* for all obligations of such Member in terms of this Memorandum of Incorporation;

- (27) “Occupier” means any person in occupation or in possession of an Erf or Unit or physically upon an Erf for any reason whatsoever and whether that person is lawfully or unlawfully so in possession or occupation or otherwise thereon, and for any purpose whatsoever;
- (28) “Owner” means the owner of an Erf or Unit or a share thereof, who is, in terms of the Deeds Registries Act, reflected in the records of the relevant deeds registry as a registered owner or joint owner of the Erf or Unit;
- (29) “Private Areas” means all Erven zoned by the Local Authority as private roads and private open spaces on the Estate;
- (30) “Prime Rate” means the rate of interest per annum which is equal to the published prime lending rate of interest per annum charged by Nedbank Limited, compounded monthly in arrears (in the case of a dispute as to the rate, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose certificate shall be prima facie evidence thereof).

- (31) “Recreational Facilities” means the two tennis courts and swimming pool and any other associated buildings erected or constructed by the Developer or the Company for the use and enjoyment of the Members and their guests on the Estate;
- (32) “Sectional Titles Act” means the Sectional Titles Act No 95 of 1986, as amended;
- (33) “Sectional Title Scheme” any scheme established in terms of the Provisions of the Sectional Titles Act;
- (34) “Services” means the roads, verges, parking bays, water supply, sewerage pipes, storm water pipes and drains, electricity cables and all other services made available to all occupants of the Estate, but excluding any services pertaining to an Erf or Unit;
- (35) “Settlement Agreement” means the comprehensive Agreement concluded between the Company and the Developer on 15 December 2016 and duly ratified by the Members at a Special General meeting held 2 February 2017;
- (36) “Subcontractors” means 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 Company;
- (37) “Tenant” means a person leasing an Erf of Unit;
- (38) “Unit” means a sectional title unit which forms part of a Sectional Title Scheme on the Estate and as the term is defined in the Sectional Titles Act.

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*.

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.

If an Erf or Unit 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 of Incorporation.



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

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

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

**Part C** – Conditions of the Company

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

**Part E** – Membership

### **Part A**

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

1.1 The Company has been 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 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 of Incorporation;

1.2.3 the provisions of this Memorandum of Incorporation; and

1.2.4 the Estate Rules, if any.

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 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 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 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 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 Company derived from whatever source shall be applied solely towards the promotion of its main objects, 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 Company. Nothing herein contained shall, however, prevent the payment in good faith of a reasonable remuneration or fee to any officer or servant of the Company or to any Member thereof in return for services actually rendered to the Company.
- 2.2 Upon its winding-up, deregistration or dissolution the assets of the Company 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)(i)(v) of the Income Tax Act, 58 of 1962, to be determined by a Court of competent jurisdiction.
- 2.3 Those profits or gains of the Company that 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 Company including the letting of property to non-Members.

- 2.4 The Members will be obliged to contribute by way of levies toward the funds of the Company, and the Company will be entitled to enforce payment of and to collect and receive from Members contributions and/or levies, including interest on all amounts in arrears.
- 2.5 The Company 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 Services Board Act, 1990, and in securities listed on a licensed exchange as defined in the Financial Markets Act, 2012.

### **Liability**

- 2.7 Each Member undertakes to contribute to the assets of Association in the event of it being wound up while he or she is a Member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he or she ceases to be a Member. The same applies to the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves. The liability of Members in this regard shall be limited to R1 per Member.

### **Management and control of the Company**

- 2.8 The responsibility for managing and carrying out the day to day functions of the Company 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 Company, to the Chief Executive Officer of the Company 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 of at least 66.67% of the of the voting rights

of the Members exercised on such resolution at a quorate general meeting convened specifically for such purpose. Any amendments, variations or additions to the objectives of the Company, any of the definitions and/or the provisions of clauses 4, 8, 3.2.8 and 3.1 of this Memorandum of Incorporation, will only take effect after obtaining the written approval of the Local Authority.

- 3.1.2 The notice of such meeting shall, in addition to complying with 14.5 and 14.6 below, set out in specific terms the proposed amendment, variation or addition to this Memorandum of Incorporation.

## **3.2 General rules**

- 3.2.1. If the appearance or condition of any Erf or any building, structure or object on any Erf is considered unsightly or injurious or a nuisance to the surrounding area or the Estate generally, the Directors may serve notice on the 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 Company.

The Directors shall be obliged 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 Units, and each Member shall indemnify and hold harmless the Company 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 on all Occupiers.
- 3.2.4 No person ceasing to be a Member of the Company for any reason whatsoever shall (nor shall such person's executors, curators, directors, Members, business rescue practitioner 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 Company.

- 3.2.5 The Company may claim from any Member or his or her Estate any arrear levies and interest or other sums due by him to the Company at the time of his ceasing to be a Member.
- 3.2.6 Any person using any of the Services, Recreational Facilities or any other amenities of the Company or held by the Company under lease, grant or other permission does so entirely at his own risk.
- 3.2.7 Neither the Company 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 Estate whether or not such loss, damage or injury is occasioned by any act or omission of the Company or any of 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 in or of any part of the Estate, property or premises or building structures, or any defective facilities of the Company, 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 Company and the Directors and holds each of 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 himself or by any Member of his family, or by any Occupier.
- 3.2.8 It is recorded that the Owners may be jointly liable in terms of section 63(1) and (2) of the By Law to reimburse the Local Authority for expenditure incurred by it in relation to any steps taken by it to rectify any failure by the Company to meet any of the Company's obligations under section 61(5)(d) or 62(1)(a)(ii) of the By Law.

### **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 Company 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 3.3.3, 3.3.4 and 3.3.5 below shall *mutatis mutandis* apply to special levies.

- 3.3.3 Any amount due by the Member by way of a levy shall be a debt due by him to the Company. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member of the Company, without prejudice to the Company's right to recover arrear levies from such Members. No levies paid by a Member shall under any circumstances be repayable by the Company 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.
- 3.3.4 In calculating the levy payable by each Member, the Directors shall, so far as reasonably practical, apportion the costs relating to the Estate generally to the Members 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 Bodies Corporate and linked exclusive use areas, or for the Erven held under any other scheme for common use or ownership.
- 3.3.5 The Directors' decision in calculating the levy shall be final and binding on all the Members.
- 3.3.6 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 Company in respect of his membership thereof.
- 3.3.7 No Member shall be entitled to be appointed or to remain in office as a Director of the Company unless he or she shall have paid every levy and other sum (if any) which shall be due and payable to the Company in respect of his or her membership thereof.

#### **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 positioning 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 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;
  - 3.5.1.5 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 Company and/or for the better management of the affairs of the Company 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 Company, 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 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 Company; and
  - 3.5.1.15 the control, without limitation, of all construction activities on any Erf.
- 3.5.2 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:
- 3.5.2.1 give notice to the Member concerned requiring him or her to remedy any breach of the rules within such period as the Directors may determine; and/or
  - 3.5.2.2 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 Company; and/or
  - 3.5.2.3 take such action against a Member, including the imposition of a fine, or proceedings in court, as they may deem fit.



- 3.5.3 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.
- 3.5.4 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.
- 3.5.5 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.
- 3.5.6 Notwithstanding anything to the contrary herein contained, the Company may enforce the provisions of any of the rules through legal proceedings and for this purpose may appoint attorneys and counsel as it may deem fit.
- 3.5.7 The Company 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.
- 3.5.8 All rules must be reasonable and must apply equally to all Owners and Occupiers of Erven put to substantially the same use.

### **3.6 The Club**

- 3.6.1 The Club is owned by the Local Authority and has been 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 Company to manage and control the Club then the Company shall be empowered and authorised to:

- 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 Company.

3.7.2 The Company is empowered and authorised to:

- 3.7.2.1 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;
- 3.7.2.2 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 buildings pertaining to the Recreational Facilities, all upon such conditions and terms as the Directors may deem appropriate in their discretion;
- 3.7.2.3 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**

3.8.1 The ongoing relationship between the Developer and the Company is entrenched by way of the Settlement Agreement concluded between the Company and the Developer on 15 December 2016 which agreement was duly ratified by the Members at a Special General meeting held 2 February 2017.

- 3.8.2 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.
- 3.8.3 The Company shall, subject to 3.8.2 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.
- 3.8.4 The Company 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 Company 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:

- 3.9.1 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 Company and adequately explain the transactions and financial position of the trade or business of the Company.
- 3.9.2 The accounting records shall be kept at the registered office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.
- 3.9.3 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 Company 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 Company except as conferred by the Act or as may be authorised by the Directors.
- 3.9.4 The Directors shall from time to time, in accordance with the Act, cause to be prepared and laid before the Company in general meeting such financial statements as are referred to in section 30 of the Act.

- 3.9.5 A copy of the annual financial statements which are to be laid before the Company in annual General meeting shall, not less than 21 days before the date of the meeting, be sent to every Member of the Company 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 Company is unaware.
- 3.9.6 An auditor shall be appointed in accordance with section 90 of the Act.
- 3.9.7 The financial year of the Company 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 Company shall be limited to all persons who are Owners of an Erf and to Bodies Corporate.
- 4.2 Every Owner of an Erf and each Body Corporate shall *ipso facto* be and become a Member of the Company upon registration of transfer of the Erf into his name or upon the registration of the Body Corporate and shall remain a Member of the Company and be entitled to use the Club House and Recreational Facilities until he ceases to be an Owner or until the Body Corporate is deregistered.
- 4.3 When an Erf is owned by more than one person, all the Owners shall together be deemed to be one Member of the Company and shall have the rights and obligations of a single Member of the Company and the provisions of 14.12 below shall apply as to voting by such persons.
- 4.4 When an Erf forms part of a Sectional Title Scheme, the Body Corporate of the Scheme will be the Member of the Company and shall have the rights and obligations of a single Member of the Company and the provisions of 14.12 below shall apply as to voting by the Body Corporate. The Owners of Units will not be entitled to vote, save through the vote of the Body Corporate of which they are members.

## 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 Company.
- 5.2 When a Body Corporate is finally wound up or deregistered, it shall *ipso facto* cease to be a Member of the Company.

## 6. Alienation

- 6.1 A Member shall not in any manner Alienate an Erf or the owner of a Unit shall not in any manner Alienate a Unit and any purported alienation thereof shall be of no force or effect, unless:
  - 6.1.1 the Company has given its prior written consent thereto and has issued a clearance that all amounts owing to the Company by such Member or by the Body Corporate of the Unit owner have been paid, and that all transgressions of the provisions of this Memorandum of Incorporation or the Estate Rules have been rectified to the satisfaction of the Company, 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 Company, 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 or Unit.
- 6.3 This Memorandum of Incorporation shall also bind all Occupiers and no Member shall let or otherwise part with the occupation or possession of his Erf or Unit, 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 Company.
- 6.5 Restrictions will be registered against all the Erven and Units 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 Bodies Corporate) 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 An Owner whose dwelling house has been partially or fully destroyed will be obliged to reconstruct the dwelling or to construct a new dwelling within 24 months after such partial or complete destruction.
- 7.3 An Owner who has embarked on renovations to a dwelling house, any other building on an Erf or a Unit will be obliged to complete the renovations within 12 months from date of commencement thereof.
- 7.2 Should an Owner fail for any reason whatsoever to comply with the provisions of 7.1, 7.2 or 7.3 above, then at any time after such failure to comply, the Company shall have the right to impose sanctions or penalties on the Owner in question.

## **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
- 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 or the Company for services;
- without the sanction of a special resolution of the Company and the prior written consent of the Local Authority.

## **9. Dispute resolution**

- 9.1 All disputes between the Company (on the one hand) and any Member or any occupant of any dwelling on the Estate (on the other hand) shall, subject to clause 9.3 below, be

determined by arbitration in terms of this clause 9 and shall be instituted by written notice given by the Company to the party or parties in question.

- 9.2 The arbitration will be governed by the Expedited Rules (“**the Rules**”) of the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 9.3 This clause shall not prevent any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.
- 9.4 The parties to the dispute agree that the arbitration will be dealt with on an urgent basis with a view to concluding the arbitration as speedily, efficiently and cost effectively as possible.
- 9.5 The arbitration shall be held –
  - 9.5.1 at Cape Town;
  - 9.5.2 with only the legal and other representatives of the parties to the dispute present thereat; and
  - 9.5.3 otherwise in terms of the Arbitration Act, No 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein.
- 9.6 The arbitrator shall be a practising advocate of the Cape Bar of at least five years’ standing, appointed by agreement between the parties to the dispute, subject to clause 9.7.
- 9.7 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 9.1, the arbitrator shall be appointed by the Cape Town office of AFSA at the request of any party to the dispute.
- 9.8 The parties hereby consent to the jurisdiction of the High Court of South Africa (Western Cape Division, Cape Town) in respect of the proceedings referred to in clause 9.9.
- 9.9 Subject to the outcome of any appeal in terms of clauses 9.10 and 9.11, the decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 9.8, at the instance of any of the parties to the dispute.
- 9.10 In the event that a party to a dispute wishes to appeal the decision of the arbitrator, such appeal shall be held before a senior advocate of the Cape Bar appointed in accordance with clauses 9.6 and 9.7.
- 9.11 The appellant shall deliver its notice of appeal, setting out the grounds of its appeal and the parts of the award against which the appellant wishes to appeal, and shall furnish security for the costs of the appeal in an amount of R250 000 (two hundred

and fifty thousand Rand) to the respondent's reasonable satisfaction within 10 (ten) days from the date on which the arbitration award is published by the arbitrator *a quo*. Should the appellant fail to deliver its notice of appeal and/or fail to furnish security to this effect within the aforesaid 10 day period, the right to appeal shall lapse, the party wishing to appeal will no longer be entitled to proceed with an appeal and the decision of the arbitrator *a quo* shall be final and binding upon the parties.

9.12 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

9.13 The parties agree that any dispute referred to arbitration in terms of clause 9.1 shall be resolved strictly in accordance with the provisions of this clause 9. The parties accordingly agree and undertake as follows –

9.13.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;

9.13.2 that it shall not make any application to the arbitration tribunal as contemplated in terms of section 20(1); and

9.13.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this clause 9.

## **10 Certificate of indebtedness**

Any certificate issued under the signature of a Director or Chief Executive Officer of the Company (whose appointment and authority the Company shall not be required to prove) which purports to certify the amount due by any Member to the Company shall be accepted as *prima facie* proof of such indebtedness and the Member concerned shall bear the onus of proving that the amount of such indebtedness is incorrect.

## **11 Notices and domicilia**

11.1 Each Member of the Company chooses as *domicilia citandi et executandi* the address of the Unit or Erf on the Estate of which the Member is the Owner or co-Owner for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of or in connection with this Memorandum of Incorporation.

11.2 Each Member shall be entitled from time to time to vary its *domicilium citandi et executandi* to any other physical street address within the Republic of South Africa which is not a post office box or *post restante* by giving written notice to this effect to the Company.



- 11.3 Any notice given in terms of this Memorandum of Incorporation shall be in writing and shall -
- 11.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
  - 11.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 4<sup>th</sup> (fourth) day following the date of such posting;
  - 11.3.3 if transmitted by facsimile or email be deemed to have been received by the addressee on the expiration of 24 (twenty four) hours after transmission;
  - 11.3.4 if sent by courier be deemed to have been received on the date of delivery by the courier service concerned, unless the contrary is proved.
- 11.4 Notwithstanding anything to the contrary contained or implied in this Memorandum of Incorporation, a written notice or communication actually received by a party, including by way of facsimile or email transmission, shall be adequate written notice or communication to such party.

## **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**

#### **12. Proxies**

- 12.1 A Member may be represented at a general meeting by a proxy, who can be any individual, including an individual who is not a member of the Company.
- 12.2 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 Company 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:

12.2.1 are to be lodged at a particular place, or

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

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

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

12.3 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.

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

**ATLANTIC BEACH HOMEOWNERS ASSOCIATION NPC**

**Annual General Meeting**

**PROXY FORM**

I/We..... of..... (Erf No.) being a Member(s) of Atlantic Beach Home Owners' Association NPC hereby appoint:

..... of..... (Erf No.) or failing such

person.....of..... (Erf No.) or failing such

person.....of ..... (Erf No.),

as my proxy to vote for me and on my behalf at the Annual General Meeting of the Company to be held on the ..... and at any adjournment thereof.

Signed this .....day of..... 20...

Signature .....

NOTE: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead. Such proxy who can be any individual, including an individual who is not a member of the Company. Where a Member is a corporate body, this proxy must be accompanied by an appropriate mandate or resolution.

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

**Part D**

**13. Record date for the exercise of Member rights**

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

**SCHEDULE 3 – MEMBERS' MEETINGS**

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

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

**Part C – Electronic participation**

**Part D – Quorum**

**Part E – Adjournment**

**Part F - Resolutions**

**Part A**

**14. General Meetings of the Company**

14.1 The Company 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.

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

14.3 All meetings other than annual general meetings shall be called general meetings.

14.4 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 and subject to the provisions of the Act.

### **Notices of meetings**

14.5 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 calendar days' notice in writing. Any other general meeting shall be called by not less than 15 clear calendar 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 Company in general meeting, to such persons as are, under this Memorandum of Incorporation, entitled to receive such notices from the Company: provided that a meeting of the Company 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.

14.6 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 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**

14.7 Notices may be given by the Company as provided for in Article 11 above.

14.8 Notice of every general meeting shall be given:

14.8.1 to every Member of the Company;

14.8.2 to the secretary for the time being of the Company.

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

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

- 14.10 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**

- 14.11 Members shall be entitled to vote only on the matters before the meeting concerned.
- 14.12 If an Erf is registered in the name of more than one person, then all such co-Owners shall together have only 1 vote in respect of such Erf.
- 14.13 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 Company in respect of or arising out of his or her membership and who is not suspended, shall be entitled to be present and to vote, either personally or by proxy, at any general meeting.
- 14.14 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.
- 14.15 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.
- 14.16 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.
- 14.17 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 or her decision shall be final and conclusive.
- 14.18 A vote cast under a proxy, power of attorney or other authority which has been revoked shall nevertheless be valid unless:
- 14.18.1 written notice of the revocation is received by the Company prior to the meeting concerned; or
  - 14.18.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.

- 14.19 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.
- 14.20 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.
- 14.21 If an Owner owns more than one Erf, the Owner shall be entitled to one vote in respect of each Erf owned by him/her, subject to the further provisions of this Memorandum of Incorporation. By way of example, an Owner who is the sole Owner of two Erven shall be entitled to exercise two votes, subject to the further provisions of this Memorandum of Incorporation.

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

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

- 15.1 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.
- 15.2 The Directors may decide to send notices via electronic format but all meetings shall be held in person.

#### **Part D**

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

- 16.1 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. A quorum shall consist of 10% of the total number of Members, present in person or by proxy at the meeting.
- 16.2 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 or her 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.

## **Part E**

### **17. 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:

- 17.1 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);
- 17.2 Only business left uncompleted at the original meeting may be transacted at the adjourned meeting;

## **Part F**

### **18. Members' resolutions**

- 18.1 An ordinary resolution, including a resolution for the removal of a Director, shall be adopted by a simple majority of votes.
- 18.2 A special resolution shall be adopted by 66.67% of the voting rights exercised on the resolution.
- 18.3 Special resolutions are required for the following matters in addition to the matters stipulated in section 65(11) of the Act:
  - 18.3.1 the sale, encumbrance, mortgaging of the whole or any portion of any of the Private Areas;
  - 18.3.2 subjecting any Erven forming part of Private Areas to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude,

save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof, without the sanction of a special resolution of the Company;

- 18.3.3 allowing Members to operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any residential dwellings on Erven or Units owned by such Members, save where such scheme arises from co-Ownership or syndication involving not more than 4 (four) Owners per bedroom per unit, unless the Members by special resolution resolve otherwise;

#### **SCHEDULE 4 – DIRECTORS AND OFFICERS**

**Part A – Composition of the Board**

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

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

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

**Part E – Board Meetings**

**Part F – Proceedings of Directors**

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

#### **Part A**

#### **19. Composition of the Board**

- 19.1 There shall be 5 Directors of the Company who shall jointly be solely and exclusively responsible and authorised and obliged to manage and control the entire business, affairs and undertakings of the Company in whatever form, and/or to appoint appropriate professional managers, operators and Subcontractors to undertake these functions.
- 19.2 A Director shall be an individual who shall be a Member of the Company or a director, member or trustee of a Member. A Director, by accepting his appointment to office, shall be bound by all the provisions of this Memorandum of Incorporation.
- 19.3 The instrument of nominating a Directors shall be in the following form or as near thereto as circumstances permit:



## ATLANTIC BEACH HOMEOWNERS ASSOCIATION NPC

### Director Nomination Form

Invitation to Members to nominate candidates for purposes of electing a Director to the Board of Atlantic Beach Homeowners association NPC

The following terms are to be noted and Members are required to observe and comply with them:

1. In terms of the Atlantic Beach Homeowners Association NPC's MEMORANDUM OF INCORPORATION there shall be five (5) Directors of the Company.
2. A candidate for election as Director shall be nominated by a Member in writing, which nomination shall not be valid unless the candidate has duly endorsed his/her acceptance thereon;
3. Only Members in good standing may nominate candidates.
4. A candidate for election as a Director shall be an individual who shall be a Member of the Company or a director, member or trustee of a Member;
5. A candidate for election as a Director shall be an individual who shall certify that they are not disqualified to serve as a Director in terms of section 69 of the Companies Act, 2008.
6. A candidate who has endorsed his/her acceptance must provide a Curriculum Vitae of not more than one (1) A4 page in electronic format, a legible copy of his or her identity document and a sized photograph of the candidate.
7. All information required on the Candidate Nomination Form must be completed. Failure to do so may invalidate the nomination.

In considering whether a nominee will be eligible to serve as a Director, the participating Member's attention is drawn to the following:

Only persons who are fit and proper will be eligible to serve as Directors. In considering whether a person is fit and proper, the following may be used as grounds for assessment:

- a. Has the nominee been convicted of an offence, whether within or outside of South Africa?
- b. Has the nominee ever been declared to be insolvent?
- c. Has the nominee ever been dismissed from his place of employment?
- d. Has the nominee ever been disqualified under any law from practising his/her profession?
- e. Has the nominee ever been removed from any position of trust or authority due to any misconduct on the part of the nominee?
- f. Has the nominee ever been removed as a Director in terms of section 69 of the Companies Act?
- g. Does the nominee have ulterior motives for wanting to serve on the Board?
- h. Does a clear conflict of interest exist for the nominee if elected?

### NOMINATION:

I, \_\_\_\_\_ being the registered Owner of Erf \_\_\_\_\_ hereby nominate:

Name: \_\_\_\_\_ ID No.: \_\_\_\_\_  
as a candidate for election as a Director of the Atlantic Beach Home Owners Association NPC.

Signature of Nominator: \_\_\_\_\_ Date: \_\_\_\_\_

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**ACCEPTANCE OF NOMINATION:**

I, \_\_\_\_\_ (full name), being the registered Owner of Erf \_\_\_\_\_,  
hereby declare that;

1. I accept this nomination to stand as a candidate for election to the Board of the Atlantic Beach Homeowners Association NPC
2. I do so out of my own free will, without any force or coercion and fully aware of the obligations that such an office brings and am available to attend all meetings as requested
3. I have not been declared insolvent in the past, and have not surrendered my estate for the benefit of creditors
4. I have never been convicted of theft, fraud, forgery, uttering of a forged document, perjury or any offence involving dishonesty, whether within the Republic of South Africa or elsewhere
5. I am not currently being prosecuted for any criminal offences relating to theft, fraud, forgery, uttering of a forged document, perjury or any offence involving dishonesty, whether within the Republic of South Africa or elsewhere
6. I have never been disqualified under any law from carrying on my profession or been removed from a position of trust or any position of authority
7. I have never been dismissed from any employment position due to having committed any act of misconduct
8. I am not currently being disciplined at my place of employment due to having committed any act of misconduct
9. I have familiarised myself with the requirements for holding an office as a company Director and declare that I am fit and proper to do so
10. I do not have a record of transgressions of the Atlantic Beach Estate Rules

11. The reason for me making myself available to serve on the Board is to serve the Atlantic Beach community as a whole.

12. I have no ulterior motives or motivations in favour of or against any Homeowners, Staff Members or service providers employed by the Company.

13. I acknowledge that the Board duties typically will include:

- governing the organization by establishing broad policies and objectives;
- selecting, appointing, supporting and reviewing the performance of the chief executive;
- ensuring the availability of adequate financial resources;
- approving and monitoring annual operating and capital budgets;
- accounting to the homeowners for the Company's performance;
- insuring compliance with the Company Memorandum of Incorporation

14. I consent to Atlantic Beach Homeowners Association NPC or any duly authorised agent thereof, conducting credit checks, employment history checks, criminal checks and any other necessary background checks in order to determine my eligibility to act as a Director.

15. I understand that any information I have supplied, found to be false, may disqualify me from standing for election.

\_\_\_\_\_

**Nominee signature:**

**ID Number:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Place:** \_\_\_\_\_

**Telephone Number(H):** \_\_\_\_\_

**Telephone Number (W):** \_\_\_\_\_

**Cellphone Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

19.4 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.

19.5 The responsibility for managing and carrying out the day to day functions of the Company 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 Company, to the Chief Executive Officer of the Company or to such other person or persons as determined by the Directors to be appropriate.

## **Removal and rotation of Directors**

- 19.6 Each Director shall continue to hold office as such from the date of his appointment to office until the annual general meeting following his or her said appointment, at which meeting each Director shall be entitled to elect whether to retire from office or to renew his or her 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.
- 19.7 A Director shall be deemed to have vacated his office as such upon:
- 19.7.1 ceasing to be a Member or the director, member or trustee of a Member;
  - 19.7.2 having become disqualified to act as a director in terms of the provisions of the Act;
  - 19.7.3 being removed from office as provided in the Act;
  - 19.7.4 becoming disentitled as a Member of the Company to exercise a vote in terms of 14.13 above;
  - 19.7.5 his or her Estate being sequestrated, whether provisionally or finally;
  - 19.7.6 the commission by him or her of any act of insolvency;
  - 19.7.7 conviction for any offense involving dishonesty;
  - 19.7.8 becoming of unsound mind or being found lunatic; or
  - 19.7.9 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 or she is no longer a Director has been recorded in the Director's minute book.
- 19.8 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 19.6 above.

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

Not applicable

### **Part D**

## **20. Powers of Directors**

- 20.1 Subject to the express provisions of this Memorandum of Incorporation, the Directors shall manage and control the entire business and affairs of the Company 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 Company and do all such acts on behalf of the Company as may be exercised and done by the Company in general meeting, subject however to such rules as may have been made by the Company in general meeting or as may be made by the Directors themselves from time to time.
- 20.2 The Directors shall at all times have the right to engage on behalf of the Company 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.
- 20.3 The Directors shall further have the power:
- 20.3.1 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
  - 20.3.2 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.
- 20.4 The Directors shall have the right to vary, rescind or modify their decisions or resolutions from time to time.
- 20.5 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 and 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.
- 20.6 The Directors may appoint an architectural review committee or a suitably qualified person, to exercise the powers set out above in 20.3 above which committee or person may, but shall not necessarily, consist of or be:
- 20.6.1 a practicing professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;

- 20.6.2 one Director; and
- 20.6.3 such other person as the Directors may determine;
- 20.7 Members of the architectural review committee shall not be required to be Members of the Company.
- 20.8 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 shall include the architectural review committee, should one have been appointed.
- 20.9 In the execution of their duties the Directors shall be entitled to enter into a services agreement or agreements for upkeep and Maintenance purposes.
- 20.10 In the execution of their duties the Directors shall be entitled to invest surplus funds as provided for in Article 2.6 provided that the investment period does not exceed 24 months.

## **Part E and Part F**

### **21. Board Meeting and Proceedings of Directors**

- 21.1 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.
- 21.2 The quorum necessary for the holding of all meetings of the Directors shall be 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.
- 21.3 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.
- 21.4 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.

- 21.5 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**

### **22. Directors Indemnity and Expenses**

- 22.1 All the Directors and the Auditors shall be and are hereby indemnified by the Company against all liabilities *bona fide* incurred by them in their respective capacities, in the defense or institution of any proceedings, civil, criminal or otherwise.
- 22.2 Every Director, servant, agent and employee of the Company, and the Auditors, shall be and is hereby indemnified by the Company against (and it shall be the duty of the Directors out of the funds of the Company 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.
- 22.3 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.