



MEMORANDUM OF INCORPORATION

1 September 2016

**REPUBLIC OF SOUTH AFRICA**

COMPANIES ACT, 1973

MEMORANDUM OF INCORPORATION

**OF A COMPANY NOT HAVING A SHARE CAPITAL**

REGISTRATION No OF COMPANY

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NAME OF COMPANY

**LE JARDIN HOMEOWNERS ASSOCIATION NPC**

**1. PRELIMINARY**

The company is a non-profit company as defined and modified by Section 10(1) as well as the exclusions defined in Section 10(2) and Schedule 1 of the Companies Act 71 of 2008.

**2. DEFINITIONS**

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

The headings to this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of this memorandum.

2.1.1 "The Act" means the Act No 71 of 2008, as amended or any Act that replaces it.

2.1.2 "Area" means the different nodes or developments within the Greater Avianto Development, where each node is made up of a collection of properties which are deemed to have similar shared operational costs. An area or node can consist of a combination of both freehold and sectional title properties and both residential or commercial properties.

2.1.2 "Association" means the company: Le Jardin Homeowners Association NPC (and "HOA")

shall have cognate meaning);

- 2.1.3 "Auditors" mean the auditors of the Association appointed by the association;
- 2.1.4 "Chairperson" means the chairperson of the Board of Directors;
- 2.1.5 "Debt" means any amount owed by a member to the Association in respect of levies (of whatsoever nature) and/or penalties and/or interest and/or legal cost and/or howsoever otherwise arising;
- 2.1.6 "Deliver" means delivery of any notice, letter and/or other document by hand at the unit or to the members postal address as designated by the member in writing (and recorded in the Association register of members) or dispatched by telefax or e-mail to the facsimile number or email address as designated by the member in writing to the Association from time to time;
- 2.1.7 "developer" means MANOR MAZE INVESTMENTS 2 (PROPRIETARY) LIMITED and any other developer who is responsible for any additional phases added in accordance with 2.1.20.3 below.
- 2.1.8 "Development period" means the period from the establishment of the Association until all lots within the township as described in 2.1.20 below have been sold; alternatively, upon the date that the developer notifies the Association that it waives the rights herein conferred upon it during the development period.
- 2.1.9 "Directors" means the Directors of the Association, who shall for the purpose of the Act be the Directors of the Association, and a reference to the "Board" or "Board of Directors" shall be to the Directors in meeting;
- 2.1.10 "in writing" means written, printed or lithographed or telefaximile partly one and partly another, and other modes of representing or producing this in a visible form;
- 2.1.11 "Management" means any person(s) or body appointed by the Association to undertake the administrative and management functions of the Association;
- 2.1.12 "member" means a member of the Association;
- 2.1.14 "MOI" Memorandum of Incorporation of the Association;
- 2.1.15 "Rules" means any rules made pursuant to Article 5;
- 2.1.16 "Sectional Titles Act" means Sectional Titles Act, No 95 of 1986 as amended;
- 2.1.17 "Sectional Title Unit" means a section shown as such on an approved sectional plan together with an undivided share in the common property as determined in accordance with the participation quota applicable to such section (and, if relevant, together with any exclusive use of a defined area of the common property), and as defined more fully in terms of the Sectional Title Act;
- 2.1.18 "Special resolution" means a resolution dealing with any amendments of the MOI or subdividing, or amending the zoning of any immovable property owned by the HOA, and as otherwise referred to in the Act;
- 2.1.19 "Sub Committee" means a sub body of the Association and includes a Body Corporate of a sectional title block. A Sub Committee can be formed by the members of any of the different areas to convene meetings only appropriate to their area. The Association shall at all times have complete control over the rules governing these Sub-Committees or Bodies Corporate.

2.1.20 "Township" the township of Le Jardin forms part of the planned Greater Avianto Development as reflected on the aerial photograph attached hereto as Annexure A, which comprises of various phases as referred to in the plans/diagrams registered and to be registered with the Surveyor General as follows, including but not limited to:

2.1.20.1 Phase 1 (Le Jardin Drift Ext 8) SG plan number 3326/2011 and Phase 2 (Le Jardin Drift Ext 7) SG plan number;

2.1.20.2 Any other phases and further developments of Le Jardin as agreed by the Board of Directors.

2.1.20.3 Any phase and further developments which shall form part of the planned greater Avianto Development as expanded and/or developed in future.

2.1.21 "unit" means:

2.1.21.1 a dwelling unit for the single family, as defined in the Mogale Town Planning Scheme , with or without outbuildings, and situated on its own residential lot or individual subdivision of a residential lot, tenure of which may be registered in the office of the Registrar of Deeds;

2.1.21.2 A sectional Title unit;

2.1.21.3 A cluster unit;

2.1.21.4 A vacant stand

whether used for residential or business purposes (or both) and further as may be defined in terms of the applicable town planning scheme with respect to the Township.

2.1.22 "Vice Chairperson" means the vice chairperson of the Board of Directors;

2.2 Unless the context otherwise requires, any words importing the singular number shall also include the plural number, and vice versa and words importing anyone gender shall include the other two genders.

2.3 A reference to any Act shall include any amendment thereto and Act in substitution therefore.

2.4 The headings to this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of this memorandum.

2.5 Subject as aforesaid, any words or expressions defined in the Act or any statutory Modifications of such Acts in force at the date on which these presents become binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

2.6 If the provisions of these Articles are in any way inconsistent with the provisions of the Statutes, the provisions of the Statutes shall prevail, and these Articles shall be read and interpreted in all respects subject to the Statutes.

2.7 Notwithstanding the omission from these Articles of any provision to that effect, the company may do anything which the Companies Act empowers a company to do if so authorised by its Memorandum of Incorporation.

## MANAGEMENT RULES

### 3. MEMBERSHIP

#### 3.1 Definition of membership and Related matters

- 3.1.1 Membership of the Association shall be limited to any party who is in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act) reflected in the records of the office of the Registrar of Deeds as the registered owner of any land or unit in the township.
- 3.1.2 Where any unit is owned by more than one person, all the registered owners of that unit shall together be deemed to be collectively one Member of the Association and have the rights and obligations of one Member of the Association; provided however that all co-owners of any unit shall be jointly and severally liable for the due performance of any obligations to the Association.
- 3.1.3 Where a unit is owned by more than one person, such co-registered owners shall designate one of them to represent the others as a Member. Power of attorney shall be provided to the management evidencing such authority, without derogating from the rights of such Member to provide a separate authority (proxy) for purposes of any general meeting as referred to in Article 9.
- 3.1.4 When any person including a juristic person becomes the registered owner of a unit, he shall *ipso facto* become a Member of the Association, and when he ceases to be the owner of any unit in the township, he shall *ipso facto* cease to be a Member of the Association.
- 3.1.5 The fact that a person ceases to be a Member of the Association as a result of the transfer of a unit to another person, shall not release such Member from any liability to the Association in respect of any Debt, the cause of which arose prior to the transfer of such Unit nor otherwise relieve such erstwhile Member from any other obligations owed to the Association during the period of his membership.
- 3.1.6 No member shall let or otherwise part with occupation of his unit, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such unit as a *stipulatio alteri* in favor of the Association that such occupier shall be bound by all the terms and conditions of these presents.
- 3.1.7 A registered owner of a unit may not resign as a Member of the Association.
- 3.1.8 Where a Member is a legal entity (company, closed corporation, trust or other entity, whether incorporated or unincorporated) such Member shall designate a person to represent it with respect to the Association. A power of attorney shall be provided by the legal entity to the Management evidencing the authority of the person to represent it, without derogating from the rights with respect to the provision of a proxy as referred to in Article 9. Such authorized representative shall be obliged to present proof of identity and confirmation of his representative capacity to the Chairperson or his duly appointed representative, at any general meeting attended by such representative.
- 3.1.9 Where a member is a legal entity (company, closed corporation, trust or other entity, whether incorporated or unincorporated), the shareholders, Directors and/or Members of such legal entity shall be personally liable, jointly and severally with such Member, for the due performance by the Member of its entire obligation in terms on the MOI and Rules.

- 3.1.10 The Association shall maintain at its registered office, alternatively at the office of the Management, a register of Members of the Association where that register shall only include the unit number and registered owner
- 3.1.11 The register of owners shall be opened to inspection.
- 3.1.12 Each member shall be required to provide the Association with written details of his postal address, and if he so indicates, any facsimile number and/or e-mail address to facilitate delivery, it being competent for any Member to alter any such details by written notice to the Association at its registered office or care of Management provide, however, that any physical address and/or postal address for delivery purposes shall be in the Republic of South Africa.
- 3.2 Rights and obligations of Members
- 3.2.1 Members who are in good standing (i.e. have paid all Debts due and payable to the association) shall have the right to vote at all meetings of the Association.
- 3.2.2 Subject to Article 11, member shall elect Directors annually at the Annual General Meeting of the Association.
- 3.2.3 Members shall use their best endeavors to further the interest of the Association in pursuance of its main object and main business.
- 3.2.4 Members shall diligently and promptly comply with the obligations imposed in terms of this MOI and observe all Rules made by the Association; and shall be responsible for and obliged to ensure compliance therewith by their families, employees, agents, contractors, tenants (including any other occupants of the unit), visitors and guests (which shall include, in the case of any Member who conducts any form of business or profession on or from a unit, his customers, clients and patients)
- 3.2.5 No Member shall let or otherwise part with occupation of his unit, whether temporarily or otherwise, unless such proposed tenant or occupier of the unit has agreed in writing to be bound by, and observe the terms and conditions of this MOI including the Rules referred to in Article 5 such obligations to comprise a *stipulatio alteri*(benefit in favor of third party) in favor of the Association, without derogating from the liability and responsibility of the Member for the acts and omissions of such proposed tenant or occupier as referred to in Article 3.2.4 above.
- 3.2.6 The rights and obligations of a member shall not be transferable and every member shall:
- 3.2.6.1 further to the best of his ability the objects and interests of the Association;
- 3.2.6.2 observe all Rules made by the Association or the Directors; provided that nothing contained in these Articles of Association shall prevent a member from ceding his rights in terms of these Articles as security to the mortgagee of that member's unit.
- 3.2.7 Members shall not interfere with nor give instructions to any officers, employees, agents or contractors of the Association or Management, and any complaints shall be addressed in writing to Management. Management may request that any complaint be dealt with at the forthcoming Board meeting.
- 3.2.8 Should a vacant stand situated in the Township be sold by the developer, the agreement of sale shall stipulate that the purchaser or any subsequent purchaser, shall be obliged to, and undertakes to, complete construction of any dwelling thereon as follows:

Drift 8 - any sale agreements for Drift 8 signed after September 2015 but before 31 Aug 2017 must complete building by the 1<sup>st</sup> of March 2019.

Any purchases directly from the developer after 31 Aug 2017 on Drift 8 will always have 18 months from date of transfer of the stand to complete building.

Drift 7 - any sale agreements for Drift 7 signed before 31 March 2018 must complete building by the 1<sup>st</sup> of October 2019.

Any purchases directly from the developer after 31 March 2018 on Drift 7 will always have 18 months from date of transfer to complete building.

Should an owner fail to complete building in this timeframe, penalties will apply as stated in the MOI. Construction must be completed within 12 months from date of commencement and exceeding this time limit will also attract monthly penalties.

- 3.2.9 Should any member fail, refuse and/or neglect to complete construction as set out above, that Member in question, shall be liable to contribute monthly double his contribution in respect of each such stand owned by him for the first year following the expiry of such 36 (thirty six) months, thereafter monthly 3 (three) times his contribution in respect of each such stand owned by him for the second year following the expiry of the 36 (thirty six) month period, thereafter, contribute monthly 4 (four) times his contribution in respect of each such stand owned by him in the third year following the expiry of the 36 (thirty six) month period and thereafter contribute monthly 5 (five) times his contribution in respect of each such stand owned by him in the fourth year following the lapse of the 36 (thirty six) month period and which 5 (five) times contribution shall annually thereafter apply until building work commences and is finalised on his stand as per the Architectural Rules and Guidelines accepted by the Directors from time to time. Finalisation of construction shall be deemed on presentation of an occupancy certificate issued by Mogale Local Municipality.

The directors shall, as soon as possible after the imposition of the levies in terms of Article 3.2.9, notify each member in writing of the contribution payable by him to the levy fund. Such levy contribution shall be payable in equal monthly instalments in advance on the first day of each and every month of the financial year.

#### **4. FINANCIAL AND LEVIES**

- 4.1 The Directors shall not less than 15 (fifteen) working days prior to each Annual General Meeting, prepare and serve upon every Member at the address chosen by him of a draft budget in reasonable detail of the levies which shall be required by the Association to meet the expenses during the following financial year, and shall specify separately such estimated efficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature. The budget shall further specify the estimates deficit, if any, carried forward from the preceding year.
- 4.2 The budget shall, in the discretion of the Directors, either be delivered to Members, alternatively copies shall be available for collection at the offices of the Management (and in all instances be accessible on the Association's website) not later than 15 (fifteen) days prior to the date of the Annual General Meeting.
- 4.3 The Directors shall advise the Members, in writing, as soon as practically possible after the Annual General Meeting, of the amount of the levies that is payable by each Member for the financial year ahead.
- 4.4. The budget shall be presented at the Annual General Meeting for approval by the Members, in the form as presented or with amendments or modifications as the Members decide.
- 4.5. The Directors shall in their administration and management of the Association, not exceed the

approved budget, and not increase the levies or impose additional levies (with respect to any unforeseen and/or extraordinary expenditure, special projects or otherwise) unless a due motivation accompanied by a feasibility study has been made available to Members. The special levies will also be payable in monthly installments over the period indicated by the Association in its written notice after approval.

- 4.6. Every levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- 4.7. In the event of the Directors for any reason whatsoever failing to prepare and serve the estimate referred to in article 4.1 above timeously, every member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in article 4.1.
- 4.8. The Directors may from time to time make special levies upon the members. This clause is subject to the special levies only being imposed once per calendar year, and in addition being sanctioned by a special resolution of the Homeowners' Association.
- 4.9. The Directors shall be empowered in addition to such other rights as the Association may have in law as against its Members to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate laid down in terms of the National Credit Act, as amended.
- 4.10. Any amount due by a Member by way of levy, penalties and interest shall be a Debt due by him to the Association. The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member without prejudice to the Association's right to recover arrear levies and interest. No levies or interest 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 a unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that unit, to pay the levy and interest thereon attributable to that unit. A Member must inform the Association in writing of the transfer in case of where a Member sold or otherwise disposed of a Unit.
- 4.11. No Member shall be entitled to transfer a Unit without first obtaining a clearance certificate from the Association, confirming that all levies (including any outstanding amounts of Debt) and includes any debt in the case of a forced sale have been paid up to and including the end of the month during which such contemplated registration of transfer of such Unit will take place.
- 4.12. Contributions to the levy fund shall be made by the members in accordance with the following formula:
  - 4.12.1. The Developer shall during the development stage identify separate areas within the development, being residential areas, sectional title areas, commercial areas or shared public facilities, which areas may form part of one another.
  - 4.12.2. The amount of levies of each unit shall be based on the basic costs of that unit situated within its individual area(s) plus the cost for the use of the shared "public" facilities.
  - 4.12.3. A sectional title unit which also forms part of a separate residential area, shall pay the equivalent levy even though the member shall also be levied by the body corporate of that particular sectional title block.
  - 4.12.4. A commercial unit shall be levied as 1 (one) unit for every 150 square metres or part thereof, rounded off to the nearest full figure, with a minimum of 1(one). A commercial unit which also forms part of a sectional title area will also attract the levy of the body corporate of the sectional title block
  - 4.12.5. Upon the inception of each and every financial year of the company, the directors will determine the basic costs of each area and each unit situated within each area to



determine the percentage of a unit's contribution relative to the budget referred to in clause 4.1 above.

- 4.12.6 The Directors may in any case where they consider it equitable to do so, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 4.12.7 For purposes of determining the amount to be contributed by the developer in respect of levies, the developer shall be deemed to be the owner of each unit remaining registered in the name of the developer, but shall only be liable for the security levy on these unsold units.
- 4.12.8 The Directors may enter into an agreement or agreements with the developer for the provision of a capital sum and/or the transfer of land and/or equipment and/or services to the Association in lieu of levies.
- 4.13 The levies shall be payable to the Association free of exchange, deduction or commission.
- 4.14 Management will be allowed to levy an administration fee when issuing clearance certificates, or having to follow up on outstanding payments.

#### **Differentiated and Weighted levies**

- 4.16 Having regard to the nature, extend of occupation, type of Unit, use of Unit (residential, sectional title, commercial, or public), size of erf having taken account of these and other criteria the Directors shall at their sole discretion determine if there should be differentiation of levy attached to any Unit (these rights can extend to special and additional levies). 4.17 The Member shall be responsible for any costs that are directly attributable to a unit (as owner of such unit). These costs shall include but not limited to municipal and/or other Local Authority service charges and other expenses.
- 4.18 A Member shall be entitled to Deliver an objection in writing to the Directors within no more than 14 (fourteen) days after delivery of written notification of the levies payable by such Member. The Directors shall not entertain any objection which is not received within the aforementioned prescribed period. The Directors shall review the objection and shall supply the Member with the calculation and determination as effected by the Directors. The Directors shall meet with the complainant Member and hear further representations. The Directors shall either reject or review the determination after the meeting and deliver a written confirmation of such to the complainants. In all events the Directors determination shall be final and binding upon the Association and the Member.

### **5. RULES**

- 5.1 In order to promote and implement the main business and main object of the Association and ensure the efficient running and management of the Estate, the Directors shall formulate and enforce Rules. Subject to the Architectural, Aesthetical and Landscape Design Guidelines any Environmental Guidelines and House Rules and any quantum of penalties, restriction imposed or direction given at a general meeting of the Association, the Directors may from time to time make Rules in regard to:
- 5.1.1 the standards and guidelines for the architectural design of all buildings and outbuildings, structures of any nature, swimming pools, landscaping and external ornaments and decorations and all additions and alterations to any such buildings, outbuildings or structures erected or to be erected in the township, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the

materials used on such exteriors to ensure an attractive, aesthetically pleasing character to all the buildings in the township;

- 5.1.2 the siting of all buildings, outbuildings, structures of any nature, swimming pools and all additions and alterations to any thereof;
  - 5.1.3 the standards and guidelines for the design of all site works, buildings, structures, installations and projections on the properties in the township, including aerials, pergolas, lapas, side walls, swimming pools, squash court, awnings, Jacuzzis, carports, garage doors, gates, paved pathways and landscaping features and works;
  - 5.1.4 the preservation of the environment including the right to control vegetation and the right to prohibit and/or control the erection of fences, whether upon or within the boundaries of any property;
  - 5.1.5 the right to prohibit restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
  - 5.1.6 the conduct of any Members or persons within the township for the prevention of nuisance of any nature to any member, maintain good neighbourly relations and this can include the regulation of use of noise making/generating equipment (e.g. lawnmowers, power tools, TV/radio); control of operations and movement of estate agents, building contractors, subcontractors, project managers, any other agents and employees and agents of the foregoing;
  - 5.1.7 the preservation of the natural environment, vegetation and fauna in the township;
  - 5.1.8 the use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof; the operations and activities of all businesses whatsoever conducted on or from the Township, including advertising within the Township;
  - 5.1.9 for 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 interests of members and/or residents in the township (e.g the nature, method and location of any posters or other form of advertising);
  - 5.1.10 for the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within the township;
  - 5.1.11 for the advancement of the security and controlled entrances established on Township, security installations, its perimeter and access points, crime prevention and monitoring procedures, fire prevention and control, vehicle security;
  - 5.1.12 rules applicable to the determination of levies and matters relating thereto;
  - 5.1.13 rules dealing with disciplinary matters, sanctions and penalties;
  - 5.1.14 the control of vehicular traffic of whatsoever nature, including parking; access and egress from the Township;
  - 5.1.15 the control and recycling of refuse, littering;
  - 5.1.16 all rules, including any amendment, addition or deletion thereto, shall require the approval of Members at the AGM.
- 5.2 The Directors shall be responsible for the enforcement of all Rules including the

Disciplinary Code. The Disciplinary Code comprises of the following:

- 5.2.1 A protocol related to warnings provided for the delivery of a written notice requiring offenders to remedy any stipulated breach of Rules within a reasonable period and failing which, a prescribed process of enforcement of sanctions, including the imposition of penalties.
- 5.2.2 A schedule indicating the sanctions and specifying the penalties which shall be imposed or levied in the event of an unremedied breach.
- 5.2.3 Procedure with regards to a Member who disputes that he has committed a breach. The Member shall be entitled to deliver a submission, in writing to the Directors within a period of no more than 30 (thirty) days from the date of expiry of the period of demand contained in the notice delivered to the affected member.
  - 5.2.3.1 The Directors shall convene as soon as reasonable after receipt of the submission. The proceedings of such meeting shall comply with principals of natural justice, and the decision shall be final and binding upon the Association and the affected Member.
- 5.3 The prescribed procedures relating to disputes in respect of the Directors decisions/disputes:
  - 5.3.1 and party may declare a dispute by delivering the details thereof to the other party, and
  - 5.3.2 request that such dispute be referred by the parties, without legal representation by mutual agreement, to mediation by a single mediator at a place and time to be determined by him.
  - 5.3.3 If, within 30 (thirty) days of the delivery of the declaration of a dispute, request that such dispute be referred by the parties, without legal representation, to mediation by a single mediator at a place and time to be determined by him.
  - 5.3.4 If, within 30 (thirty) days of the delivery of the declaration of a dispute, the parties have not agreed to accept mediation then the dispute shall be determined by arbitration as hereinafter prescribed.
  - 5.3.5 If the parties agree to mediation then the Arbitrator shall be:
    - 5.3.5.1 Selected by agreement between the parties or, failing such agreement, nominated on the application of either party by the Chairperson for the time being of the Association of Arbitrators (Southern Africa) or his nominee.
    - 5.3.5.2 The mediator shall, at his entire discretion, determine whether the reference to him shall be made in the form of written and/or oral representations providing that, in making this determination, he shall consult the disputing parties and be guided by their desires of the form in which the said representations are to be made.
    - 5.3.5.3 The mediator shall, within a reasonable period thereafter, express in writing an opinion on the matter and shall include therein his detailed reasons leading to the opinion. The mediator shall deliver a copy of his opinion to each party.
    - 5.3.5.4 The opinion so expressed by the mediator shall be final and binding on the parties unless either party within 30 (thirty) days of the delivery of the opinion, notifies the other party of its unwillingness to accept the said opinion.
    - 5.3.5.5 The costs of mediation shall be determined by the mediator and shall comprise: of the mediator's expenses, the venue where mediation take place; and a fee which shall have been previously agreed by the parties. The said costs shall be

borne equally by the two parties and shall be due and payable to the mediator on presentation to them of his written account. Each party shall bear the costs of any legal advice it may have obtained in connection with the mediation.

- 5.3.5.6 The expressed opinion of the mediator shall not prejudice the rights of the parties in any manner whatsoever in the event of their proceeding to arbitration.
- 5.3.5.7 Any decision given by any representative of the parties in accordance with any provision of this agreement prior to or during the mediation shall not disqualify him from being called as a witness and giving evidence before the Arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the Arbitrator as herein provided.
- 5.3.5.8 If either party to this agreement be unwilling to accept mediation or be unwilling to accept the opinion expressed by the mediator then either party may, by written notice delivered to the other, within 30 (thirty) days of the declaration of the dispute if there be no mediation or within 30 (thirty) days of the issue of the mediator's opinion if mediation takes place, require that the dispute be referred to arbitration.
- 5.3.5.9 Such arbitration shall be by a single Arbitrator who shall be selected by agreement between the parties or, failing such agreement, nominated on the application of either party by the Chairperson for the time being of the Association of Arbitrators.
- 5.3.5.10 The Arbitrator shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued.
- 5.3.5.11 Upon every or any such reference, the costs of and incidental to the reference and award shall be in the discretion of the Arbitrator, who may determine the amount thereof, or direct same to be taxed as between Attorney and client or as between party and party and shall direct by whom and to whom and in what manner the same shall be borne and paid.
- 5.3.5.12 The award of the Arbitrator shall be final and binding on the parties hereto.
- 5.3.5.13 In all respects the arbitration shall be conducted in accordance with the Rules for the Conduct of Arbitrators published by the Association of Arbitrators and current at the date the Arbitrator is appointed or nominated.
- 5.3.5.14 The arbitration clause contained herein does not preclude the owners from approaching a Court for relief. The Directors may in the name of the Association enforce the provisions of any Rules by civil application or action in a Court of competent jurisdiction and for this purpose may appoint such Attorneys and Counsel as they deem fit.
- 5.3.5.15 In the event of the Directors instituting any legal proceedings against any member or resident within the township 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 resident concerned, calculated as between Attorney and client.
- 5.3.5.16 In the event of any breach of the Rules by the members of any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually

committing the breach as they in their discretion may deem fit.

## **6. MEETINGS**

6.1 The Directors shall convene and hold an Annual General Meeting (AGM) within the time period specified in the Act.

6.2 All general meetings other than Annual General Meetings shall be called Extraordinary General Meetings. These meetings may be convened for the passing of a Special Resolution dealing with special business that was not dealt with at the AGM.

### **6.3 Notices of meetings**

6.3.1 The notice convening the AGM shall be delivered to the Members and shall contain the agenda of the business to be conducted as follows:

6.3.1.1 Chairperson' report;

6.3.1.2 Consideration of annual financial statements;

6.3.1.3 Presenting budget for the affected financial year and determining levies and approval thereof;

6.3.1.4 Appointments of the Associations auditors;

6.3.1.5 Election of Directors;

6.3.1.6 Any other relevant business.

6.3.2 Subject to the other provisions of this MOI, each AGM shall be called by written notice of at least 21 (twenty one) clear days before the date set for the meeting.

6.3.3 The Directors shall within 14 (fourteen) clear days of receipt of written requisition signed by no less than one twentieth of the voting rights in the Association (based on one vote per Unit) convene an Extraordinary General Meeting.

6.4 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification or present any document required to be given or sent in terms of these presents, or in terms of the Act, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

## **7. QUORUM**

7.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. During the development period, the quorum necessary for the holding of any general" meeting shall be such of the members entitled to vote as together for the time being represent the votes of the developer, and 25% (twenty five percent) of votes in number from all other Members of the Association entitled to vote for the time being. After the development period, the quorum shall be such of the members entitled to vote as together for the time being represent the votes of 25% (twenty five percent) in number of all members entitled to vote for the time being, provided that at no time the quorum will be less than three members present in person.

7.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not

present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place as the Chairperson of the meeting shall appoint, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

## **8. PROCEDURE AT GENERAL MEETINGS**

- 8.1 The Chairperson may, with the consent of any general meeting at which a quorum is present and shall if so directed by the meeting, adjourn a meeting from time to time and place to place but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.
- 8.2 The Chairperson and Directors shall acquaint themselves with the meeting procedure and agenda and the chairperson or his duly appointed representative shall be entitled to rule on any technical irregularities regarding the conduct of any general meeting, which ruling shall be final and binding upon the Directors and Members.

## **9. PROXIES**

- 9.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the member concerned or his agent, duly authorized in writing, but need not be in a particular form provided that, where a member is more than 1 (one) person, a majority of those persons shall sign the instrument appointing a proxy on such member's behalf.
- 9.2 The instrument appointing a proxy and the Power of Attorney or any other authority under which it is signed shall be tabled at the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 2 (two) months from the date of its execution.
- 9.3 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Directors at any time before a vote is taken in respect of which the proxy exercises such vote.

## **10. VOTING**

At every general meeting:

- 10.1 Every member, who is in good standing (who is not in arrears with respect to any levies or other Debt) shall be entitled to vote in person or by proxy and shall have 1 (one) vote for each unit of registered in his name.
- 10.2 If a unit or is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
- 10.3 At any general meeting a resolution put to the vote of the meeting shall be decided by ballot paper or poll.
- 10.4 Scrutinizers shall be elected to determine the result of the poll. In the case of an equality of votes, the Chairperson of the meeting shall not be entitled to a second or casting vote.

- 10.5 A poll on any question shall be taken at such time as the Chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 10.6 Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 10.7 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolutions shall be deemed to have been defeated.
- 10.8 Unless any member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
- 10.9 Copies of special resolutions shall be annexed to the original of the Association's MOI, which shall be retained by the auditors, and the true counterparts retained by the Directors and Management.

## **11. DIRECTORS**

- 11.1 There shall be a board of Directors of the Association consisting of not less than 5 (Five) and not more than 12 (Twelve) Directors who shall be elected by the Members at the AGM, however the Board of Directors shall during the development period, consist of not less than 7 (Seven) nominees of the Developer. Where possible, it is preferable that each Area shall be represented by at least 1 (one) Director. The Chairperson and Vice chairperson shall be selected at the first Board meeting after the AGM.
- 11.2 A director shall be a natural person but need not himself be a member of the Association.
- 11.3 A Director, by acceptance of his appointment to the office as such, shall be deemed to have agreed to be bound by all provisions of the MOI.
- 11.4 Each Director shall continue to hold office until the next AGM at which, subject to the provisions set out hereinafter, each Director shall be deemed to have retired from office but will be eligible for re-election to the Board of Directors. Any Director has the right to resign at any time. 50% (fifty) percent of the Directors have to be elected at the AGM rather than nominated.
- 11.5 A Director shall be deemed to have vacated his office upon:
- 11.5.1 his having become disqualified to act as Director in terms of the provisions of the Act;
  - 11.5.2 his being removed from office as provided in Section 71 of the Act;
  - 11.5.3 the remaining Directors take a vote of no confidence against said Director of which the vote is unanimous;
  - 11.5.4 his having submitted his resignation in writing to the Association;
  - 11.5.5 his being convicted of any fraudulent act;

- 11.5.6 his being declared insane;
- 11.5.7 his noncompliance with the objectives of a Homeowners' Association or failure to adhere to 3 (three) written warnings from the majority of the remaining Directors.
- 11.6 Upon any vacancy occurring in the office prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors, provided however that, if the Director who vacates his office as aforesaid was a nominee of the developer, the developer shall be entitled to nominate a Director in his stead.
- 11.7 The Directors shall within 14 (fourteen) days after each Annual General Meeting appoint from their number a Chairperson and Vice Chairperson, who shall hold their respective offices until the Annual General Meeting the next year after their said appointments, provided that the office of Chairperson or Vice Chairperson shall *ipso facto* be vacated by a Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be appointed to more than one of the, aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the Directors shall immediately appoint one of their number as a replacement in such office.
- 11.8 Except as otherwise provided, the Chairperson shall preside at all meetings of the Board of Directors and all general meetings of members and, in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice Chairperson shall act in his stead, or failing the Vice Chairperson, a Chairperson appointed by the meeting.
- 11.9 Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Directors. Save as aforesaid, Directors shall not be entitled to any remuneration for the performance of their duties in terms hereof, unless the Association in a general meeting otherwise decides.

## **12. POWERS OF DIRECTORS**

- 12.1 Subject to the express provisions of these present, the Directors shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right to enter into agreements to buy additional land or businesses, to enter into credit agreements and the right of appointment and dismissal of the Managing Agent. They 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 and as are not by the Act or by these presents required to be exercised or 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 from time to time.
- 12.2 Save as specifically provided in these present, the Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, Attorneys, Advocates, architects, engineers, a Managing Agent and any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors and on such terms as the Directors shall decide and enter into contracts necessary for the purpose of the main business.
- 12.3 The Directors shall further have power:
- 12.3.1 to require that any works being constructed within the township be supervised to ensure that the provisions of these presents and the Rules are complied with and that all work is performed in a proper and workmanlike manner. "Works" for the purposes of this article shall mean construction works of any sort in relation to any improvement within the township including, without limiting the generality of the afore going, the construction of all buildings, outbuildings, structures of any nature pools, tennis courts, walls, fences and landscape architectural features;



- 12.3.2 to issue an architectural and environmental design and maintenance manual in respect of the township;
- 12.3.3 open and conduct banking accounts for the purposes of the Associations business and disburse, from the bank accounts, such operational and capital expenditure as approved in the budget and as otherwise authorized at the AGM or Extraordinary Meeting.
- 12.4 The Board of Directors shall have the right to co-opt on to the Board any person or persons chosen by it. Co-opted Directors need not necessarily be a Member of the Association.
- 12.5 The Directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary. The Directors shall also be entitled to terminate any committee or revoke/amend any appointments to such committees.
- 12.6 The Directors may meet to attend to their business, adjourn and otherwise regulate their meetings as they think fit. The quorum for any meeting of the Directors shall be 3(three) Directors present in person. The minutes of all meetings shall be kept and put into writing within 7(seven) days and certified as correct by the Chairperson. A copy of the minutes shall be delivered to each Director within 14 (fourteen) days of the meeting to which such minutes relate. All minutes shall be kept in the Directors book by Management in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies.
- 12.7 The Directors may not appoint another person to function in his stead or to fulfill his functions. He may not delegate his functions or any of his obligations.
- 12.8 Any resolution passed by the Board of Directors shall be carried by a simple majority. Should there be an equality of votes for or against any resolution of the Board, the resolution shall be deemed to be defeated.
- 12.9 A Director (except if this director is the Developer) who has personal interest of conflict of interest regarding any matter before the Board shall be obliged to disclose such personal interest or conflict. The said Director shall be able to attend meetings of the Boards where such matter is discussed or decided, but such Director shall not be entitled to vote in respect of matters where he has a personal interest or conflict.
- 12.10 The Directors shall be entitled to appoint an architectural review committee which shall consist of;
- 12.10.1 a practicing professional architect duly qualified to practice as such on his own account in the Republic of South Africa;
- 12.10.2 1 (one) Director.
- 12.11 Save as provided in these presents, the proceedings of any Directors meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 12.12.1 A resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors.

### **13. ACCOUNTS**

- 13.1 The accounts and books of the Association shall be open to inspection of members' at all

reasonable times during business hours at the office of the Management.

- 13.2 Should a Member require copies of any documents, this request shall be put into writing to the Directors, and the Directors shall be entitled to levy a fee, in their sole discretion in respect of the administration for such a request including the cost of the copies.
- 13.3 The Directors shall ensure that the accounts are written up and maintained in accordance with all legal requirements, ensure compliance with all applicable legislation, whether fiscal or otherwise.
- 13.4 Once in each financial year the accounts of the Association shall be examined and the correctness thereof ascertained by auditors. These statements will be tabled at the AGM.
- 13.5 The appointment and duties of the Auditors shall be in conformity with the Act, and the appointment and remuneration of the Auditors are to be made and confirmed at each AGM.

#### **14. SERVICE OF NOTICES**

- 14.1 A notice may be served by the Association upon any member at the address of any unit owned by him unless the member shall have notified the Association of another address for service of notices. Any notice served by post shall be deemed to have been served on the day but one following that on which the letter containing the same was posted.
- 14.2 Notwithstanding any provisions to the contrary contained in this MOI, any notice or other written communication served by any other means (by hand, facsimile or e-mail transmission) shall be considered delivered where receipt has been acknowledged by the addressee or can be proven by the addressor.

#### **15. INDEMNITY**

- 15.1 Every Director, servant, agent and employee of the Association and any Managing Agent, his employees, nominees or invitees, shall be indemnified by the Association against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into or any act or deed done by such person or persons in the discharge of their respective duties, including in the case of a Director, his duties as Chairperson or Vice Chairperson. Without prejudice to the generality of the foregoing, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.
- 15.2 The provisions as set out in 15.1 shall similarly apply insofar as every co-opted Director and member of any committee appointed by the Directors are concerned and the Association indemnifies all such persons accordingly.
- 15.3 The Directors shall be entitled in terms of the Rules to require each person (other than the Member and his family who form part of the household) as a precondition of entering the Township complete and sign a Written indemnity in which the Association (and management) and their respective officers, employees and agents are indemnified and held harmless in respect of any claims, damages, or losses including any personal injury or other harm incurring or arising in and about the Township.
- 15.4 The Directors shall be entitled to implement such procedures and measures and effect such insurances pertaining to all risks, whether insurable or otherwise and shall procure that the Association is covered by such short-term insurance including but not limited to public liability cover) as is determined from time to time.

**16. GENERAL**

- 16.1 Whenever they consider that the appearance of any land or building vested in a member or members is such as to be unsightly or injurious to the amenities of the surrounding area or the township as viewed from the outside, the Directors may serve notice on such member or members to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member or members failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the property concerned and take such steps as may be necessary, and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the Association.
- 16.2 The Directors shall be obliged in giving such notice to act reasonably.
- 16.3 No person shall within the township commence with the construction of any building or structure, or any additions or alterations thereto, or any works of whatsoever nature unless he has submitted to the Directors for examination and approval or refusal such plans for such building, structure, alteration or addition as the Directors may require. The Directors shall have power in approving any plan to lay down such reasonable conditions as they may deem fit.
- 16.4 Subject to the provisions of Clause 5.1.10 above the Association requires any member to maintain the sidewalk adjacent to his property between the kerb of the road and the boundary of his unit, and in the event of such member failing to so maintain such sidewalk to the satisfaction of the Association, the Association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge the member concerned. In the event of the Association requiring any member to maintain the sidewalk as aforesaid, the Directors shall in determining the levy payable by such member take into account the saving to the Association resulting from the member himself maintaining such sidewalk.
- 16.5 In the event of the Association electing to provide a security service and/or other services for members in the township, all members shall be obliged:
- 16.5.1 to permit the installation of any equipment in the units for the purpose of such services as may be determined by the Association from time to time;
- 16.5.2 to make payment of the charges raised by the Association in respect of such services;
- 16.5.3 abide by such terms and conditions of the provisions of such services as may be laid down by the Association from time to time.
- 16.6 Where the boundary of any member's property also constitutes the boundary of the township, such member shall be obliged to permit the Association to erect upon such member's property immediately adjacent to such boundary, such walling or other fencing as the developer and/or the Association may determine. Such member shall not be entitled to interfere in any manner whatsoever with any such walling or fencing, and shall permit the Association from time to time access to such member's property in order to inspect such walling or fencing and to effect such repairs as may be necessary from time to time. In the event of any such member wishing to erect his own walling or fencing, he shall be obliged to erect same within the walling or fencing referred to above and subject to such conditions as the Association may lay down to permit the Association access to the boundary walling or fencing concerned.
- 16.7 Subject to the provisions of Clause 5.1.10 above, every member as owner of a residential or commercial unit and any sub body of the Home Owners Association shall at their own cost be responsible for the maintenance and upkeep, including the painting, of the boundary walls of their specific unit or area within the greater Avianto Estate, irrespective of the fact that the boundary wall faces their unit or area or any part of the public area.

- 16.8 Every member as owner of a residential or commercial unit and any sub body of the Home Owners Association shall further at their own cost be responsible for the maintenance and upkeep of their own gardens, be it a garden that forms part of a residential or commercial unit or of the common property of a specific area.
- 16.9 The provision of these articles shall be binding on the owner and any lessee or other occupant of the home, and it shall be the duty of the owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant. No member shall let or otherwise part with occupation of his unit without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the proposed occupier of the unit has complied with the provisions of this constitution.
- 16.10 No member shall transfer his unit until the Board of Directors under the hand of one of its members has certified that the member has at date of transfer fulfilled all his financial obligations to the Association. No unit or any interest therein shall be alienated without the consent of the Association. Such consent shall not be withheld unless:
- 16.10.1 such member is indebted to the Association in any way in respect of levies or other amounts which the Association may in terms of these presents be entitled to claim from him;
- 16.10.2 such member remains in breach of any of the provisions of these presents or any Rules after notice from the Directors requiring him to remedy such breach.
- 16.11 The Directors in issuing the certificate shall be entitled to charge a reasonable fee therefor to be determined by the Directors from time to time subject to review by the Association in general meeting.

## **17. TRANSITIONAL ARRANGEMENTS**

- 17.1 Subject to the provisions of the MOI and the rules on or after commencement date, anything which was done under provision of the MOI and the Rules in effect on the day immediately preceding the day on which day the MOI came into effect and which could be done under a corresponding provision of the MOI and the Rules, is deemed to have been done under that corresponding provision.
- 17.2 The coming into effect of the MOI does not affect any rights, debt, obligations and/or any liabilities which existed on the day immediately preceding the day on which the MOI comes into effect and such rights, Debt, conditions and obligations and liabilities shall continue under the MOI and Rules on and after the commencement date and shall be deemed to have existed under, in terms of or by virtue of a corresponding provision of the MOI and the rules.

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FOR AND ON BEHALF OF THE HOA

2. \_\_\_\_\_

DARIN D'OLIVEIRA ID 640423 5068 085

1. \_\_\_\_\_

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FOR AND ON BEHALF OF THE HOA

2. \_\_\_\_\_

TREVOR D'OLIVEIRA ID 670223 5096 083

1. \_\_\_\_\_

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FOR AND ON BEHALF OF THE HOA

2. \_\_\_\_\_

CARL BOTHMA ID 710713 5094 08 0

1. \_\_\_\_\_

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FOR AND ON BEHALF OF THE HOA

2. \_\_\_\_\_

SUZAN VAN ASWEGEN ID710423 0302 088

1. \_\_\_\_\_

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FOR AND ON BEHALF OF THE HOA

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TRAVESH RAMKHEWAN ID741114 5099 08 3

1. \_\_\_\_\_

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FOR AND ON BEHALF OF THE HOA

2. \_\_\_\_\_

MARLON DEAN DUNN ID770824 5162 08 7

1. \_\_\_\_\_

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FOR AND ON BEHALF OF THE HOA

2. \_\_\_\_\_

MICHAEL FRANSISCO ID630125 5096 08 9