

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 2008 (Act 71 of 2008)

**MEMORANDUM of INCORPORATION  
OF A NON-PROFIT COMPANY**

Name of Company

**WILLOW ACRES HOMEOWNERS ASSOCIATION NPC**

Registration Number

2003/018683/08

**Amendment date: October 2022**

## INDEX

1.	FORMAT OF MEMORANDUM.....	4
2.	DEFINITIONS .....	4
3.	MAIN OBJECT, CONDITIONS AND BUSINESS OF THE ASSOCIATION.....	9
4.	APPLICATION OF OPTIONAL PROVISIONS OF THE ACT and FINANCIAL ASSESSMENT PROCEDURE OF COMPANY .....	9
5.	MEMBERSHIP.....	9
6.	LEVY .....	12
7.	ASSOCIATION’S PRINCIPLES, RULES AND REGULATIONS .....	14
8.	ASSOCIATION’S POWER TO ENFORCE ITS RULES.....	18
9.	ELECTION OF DIRECTORS.....	20
10.	POWERS OF DIRECTORS .....	21
11.	INTEREST OF DIRECTORS .....	23
12.	DISQUALIFICATION OF DIRECTORS.....	23
13.	BUSINESS AND MEETINGS OF THE BOARD of DIRECTORS OF THE ASSOCIATION.....	24
14.	INDEMNIFICATION OF DIRECTORS .....	27
15.	MEETINGS OF THE ASSOCIATION .....	27
16.	PROXIES .....	28
17.	FORMALITIES .....	29
18.	VOTING BY PROXY .....	32
19.	NOTICE OF MEETINGS.....	32
20.	VERIFICATION OF RIGHT TO ATTEND MEETING .....	33
21.	PROCEDURE AT GENERAL OR ANNUAL MEETINGS .....	34
22.	VOTES AND POLLS.....	35
23.	BUSINESS OF AN ANNUAL GENERAL MEETING OF MEMBERS.....	36
24.	VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES .....	36
25.	RESERVES .....	37
26.	SERVICE OF NOTICES AND LEGAL PROCESS.....	37
27.	REGISTERS.....	38

28.	COMMON AREAS OF THE ASSOCIATION AND CLEARANCES .....	39
29.	GENERAL.....	41
30.	BOOKS OF ACCOUNT .....	42
31.	MEMBERS INFORMATION .....	42
32.	AGREEMENTS.....	42
33.	SECURITY AND BOUNDARY WALLS.....	42
34.	ALTERATION OF MEMORANDUM OF INCORPORATION .....	43
35.	MEDIATION AND ARBITRATION .....	43

## 1. FORMAT OF MEMORANDUM

- 1.1 Neither the short nor the long standard form of Memorandum for a Non-Profit Company, being Forms CoR.15.1.E and respectively CoR15.1.F, will apply to the Company.
- 1.2 This Memorandum is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Act.

## 2. DEFINITIONS

### 2.1 Unless the context otherwise indicates:

- 2.1.1 “**Act**” means the Companies Act No 71 of 2008;
- 2.1.2 “**Association**” means the Willows Homeowners Association NPC, a non-profit company, to which this Memorandum of Incorporation is applicable, duly registered and incorporated according to the company laws of the Republic of South Africa;
- 2.1.3 “**Auditors**” means the Auditors of the Association;
- 2.1.4 “**Board**” means the Board of Directors of the Association;
- 2.1.5 “**CSOS**” means the statutory body established in terms of the Community Scheme Ombud Service Act, 2011, Act 9 of 2011.
- 2.1.6 “**Chairman**” means chairman of the board of Directors;
- 2.1.7 “**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;
- 2.1.8 “**Electronic Communication**” has the meaning set out in Section 1 of the Electronic Communication and transactions Act, Act 25 of 2002, and includes a communication by means of a data message consisting of data generated, sent, received or stored by electronic means including electronic mail (e-mail), fax,

- SMS and, where applicable, Skype or any other video conferencing communication or electronic virtual platform communication available.
- 2.1.9 “**Erf**” means any erf or subdivision of an erf or consolidation of erven registered in the name of any person in terms of the Deeds Registries Act, No. 47 of 1937;
- 2.1.10 “**Estate**” means the Willow Acres Estate;
- 2.1.11 “**Good Standing**” a member is regarded in good standing when all financial obligations the member has in respect of the Association is fully paid up to date, the member is not in any breach of any provisions of the Memorandum of Incorporation or the Estate Rules or any Regulations issued by the Association.
- 2.1.12 “**Managing agent**” means any person or body appointed by the Association as an independent contractor to undertake the administrative and management functions of the Association;
- 2.1.13 “**Manager**” means and includes, as the case may be, any or all of the Estate Manager, Managing Agent, Security Manager or any other person(s) appointed as such by the Board;
- 2.1.14 “**Medium**” means any medium recognised by the Directors and the laws of the Republic of South Africa including but not limited to, electronic mail, telegram, telex, telecopy, the internet, facsimile, telephone, short message system, audio visual and audio cassette.
- 2.1.15 “**Member**” means the persons or entities referred to in paragraph 5 and which have specified rights in respect of the Association as contemplated in item 4 of Schedule 1 of the Companies Act 71 of 2008;
- 2.1.16 “**Memorandum**” means this Memorandum of Incorporation;
- 2.1.17 “**Publish**” means notice given in writing by letter, which letter can be posted and need not be registered mail, or could be hand delivered to a legal address, or could be sent in electronic format, by any Medium, or as an e-mail or as any official newsletter of the Association, or a facsimile or by SMS.

- 2.1.18 “**Resident**” means any person paying rent or occupational rent to a Member, the tenants of Members, or any person residing in the Township.
- 2.1.19 “**Representative**”, in relation to any Member not a natural person acting personally, means (in relation to the particular Trust or legal entity/ies registered as the owner) in respect of:
- A Company; all of its Shareholders, Directors and Office bearers;
  - A Close Corporation; all of its members; and
  - A Trust; all of its Directors and Beneficiaries.
- 2.1.20 “**Sectional Title Unit**” means a section shown as such on a Sectional Plan approved by the Surveyor General together with an undivided share in the common Property as determined in accordance with the participation quota of that section, and as described more fully in terms of the Sectional Titles Act;
- 2.1.21 “**Sectional Title Development Scheme**” means a scheme in terms of which a building or buildings situated or to be erected in the Township is or are, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections, or as contemplated in the proviso to section 2 (a) of the Sectional Titles Act;
- 2.1.22 “**The Statutes**” means the Companies Act of the Republic of South Africa as well as each and every other statute or ordinance from time to time in force concerning companies and necessarily affecting the Association;
- 2.1.23 “**Surplus**” includes revenue left after payment of all expenses in any financial year, including as a result of over budget, capital income generated from the sale of a capital asset(s), and any other amounts determined to be a surplus by the Association’s auditors;
- 2.1.24 “**Township**” means the Township of Willow Acres and its extensions including any adjacent properties thereto, whether incorporated into the Willow Acres Township (and/or its extensions, as proclaimed) or otherwise as may be contiguous to any of the foregoing, which are incorporated by virtue of a Special

Resolution into the Township or Estate of Willow Acres by virtue of the provisions of this Memorandum;

- 2.1.25      **“Unit”** jointly refers to an Erf, Sectional Title Unit and/or a Vacant Erf.
- 2.1.26      **“Vice chairman”** means the vice chairman of the board of Directors;
- 2.1.27      **“Works”** means the construction Works of any sort in relation to any improvements within the Township which shall include construction of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts, golf course, country club, walls, fences, paving, landscape, architectural features and other recreational facilities and/or amenities (and including any alterations and/or additions to any of the foregoing).
- 2.1.28      **“In writing”** or **“written”** including typewriting, printing, lithography and includes any communication in electronic form transmitted by using any Medium;
  
- 2.2          Words which describe a natural person will also describe an Association, Body Corporate, the Directors of a Trust or other legal persons, and *vice versa*;
  
- 2.3          Words which describe the masculine shall also describe the feminine or refer to the neutral. For convenience only, this agreement refers to the masculine singular.
  
- 2.4          Words which are singular shall include a reference to the plural and *vice versa*;
  
- 2.5          Annexures to this agreement are an integral part of it;
  
- 2.6          Reference to a party includes that party's successors and permitted assigns;
  
- 2.7          Any reference to an enactment is to that enactment as at the date of signature hereof;
  
- 2.8          Where the day on or by which anything is to be done is not a business day, it must be done on or by the first business day that follows;

- 2.9 When a number of days is prescribed in this agreement, they must be calculated exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;
- 2.10 Any reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 2.11 The captions appearing in this agreement are for reference purposes only and shall not affect the interpretation hereof;
- 2.12 Where figures are referred to in numerals and words, if there is any conflict between the two, the words must prevail;
- 2.13 Where notice needs to be given in terms of this agreement, notice may be published by the Association to any Member, by any Medium convenient to the Directors;
- 2.14 the onus remains on the Member to inform the Secretary of any change in his email, facsimile / telephone number or postal address and to receive written acknowledgement of receipt. In the event that a Member does not receive written acknowledgement of receipt from the Association, the change will not be effective against the Association.
- 2.15 Where the Act refers to "a Member", "a shareholder", "the holders of a company's securities", "holders of issued securities of that company" or "a holder of voting rights entitled to be voted", the reference must be read to be a reference to the voting Members of the Association.

**3. MAIN OBJECT, CONDITIONS AND BUSINESS OF THE ASSOCIATION**

3.1 The main business of the Association is to promote and protect the communal interests of the Members and occupiers of the Township and its extensions (as defined in this Memorandum) and recreational facilities, and to maintain high security, aesthetic, architectural and environmental standards in the Township.

3.2 The main object of the Association is to promote its main business with respect to the communal interests of the Members including, without limitation thereto, by way of enforcing regulatory measures, the terms of this Memorandum and the raising of levies and charges to fund the same.

**4. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT and FINANCIAL ASSESSMENT PROCEDURE OF COMPANY**

4.1 The Association does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 (*Enhanced Accountability and Transparency*) of the Act.

4.2 The Association does not elect, in terms of section 118 (1)(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act nor to the Takeover Regulations provided for in the Act and will be bound by these provisions only to the extent contemplated in section 118(1)(c)(i).

4.3 The accounts of the Association must nevertheless be strictly audited, in accordance with standards to be determined by the Directors from time to time by resolution, and minuted, but which may be no less than those imposed by IFRS Small Business Compliant auditing.

## 5. MEMBERSHIP

- 5.1 Membership of the Association shall be limited to persons who are, in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act), reflected in the records of the Deeds Registry concerned as the registered owner of any Unit in the Township, and the management association or body corporate in respect of any Sectional Title Unit.
- 5.2 Concurrently with every concluded deed of sale in respect of a Unit in the Township, every prospective Purchaser must also sign a consent in the prescribed form wherein the Purchaser consents to their membership of the Association.
- 5.3 When a person or representative 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 a Unit in the Township, he shall *ipso facto* cease to be a Member of the Association unless such Member owns any other Unit;
- 5.4 A Member shall include the trustee in an insolvent estate, a liquidator or the trustee elected in terms of any regulatory or legislative measure, the liquidator of a company or close corporation which is a Member, the executor of the estate of a Member who has died or a representative of a Member, recognised by law of a Member who is a minor or of unsound mind or is under disability if such trustee, liquidator, executor or representative is acting within the scope of his authority.
- 5.5 A Member may not resign from the Association while he is the registered owner;
- 5.6 Where two or more people own a Unit, the co-owners are seen collectively as one Member and are jointly and severally liable for the performance of an obligation to the Association. The co-owners have the rights and obligations to the Association of one Member. Similarly, where a legal entity defined as a Member has one or more Representatives, the representatives are seen collectively as one Member.
- 5.7 All Members must pay levies to the Association and must obey the rules of the Association whether such rules form part of this Memorandum or alternatively form part of any Rules made pursuant to paragraph 7 of this Memorandum.

- 5.8 The rights of a Member are terminated on the date that the Unit is transferred out of the Member's name. The purchaser of the Unit must become a Member of the Association.
- 5.9 Any obligation, known or unknown that a Member may have had to the Association while he was a Member will be enforceable after termination of his Membership.
- 5.10 A Member is responsible for the action or inaction of the Resident while they occupy the Unit, and must pay any penalties or penalties that may result from their occupation, even if the Resident has not signed a contract.
- 5.11 No Member shall let or otherwise part with occupation of his Unit, whether temporarily or otherwise, unless he has agreed in writing with the proposed lessee or occupier of the Unit that such lessee or occupier shall be bound by all the terms and conditions of this Memorandum, in favour of the Association as a *stipulatio alteri*.
- 5.12 Members must at all-times further the objectives and interests of the Association to the best of their ability; and must obey the rules of the Association made by the Board in terms of this Agreement. Members are responsible to ensure that any Resident or visitor obeys the rules of the Association.
- 5.13 A Member cannot transfer his rights and obligations to the Association to anybody else, except if he cedes his rights in terms of this Agreement to a bank as security for a mortgage.
- 5.14 Members in good standing have the right to use all common property owned or leased by the Association, and are entitled to enjoy all other privileges offered by the Association subject to any rules or directions imposed by the Association or the Board.
- 5.15 The Directors may restrict access to, or otherwise suspend the use of common property or leased premises of the Association.

## 6. LEVY

- 6.1 The Directors of the Association shall impose levies on Members of the Association to recover the costs and charges incurred by the Association, together with any amounts as may be raised for capital assets, maintenance of capital assets and reserves.
- 6.2 Members must pay levies to cover the expenses of the Association that have been paid or that the Association reasonably believes it will have to pay in the future, for the operation, protection, maintenance; repair and improvement and raising of reserves (the “expenses”) of the Township and its common properties.
- 6.3 A budget, in reasonable detail, of the amount of the levy (the “budget”) must be prepared by the Directors not less than 30 (thirty) days or as soon afterward as may be possible, before the end of the Association’s financial year. The Directors must publish a notice with the budget to the Members within 10 (ten) days of adoption.
- 6.4 A Member shall not be entitled to withhold payment for any reason whatsoever of any levy or special levy or contribution due by him to the Association.
- 6.5 Where two or more persons are registered as the owner of a Unit or where two or more persons are the members of a body corporate or management association in respect of any Sectional Title Unit, their liability to pay levies shall be jointly and severally.
- 6.6 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 Prescribed Rate of Interest Act No 55 of 1975, as amended.
- 6.7 Any amount due to the Association by a Member in respect of levies, penalties, interest and/or otherwise shall be a debt due by him to the Association.
- 6.8 The obligations of a Member to pay levies shall terminate upon his ceasing to be a Member without prejudice to the Association’s rights to recover all arrear levies, penalties and interest.
- 6.9 No levies, penalties or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member.

- 6.10 Further, a Member on ceasing to be such shall have no claims whatsoever on any surplus the Association may have, whether obtained by way of sale of association assets or otherwise.
- 6.11 A Member's successor in title (to any Unit) shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Unit to him, and pay the levies and interest attributable to that Unit.
- 6.12 The budget must set out in reasonable detail:
- 6.12.1 the amount that the Directors of the Association believe will be needed to cover expenses for the next financial year;
  - 6.12.2 the deficit from the preceding financial year, if any, and an explanation thereof;
  - 6.12.3 if the Directors deem it necessary, the details of any amount to be held in reserve to meet unexpected costs, or a reserve fund for unanticipated expenses; and
  - 6.12.4 the contribution payable by each individual Member.
- 6.13 When imposing levies, the Directors must, as far as possible:
- 6.13.1 allocate any specific cost of the Association to the Unit it relates to;
  - 6.13.2 assign a cost applying generally to a number of Units it relates to, in an appropriate proportion; and
  - 6.13.3 assign the costs relating to the Association generally, to all Units.
- 6.14 In calculating the levies payable by Members, the Directors shall as far as is reasonably practicable:
- 6.14.1 allocate those costs arising directly in respect of the Unit itself to the Member owning such Unit;
  - 6.14.2 assign those costs relating to the Township generally to the owners of all Units equally, provided however that the Directors may in any case, where considered equitable, assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances;
- 6.15 If the Directors do not prepare a budget in time, the Members must continue to pay the same levy as the previous year. The new levy is payable from the first day of the first month after the Directors have properly distributed the budget.

- 6.16 The Members must pay levies for each month in advance, on or before the first day of the month. Any amount due by a Member by way of a levy and interest shall be a debt due by him to the Association. A Member may not choose to pay portion of his levy for any reason relating to his interpretation of service delivery by the Association. The full levy raised is due and payable monthly and the dispute resolution mechanism provided in this agreement must be followed for any other issue.
- 6.17 The Directors may impose a special levy on Members, for any expenses not included in the budget, and may decide on a method by which the Members must pay the special levy.
- 6.18 The Directors must publish notice of their intention to impose a special levy, at least 30 (thirty) days before its imposition on the Members. The notice must specify the reason for the special levy, the amount and the breakdown of the calculations in terms of which the amount was reached. The period of 30 (thirty) days can be reduced (in the discretion of the Board) to address any emergency.
- 6.19 At the request of the Board, a Member shall preferably sign a debit order authority in favour of the Association for the payment or via Electronic Funds Transfer or by means of a Stop Order of all levies and other charges due to the Association.

## **7. ASSOCIATION'S PRINCIPLES, RULES AND REGULATIONS**

- 7.1 The Members understand that the Township is a residential estate and this character should be preserved. The Members also understand that it is the goal of the Association to make sure that development in the Township is harmonious and agrees with the Township's development plans.
- 7.2 Notwithstanding that Members hold title to their individual stands it is recorded that the development of the Estate is of a homogenous nature and that the Association shall be vested with overall control of all matters affecting the Estate.
- 7.3 Notwithstanding the authority provided in this Memorandum, each Member agrees and acknowledges that the Board is entrusted with the overall management of the Township including the provision of a security service. It is further acknowledged that the security service is not a service to protect an individual Unit, but a general security service for the Estate, in respect of which there is no guarantee of safety of persons or property. Each

Member hereby irrevocably indemnifies and holds the Association and/or Board of Directors free from liability against all claims, losses, liabilities, demands, damages, costs, charges or expenses arising out of the security service so provided.

7.4 The Members give the Board of Directors the power to set the Rules for the Association and its Members, and to set penalties for violation of the rules as contemplated in terms of Section 15 of the Act.

7.5 The Rules may relate to any matter of communal interest including, without limitation thereto, any of the following:-

7.5.1 the standards and guidelines for the architectural design of all buildings and outbuildings, structures of any nature, swimming pools, tennis courts, other recreational facilities and amenities and all additions and alterations to any of the aforesaid including any 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 the exteriors) to ensure an attractive and aesthetically pleasing character to all the buildings, outbuildings, structures, facilities and amenities referred to in the Township;

7.5.2 the positioning of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts and other recreational facilities and amenities and all additions and alterations thereto;

7.5.3 the standards, guidelines and controls for the design of all site-Works, buildings, structures, installations, and projections on the properties in the Township, including aerials, pergolas, air conditioning units, generators, side walls, swimming pools, tennis courts, awnings, jacuzzis, carports, paved pathways, landscaping features, solar panels, rain water harvesting or any new technology devices (and any other facilities and amenities) and Works as well as the right to set standards, guidelines and controls for the erection of double storey Units together with the right to relax such standards, guidelines and controls so set;

7.5.4 the preservation of the environment including the right to control and/or prohibit vegetation, the erection of fences (whether upon or within the boundaries of any properties), security services/installations, aerials, washing lines and the like;

- 7.5.5 the right to prohibit, restrict or control the keeping of any animal, bird, reptile or insect which they regard as dangerous or a nuisance;
- 7.5.6 the conduct of any persons within the Township for the prevention of nuisance of any nature to any Member, or occupier and/or any occupiers of properties neighbouring the Township;
- 7.5.7 the preservation of the natural environment, vegetation and flora in the Township and eradication of any noxious and/or invader flora;
- 7.5.8 the use of services, entertainment and recreational facilities and amenities including the right to levy a reasonable charge for the use thereof;
- 7.5.9 the standards and guidelines for the security system for all buildings, outbuildings, walls and structures of any nature including the standards and guidelines for the installation of security systems and/or provisions of security service and the integration thereof in any communal or other security system/installation/service serving the Township;
- 7.5.10 for the furtherance and promotion of any of the objects of the Association and/or for the better management of the business of the Association and/or for the advancement of the interests of Members and/or Residents in the Township;
- 7.5.11 the use, maintenance, repair and replacement of all buildings, outbuildings, structures, security systems/installations and improvements of any nature, including any recreational, private and public open spaces including any roads and road reserves in the Township and/or any services, connections and equipment in such areas including the right to levy a reasonable charge for the use thereof;
- 7.5.12 the control of the operations and movements of builders, sub-contractors, their employees, agents and assigns within the Township:
  - 7.5.12.1 Obtaining building, alterations and landscaping deposits from each Member or proposed Member prior to the commencement of any building, alterations and/or landscaping so as to compensate any Member or third party for any destruction or damage which might have arisen or potentially being affected;
  - 7.5.12.2 Such remaining sum of the deposit shall be refunded to the Member or prospective Member, less any deductions free of interest, within a reasonable period after the completion of the building alterations and/or landscaping and/or (other) Works;

- 7.5.13 The control of the operations and movements of estate agents within the Township which shall include control of their methods of sale, resale and/or advertising within the Township;
  - 7.5.14 The control of access to the Township in all its respects and the establishment of security protocols;
  - 7.5.15 The drawing up of Estate Rules dealing with any of the matters addressed in this paragraph 7 and/or dealing with such other matters deemed necessary for the good governance, management and administration of the Township in pursuance of the objects and purposes of the Association.
- 7.6 If the Directors pass a resolution to include, amend or delete (“change”) a rule or penalty, the Directors shall ensure circulation or publication of the Rules by means of any Medium in a manner that brings same to the attention of Members, but each Member shall nevertheless be responsible for ensuring that he is in possession of a current set of Rules.
- 7.7 The Directors shall be indemnified by the Members in respect of any action performed in proper pursuit of the rules.
- 7.8 A rule and penalty is binding in the interim as specified in the Act and permanently once it has been ratified by an ordinary resolution of the Association.
- 7.9 A Member is vicariously responsible for the actions or inactions of his household, visitors, employees, agents, invitees or contractors, and any Residents at his Unit, and if any of them breach the Association’s rules, or this Memorandum, or any direction of the Board, such Member will be penalised by the Association, or the Association may take appropriate legal action against him, as if he had himself infringed the Associations’ rules.
- 7.10 The Association may (without affecting its rights) penalty or take other steps against the individual who actually infringed the Association’s Rules.
- 7.11 The Association must advise the Member, and if possible, the individual who infringed the rule of the fact that a penalty has been imposed, and the reason for the penalty.

## **8. ASSOCIATION'S POWER TO ENFORCE ITS RULES**

- 8.1 If a Member or Resident or any person for whom a Member or Resident is responsible, has broken the Rules of the Association, the Directors may:-
- 8.1.1 give notice to the Member and/or Resident concerned which requires him to rectify the breach or make payment of any amount claimed by the Association, within such reasonable period as the Directors may decide; and/or
  - 8.1.2 take or cause to be taken any steps as may be considered necessary to rectify the breach of the rule that the Member or Resident may be guilty of breaching, or recover the debt, and recover any costs of doing so from the Member or Resident concerned, which amount shall be deemed, without the necessity of taxation or debate, to be a debt owing by the Member.
  - 8.1.3 after following due process, enter the Member's Unit to take any steps necessary to remedy the breach; and/or
  - 8.1.4 impose a system of penalties. The amount of the penalties must be reviewed and confirmed at each Annual General Meeting of the Association, for the year ahead; and/or
  - 8.1.5 take such other steps including proceedings in Court, as they deem reasonably necessary.
- 8.2 Notwithstanding the above, the Directors reserve the right to proceed to rectify or repair any damage to any property or Unit, including as a result of neglect, and including, the perimeter fence, entrance gates or security systems without first notifying the Member and they reserve the right to claim such damages from the Member upon submission of proof of the damage.
- 8.3 Any penalty imposed upon any Member is deemed to be a debt due by such Member to the Association and shall be recoverable by ordinary civil process together with interest in the event of such penalty not being paid on the due date; the foregoing shall not derogate from the rights of the Directors to impose any other penalty or sanction consequent upon a breach of the Rules:
- 8.3.1 should any Member dispute the fact, in writing, that he has committed a breach of any of the rules, the Chairman shall convene a dispute resolution committee, comprising of 3 (three) Directors appointed for such purpose who shall adjudicate upon the issue at such time and in such manner and according to such

- procedure as the Chairman may reasonably direct, provided that the rules of Natural Justice shall be observed;
- 8.3.2 if the Member concerned is aggrieved by the decision of such (whose decision shall be conveyed to the Member in writing), the Member shall be entitled within 10 (ten) days of receipt of such notification to have the decision reviewed by the Board of Directors, and to make further written representations to the Board of Directors, who shall determine the matter and whose decision shall be final and binding and not subject to appeal or review.
- 8.4 Members indemnify the Association in respect of any damage or losses sustained as a result of any unlawful and/or negligent act (or omission) on the part of any Member of the Member's household or his guests, lessees, occupiers, contractors, agents and Residents, the Member being responsible for the conduct of all of the foregoing persons in and about the Township.
- 8.5 The penalty referred to in paragraph 8.1.4 above, shall be payable to the Association within such period as may be specified by the Directors in the notice imposing the penalty. Failing the declaration of a dispute in terms of paragraph 8.3.1, such penalty shall be immediately due for payment and such person shall have forfeited his right to refer the matter for determination by the committee referred to in paragraph 8.3.1.
- 8.6 If the Association takes legal action in any form against a Member or Resident, the Association may recover its costs from the Member on the attorney and own client scale.
- 8.7 For as long as any amount due by a Member to the Association is overdue or a Member is in breach of any provisions of this Memorandum or of any of the rules made in terms hereof he shall not be entitled to make use of any of the facilities of the Association, nor shall he be entitled to attend or vote at any meeting of members.

## 9. ELECTION OF DIRECTORS

- 9.1 At each Annual General Meeting, at least one third of the Directors must stand down. If no Director wishes to voluntarily stand down, or no alternate Director is to be replaced by election, then the longest standing of the Directors must stand down. Any Director shall be eligible for re-election.
- 9.2 The number of longstanding Directors to stand down is determined by dividing the number of Directors currently serving by three, rounding any fractional result up to the nearest whole number and subtracting the number of any other retiring Directors.
- 9.3 The Members of the Association must fill the vacant offices at its Annual General Meeting and may decide to maintain, increase or decrease the number of Directors. A Director is elected to serve the Association from date of election till the next Annual General Meeting. (“corporate year”).
- 9.4 The Directors will be elected in terms of Section 5 (1) of Schedule 1 of the Act as follows:
- 9.4.1 Nominations for Directors must be submitted to the Secretary on the prescribed form on the date appointed for the Annual General Meeting. Such nomination must be co-signed by at least 2 (two) Members in good standing.
- 9.4.2 The Nominee must accept in writing his understanding and adherence to the conditions of the Act and in particular Sections 75, 76 & 77 of the Act and must be in good standing with the Association and its rules.
- 9.4.3 A Member seeking election as Director must be prepared to address any questions posed to him by the members.
- 9.4.4 Should the number of nominations exceed the number of vacancies for Directors, voting shall be conducted as a written ballot and the nominees with the most votes shall be elected for the available positions.
- 9.5 If for any reason, the Members are not required to vote on the appointment of new Directors, or the number of Directors newly appointed is less than the required minimum, the retiring Directors who are willing to continue in office, shall be recorded as being re-elected.
- 9.6 The Association may, by ordinary resolution remove a Director from office before the end of his term.

9.7 Directors shall be entitled to be repaid all reasonable and vouched expenses incurred by them respectively in or about the performance of their duties as Directors, provided that the Directors shall not be entitled to any remuneration for performance of their duties as such in terms of this Memorandum and any Rules made by the Association.

**10. POWERS OF DIRECTORS**

10.1 Subject to the instructions of the Members of the Association in General Meetings, the Directors have all necessary powers to manage and control the business and affairs of the Association.

10.2 Subject to the express provisions hereof, the Directors shall manage and control the business and affairs of the Association, with full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent.

10.3 The Directors shall be entitled to exercise all powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and which are not by the Act or in terms of this Memorandum required to be exercised or done by the Association in a General Meeting or pursuant to the Rules (referred to in paragraph 8) adopted by the Association in General Meeting or as may be made by the Directors from time to time, in terms of the specific powers delegated to them (in paragraph 8).

10.4 Save as specifically provided in these presents, 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, a township manager and administrative personnel or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Directors for the good governance of the Association and its business, on such terms as the Directors shall decide.

10.5 In the exercise of their powers, in terms of the Act and this Memorandum, the Directors shall at all times act reasonably.

10.6 All notices or communication by the Members to the Directors shall be in writing and addressed to the Chairperson. The Chairperson may in his discretion delegate the authority to deal with any such communication or notice to any other Director, Portfolio Committee, officer or employee of the Association.

- 10.7 The Directors shall further have power to:
- 10.7.1 require that any Works being constructed within the Township shall be supervised to ensure that the provisions of this Memorandum and of the Rules are complied with and that all Works are performed and completed in a proper and workmanlike manner;
  - 10.7.2 issue an architectural and environmental design and maintenance manual or guidelines in respect of the Township;
  - 10.7.3 to impose penalties or other penalties (sanctions) on the Members in their discretion, as referred to in paragraph 8, insofar as non-compliance with the provisions of this Memorandum;
  - 10.7.4 to determine the access to the Township;
  - 10.7.5 to determine the parking areas to be used by Members and their employees, agents and invitees;
  - 10.7.6 to determine the security facilities to be installed and the operation thereof for the protection of the Township;
  - 10.7.7 procure loan finance on behalf of the Association and give security over the assets of the Association; and
  - 10.7.8 to do all such things as may be necessary or desirable for the attainment of the main objects of the Association.
- 10.8 The Directors shall not be entitled to undertake on behalf of the Association any substantial works of a capital nature which are not included in the budget, without the sanction of a resolution of the Association in General Meeting.
- 10.9 The Directors may delegate any or all of their powers to a Managing Agent and/or a Manager, as they may determine, subject to any restrictions imposed or directive given by any General Meeting of the Association.

## **11. INTEREST OF DIRECTORS**

11.1 A Director may not:

11.1.1 Hold any other office or place of profit in the Association; or

11.1.2 Act by himself or by his firm in a professional capacity for the Association; or

11.1.3 Have any direct or indirect interest in any contract of any arrangement entered into or on behalf of the Association unless the Association in a General Meeting shall have provided its prior approval in respect of any such office, place of profit, appointment or interest and subject to such terms and conditions as may be determined by the Association in General Meetings.

11.2 A Director who has, or will have, any direct or indirect, interest in any contract with the Association must disclose his interest in writing, which disclosure must be recorded in the minutes of a Board Meeting.

11.3 The Board of Directors may not enter into a contract in which one of their Members has a financial interest, unless at least 75% (seventy five percent) of the Board approves the arrangement and full disclosure of the interest is made in accordance with this Memorandum and the Act.

11.4 The Directors must disclose the nature of the contract and the interest of the Director, at the next Annual General Meeting.

## **12. DISQUALIFICATION OF DIRECTORS**

12.1 A Director must vacate his office as a Director of the Association if he:

12.1.1 profits by his office or has an interest in any contract with the Association without the consent of the Board;

12.1.2 becomes of unsound mind;

12.1.3 is provisionally or finally sequestered;

12.1.4 resigns;

12.1.5 ceases to be a Member of the Association;

12.1.6 is found guilty of contravening any condition of this agreement or the Act.

**13. BUSINESS AND MEETINGS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION**

- 13.1 The Board of Directors of the Association (the “Directors”) shall consist of not less than 4 (four) and no more than 10 (ten) Directors.
- 13.2 A Director must be a natural person, who shall be an individual but need not himself be a Member of the Association if he is the duly authorised representative of a Member of the Association, shall be appointed by the Members at an Annual General Meeting of the Association. A director however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this Memorandum and shall sign and execute and return to the Association any Director’s Code of Conduct prescribed by the Board of Directors from time to time.
- 13.3 The Directors must meet at least every alternate month to discuss the business of the Association. Minutes must be kept of all meetings. The Chairman or any two Directors may call for an additional meeting at any reasonable time.
- 13.4 The Directors may otherwise regulate their business and meetings as they see fit.
- 13.5 The quorum for any meeting of the Directors shall be a majority of the Directors present personally.
- 13.6 When a resolution of the Board is called for, the Secretary must record in writing:-
- 13.6.1 the proposed resolution;
  - 13.6.2 the manner in which the vote on the proposed resolution was cast; and
  - 13.6.3 whether the resolution was approved or not
- 13.7 Resolutions of the Board may be:
- 13.7.1 passed by a show of hands;
  - 13.7.2 passed in counterpart, which may include the submission of a Directors vote by electronic communication, provided the motion for such vote was circulated beforehand to all Directors;
  - 13.7.3 passed on a round-robin basis or in any combination of the above.
- 13.8 Any resolution passed by the Directors shall be carried by a simple majority of all votes cast.

- 13.9 Should there be an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 13.10 Resolutions adopted by the Board are effective as of the date of the resolution.
- 13.11 If the number of Directors is below the minimum number required in terms of this Memorandum, the Directors may not act, except in an emergency or to vote to appoint additional Directors as may be necessary to bring the number of Directors to the minimum number prescribed in this Memorandum.
- 13.12 The Managing Agent of the Association may be appointed the Secretary of the Board of Directors and the Association.
- 13.13 In the event of all Directors resigning at once, the Secretary shall call for a Special General Meeting within 10 (ten) days, for the purpose of electing Directors.
- 13.14 In the event of the Board of Directors taking an *ultra vires* decision or acting outside its powers, the Secretary shall report such inappropriate decision or action to the Board of Directors with the request to withdraw and rescind such decision or action. Should the Board fail to comply with such demand, the Secretary may call for a General Meeting of Members to address the matter.
- 13.15 Within 15 (fifteen) days of the Annual General Meeting, the Secretary shall call a meeting of the Board of Directors for the purpose of electing a Chairman and Vice-Chairman to serve till the following Annual General Meeting or for such shorter period as the Board may decide. If no office bearers are present within five minutes of the start of that meeting, the Directors present must elect one of them to hold office for the duration of that particular meeting.
- 13.16 The Board of Directors may introduce a system of portfolio committee's on terms and conditions deemed fit by the Board.

- 13.17 The Board of Directors may delegate their powers to a committee of Members consisting of such number of their Members and such outsiders (including the Managing Agent and/or a Manager), as they may deem fit and to delegate to such committees such of their powers and duties as they may deem necessary, subject to any restriction imposed or directive given by any General Meeting of the Association.
- 13.18 The Directors shall be entitled to vary or revoke such appointments and delegations as they may from time to time deem necessary.
- 13.19 The Directors shall appoint an architectural review committee which shall consist of at least the following:
- 13.19.1 A practising professional architect duly qualified to practice as such for his own account in the Republic of South Africa; and
  - 13.19.2 One Director;
  - 13.19.3 Such Member/s as the Directors may determine.
- 13.20 Members of the architectural review committee shall not necessarily be required to be Members.
- 13.21 Any Manager may attend.
- 13.22 All plans for buildings, outbuildings, structures, additions, alternations and all plans for all Works shall be submitted by the Members to the Directors for transmission to the architectural review committee and the Directors shall not approve any plans unless such plans shall first have been approved by the architectural review committee.
- 13.23 The Directors may if they deem fit delegate to the architectural review committee all or certain of their functions and powers.
- 13.24 The Committee's procedures, and its obligation to minute its meetings, are exactly the same as those of the Directors as set out in this Memorandum, subject to the authority of the Directors.

13.25 All acts done or decisions taken by a Director or Committee or the Secretary within the delegated powers of authority entrusted to him, shall be reported to the next Board of Directors meeting for ratification. No Director or Committee or the Secretary may act outside the delegated powers of authority entrusted to him by the Board of Directors. The Board of Directors must confirm the delegated powers of authority annually at its first meeting.

#### **14. INDEMNIFICATION OF DIRECTORS**

14.1 The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director in respect of the defence of legal proceedings, as set out in section 78(4) is not limited or restricted by this Memorandum.

14.2 The authority of the Company's Board of Directors to indemnify a Director in respect of liability as set out in section 78(5) is not limited or restricted by this Memorandum.

14.3 The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78(6) is not limited or restricted by this Memorandum.

#### **15. MEETINGS OF THE ASSOCIATION**

15.1 The Directors must at least once a year call for and hold an Annual General Meeting of the Association, in accordance with the Act. The Annual General Meetings may not be held more than 6 (six) months after the end of every ensuing financial year of the Association.

15.2 Annual General Meetings and meetings called in order to pass a special resolution must be called for at least 15 (fifteen) business days before the meeting.

15.3 Ordinary Meetings or any other meeting must be called for on at least (10) ten business days' notice.

15.4 Notice of meetings must be published by any Medium approved by the Directors.

15.5 Other General Meetings of the Association may be held from time to time as necessary.

- 15.6 The Directors or Members may call for such a meeting in terms of the procedures set out in the Act.
- 15.7 A Members' requisition for a meeting must:
- 15.7.1 be in writing to the Directors;
  - 15.7.2 describe the specific purpose for which the meeting is to be held; and
  - 15.7.3 be made by, or signed by no less than **10% (ten)** percent of the Members of the Association entitled to vote on the agenda item for the meeting.
- 15.8 The Secretary of the Association may, if the proposed resolution is received in time, include the proposed resolution in the notice of any meeting the Association has scheduled; or otherwise, after the Member has paid for it, issue a copy of the proposed resolution to all Members by whatever convenient means, as quickly as possible, before the meeting.
- 15.9 The authority of the Association to conduct a meeting entirely by electronic communication, or to provide for members, or their proxies, to participate in all or parts of member' meetings of the Association by electronic communication, as set out and as per the provisions of Section 63 of the Act, is not limited or restricted by this Memorandum of Incorporation as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.
- 15.10 The accidental omission to give notice of a meeting to any Member does not invalidate a resolution passed at that meeting.

## 16. PROXIES

- 16.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member of the Association.
- 16.2 The instrument appointing a proxy shall be in Writing signed by the Member concerned (or his agent, duly authorised in writing), but should be similar in form to that set out in paragraph 17.
- 16.3 A proxy form shall only be valid for 1 (one) year from the date on which same was signed.

## **17. FORMALITIES**

- 17.1 The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be lodged with the Directors prior to the commencement of the meeting at which the person named in the proxy instrument proposes to vote, such instrument to be tabled at the meeting and attached to the Minutes thereof in the Minute Book.
- 17.2 No instrument appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed, unless so specifically stated in the proxy itself.
- 17.3 As to comply with the Act, the following form or as near thereto as circumstances permit is to be used:

**PROXY FORM FOR**

.....  
*(insert type of meeting)*

DATE - .....

TIME - .....h.....

VENUE .....

I .....(full names) ID/Registration No. .... being the registered owner of Unit Number .....Willow Acres ( \*Delete inapplicable) and being in good standing (i.e. all levies and other monies owing to the Association have been paid up to date), hereby appoint

..... ID Number ..... or failing him/her  
 ..... ID Number ..... or failing him/her

The chairman of the Board of Directors

as my/our proxy to act for me/us and on my/our behalf at the Annual General Meeting which will be and to vote for and/or against any matter as my/our Proxy may deem fit.

**Important**

**Please indicate whether you wish to issue any special voting instructions to your Proxy:**

- 1) Resolution to.....Yes  No
- 2) Resolution to.....Yes  No
- 3) Resolution to.....Yes  No
- 4) Resolution to.....Yes  No
- 5) Resolution to.....Yes  No

**Note:**

- A member entitled to attend and vote is entitled to appoint a proxy to attend and vote and speak in his/her stead. A proxy need not be a member of the Association.
- 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 12 months from the date of its execution.
- 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 had been received by the Directors at any time before a vote is taken in respect of which the proxy exercises such vote.
- No member shall be permitted to attend the meeting if they do not produce upon request reasonable proof of their identity and authority to attend the meeting.
- The member's attention is drawn to the Reproduction of Section 58 of the Companies Act, 2008, below.

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

\_\_\_\_\_  
**SIGNATURE**

*(NOTE: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, and such proxy need not also be a member of the company.)*

**PLEASE NOTE THE FOLLOWING EXTRACT FROM THE COMPANIES ACT:-**

**Shareholder right to be represented by proxy**

**58. (1)** At any time, a shareholder of a company may appoint any individual, including an individual who is not a shareholder of that company, as a proxy to—

(a) participate in, and speak and vote at, a shareholders meeting on behalf of the shareholder; or  
(b) give or withhold written consent on behalf of the shareholder to a decision contemplated in section 60, provided that the shareholder may appoint more than one proxy to exercise voting rights attached to different shares held by the shareholder.

(2) A proxy appointment—

(a) must be in writing, dated and signed by the shareholder; and

(b) remains valid for—

(i) one year after the date on which it was signed; or

(ii) any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in subsection (4)(c), or expires earlier as contemplated in subsection (8)(d).

(3) Except to the extent that the Memorandum of Incorporation of a company provides otherwise—

(a) a shareholder of that company may appoint two or more persons concurrently as proxies;

(b) a proxy may delegate the proxy's authority to act on behalf of the shareholder to another person, subject to any restriction set out in the instrument appointing the proxy; and

(c) a copy of the instrument appointing a proxy must be delivered to the company, or to any other person on behalf of the company, before the proxy exercises any rights of the shareholder at a shareholders meeting.

(4) Irrespective of the form of instrument used to appoint a proxy—

(a) the appointment is suspended at any time and to the extent that the shareholder chooses to act directly and in person in the exercise of any rights as a shareholder;

(b) the appointment is revocable unless the proxy appointment expressly states otherwise; and

(c) if the appointment is revocable, a shareholder may revoke the proxy appointment by—

(i) cancelling it in writing, or making a later inconsistent appointment of a proxy; and

(ii) delivering a copy of the revocation instrument to the proxy, and to the company.

(5) The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the shareholder as of the later of—

(a) the date stated in the revocation instrument, if any; or

(b) the date on which the revocation instrument was delivered as required in subsection (4)(c)(ii).

(6) If the instrument appointing a proxy or proxies has been delivered to a company, as long as that appointment remains in effect, any notice that is required by this Act or the company's Memorandum of Incorporation to be delivered by the company to the shareholder must be delivered by the company to—

(a) the shareholder; or

(b) the proxy or proxies, if the shareholder has—

(i) directed the company to do so, in writing; and

(ii) paid any reasonable fee charged by the company for doing so.

(7) A proxy is entitled to exercise, or abstain from exercising, any voting right of the shareholder without direction, except to the extent that the Memorandum of Incorporation, or the instrument appointing the proxy, provides otherwise.

(8) If a company issues an invitation to shareholders to appoint one or more persons named by the company as a proxy, or supplies a form of instrument for appointing a proxy—

(a) the invitation must be sent to every shareholder who is entitled to notice of the meeting at which the proxy is intended to be exercised;

(b) the invitation, or form of instrument supplied by the company for the purpose of appointing a proxy, must—

(i) bear a reasonably prominent summary of the rights established by this section;

(ii) contain adequate blank space, immediately preceding the name or names of any person or persons named in it, to enable a shareholder to write in the name and, if so desired, an alternative name of a proxy chosen by the shareholder; and

(iii) provide adequate space for the shareholder to indicate whether the appointed proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting, or is to abstain from voting;

(c) the company must not require that the proxy appointment be made irrevocable; and

(d) the proxy appointment remains valid only until the end of the meeting at which it was intended to be used, subject to subsection (5).

(9) Subsection (8)(b) and (d) do not apply if the company merely supplies a generally available standard form of proxy appointment on request by a shareholder."

## **18. VOTING BY PROXY**

A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or subsequent revocation of the proxy, provided that no intimation of the death or revocation shall have been received by the Directors and the proxy at any time prior to the vote being taken in respect of which the proxy exercises such vote.

## **19. NOTICE OF MEETINGS**

19.1. A meeting of Members may be called on less notice than required in paragraphs 15.2 and 15.3, but such meeting may only proceed if every person who may exercise Voting Rights in respect of any item on the agenda for the meeting:

19.1.1. is present at the meeting; and

19.1.2. votes to waive the required minimum notice at the meeting.

19.2. A notice of Member's meeting must be given in the prescribed form or such other form prescribed from time to time and must include at least the following information:

19.2.1. the date, time and place for the meeting;

19.2.2. the purpose of the meeting;

19.2.3. an agenda for the meeting setting out in reasonable detail all resolutions which will be proposed for adoption by Members at that meeting;

19.2.4. a copy of any proposed resolution of which the Association has received notice, and which is to be considered at the meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

19.2.5. such other information as may be prescribed in the Act;

19.3. In the case of an Annual General Meeting of the Association, the notice must include:

19.3.1. a summarised form of the audited financial statements to be presented; and

19.3.2. directions for obtaining a copy of the complete audited annual financial statements for the preceding financial year; and

19.3.3. a reasonably prominent statement that:

19.3.3.1. a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;

19.3.3.2. a proxy need not also be a Member of the Association; and

- 19.4 Participants will be required to provide satisfactory identification to verify their right to participate at the meeting as set out below.
- 19.5 If the Association fails deliberately to give the required notice of a Member's meeting, or if there was a material defect in the giving of the notice, the meeting may proceed if all of the persons who are entitled to exercise Voting Rights in respect of each item on the agenda of the meeting:
- 19.5.1. acknowledge actual receipt of the notice;
  - 19.5.2. are present at the meeting;
  - 19.5.3. waive notice of the meeting; or
  - 19.5.4. in the case of a material defect in the manner and form of giving notice, ratify the defective notice.

## **20. VERIFICATION OF RIGHT TO ATTEND MEETING**

- 20.1 A person wishing to attend or participate in a Member's meeting (whether as a proxy or Member), must be in good standing and must present reasonably satisfactory identification to the Secretary of the meeting at least fifteen minutes before the time scheduled for the start of the meeting. The Secretary must be reasonably satisfied that the right of the person to attend and vote has been reasonably verified. For the purposes of this article, the following forms of identification shall be reasonably satisfactory: a valid identity document, driver's license or passport (or a certified copy of any of these documents), accompanied by a power of attorney, letter of authority or other instrument appointing the proxy or person to attend the meeting on behalf of a Shareholder.
- 20.2 In the event that the identification process is not completed by the time that the meeting is scheduled to begin, then the commencement of the meeting shall be delayed until the identification process is complete.

## **21. PROCEDURE AT GENERAL OR ANNUAL MEETINGS**

- 21.1 All business conducted at a meeting, whether at an Annual General or General meeting, will be considered ordinary business and would be resolved by ordinary resolution as contemplated in Section 65 of the Act.
- 21.2 A Special Resolution of Members is required for the business prescribed in Section 65(11) of the Act, and must be supported by at least 75% (seventy five percent) of the Members at a quorate meeting.
- 21.3 The Chairman of a meeting will be the Chairman of the Association or failing him, the Vice-Chairman.
- 21.4 If neither is present within fifteen minutes of the scheduled start time of the meeting, then the Members present, whether or not a quorum is present, shall choose a Chairman. This decision may not be polled.
- 21.5 The Secretary must keep detailed minutes of the meeting in writing. The Secretary of a meeting will be the Secretary of the Association.
- 21.6 A quorum of Members for ordinary business is 10% (ten percent) of the Members entitled to vote, in person or by proxy. (Section 64(2) of the Act). The provisions of the Act will apply to the quorum and voting for the passing of Special Resolutions.
- 21.7 For the purposes of establishing a quorum, properties registered in the name of the Association is not taken into account and the Association is not considered to be a Member.
- 21.8 If there is no quorum within 30 (thirty) minutes of the scheduled start time the meeting shall stand adjourned, until a date, place and time appointed by the Chairman, which shall not be earlier than 7 (seven) business days nor later than 15 (fifteen) business days after the scheduled date of the original meeting. (Section 64 (6) of the Act)
- 21.8 If there is no quorum present within 30 (thirty) minutes of the scheduled start time of the adjourned meeting, the Members present in person or by proxy will constitute a quorum and the meeting may proceed.

- 21.9 A majority of Members at a General Meeting may make a motion, asking the Chairman of a meeting to adjourn it at any time. The procedures and time frames provided in Sections 64 (10) to (12) of the Act, will apply.
- 21.10 The agenda at an adjourned meeting must not differ in any material respect from the agenda for the original meeting and no other business may be conducted other than the unfinished business of the original meeting.
- 21.11 Save as set out above, meetings of the Association are to be convened and conducted in accordance with the Act.

## **22. VOTES AND POLLS**

- 22.1 Members who are suspended or not in good standing with the Association may attend meetings of the Association at the discretion of the Chairman, but may not vote at meetings of the Association. They may not appoint a proxy to attend or vote at the meeting of the Association. If they do vote, it will not be counted.
- 22.2 Each Unit has one vote. Only one person may represent the Unit and exercise its vote, even if the Unit has more than one registered owner.
- 22.3 Any matters put to the vote shall be decided on a show of hands.
- 22.4 Members, or their proxies, may call for a poll on any vote, either before or on declaration of the result of a vote. A minimum of three Members, or their proxies, must support the call for the poll. Proxies may vote in a poll. A call for a poll may be withdrawn.
- 22.5 The Chairman of the meeting will direct how the poll will take place. A demand for a poll on a resolution does not mean that the meeting must be interrupted. Other business must continue.
- 22.6 Save as is required by the Companies Act, voting at a meeting of Members, whether by show of hands or by poll, is decided by a simple majority.
- 22.7 The Chairman does not have a casting vote. If the number of votes is identical, the resolution is defeated.

- 22.8 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.
- 22.9 If a Member has an objection to the manner in which the meeting was conducted or votes were recorded, he must raise the objection before the close of the meeting. The Secretary must record the Members' objection.
- 22.10 If no objection is raised, the meeting is seen as having been in all respects properly and validly constituted and conducted, and the note of the outcome of any vote to have been correct.

### **23. BUSINESS OF AN ANNUAL GENERAL MEETING OF MEMBERS**

- 23.1 The Agenda of a Meeting shall be decided by the Directors of the Association.
- 23.2 The Agenda of an Annual General Meeting must include:
- 23.2.1 the business prescribed by Section 62 (3) of the Act;
  - 23.2.2 the election of new Directors of the Association;
  - 23.2.3 consideration of the audited financial statements and confirmation of the budget of the Association;
  - 23.2.4 The appointment of auditors and their fees.

### **24. VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES**

As regards all persons dealing in good faith with the Association, all acts done by any meeting of the Directors or of the committee of Directors, or by any person acting as a Director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a Director or was entitled to vote, as the case may be.

## 25. RESERVES

The Directors may set aside out of the surplus of the Association and carrying to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the Directors be applicable for meeting contingencies for the gradual liquidation of any debt or liability of the Association, for establishing, repairing, improving or maintaining any Unit, for meeting losses on realisation of or writing down investments either individually or in the aggregate, or for any other purpose to which profits of the Association may appropriately be applied. Pending such application, such sums may either be employed in the business of the Association (without being kept separate from the other assets of the Association) or be invested. The Directors may divide the reserve into such special reserves as they think fit and re-allocate the amounts of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The Directors may also carry forward any surplus without placing them to reserve.

## 26. SERVICE OF NOTICES AND LEGAL PROCESS

26.1 All notices intended or required to be given by the Association to any Member of the Association shall be given in writing either personally at the address of any Unit owned by him, or by post addressed to the Member at his address registered with the Association or by electronic notice via any Medium approved by the Directors.

26.2 A Member shall be bound by every notice given to him in terms of paragraph 26.1.

26.3 Any notice, if given by post, shall be deemed to have been delivered on the day following that on which the letter or envelope containing such notice is posted, and in providing the giving of the notice sent by post it shall be sufficient to prove that the letter containing the notice was properly addressed and handed in at a Post Officer. Any notice by hand, telefax or by email shall be deemed to have been served on the same day of transmittal by hand, telefax and by email.

26.4 All legal process may be served by or on behalf of the Association upon any Member at the address of any Unit owned by him unless the register of Members has an alternate physical address as provided for in paragraph 27.2. Such physical address, whether at his Unit or at the address set out in the register which address shall be a Member's nominated *domicilium citandi et executandi*.

26.5 For the purpose of this Memorandum, the Association chooses legal address for service, or *domicilium citandi et executandi* ("*domicilium*") as follows:

Willow Acres

49 Hoopoe Crescent

Willow Acres

Tel: (012) 809 1955

Fax: 086 150 1277

E-mail: admin@willowacres.co.za

26.6 The Association may change its *domicilium* at any time by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and is a physical address at which process can be served.

26.7 All Members shall, prior to becoming a Member of the Association, provide to the Association in writing an email address and/or telefax number which shall serve as that Members *domicilium citandi et executandi*. A Member shall be entitled to change its *domicilium citandi et executandi* in accordance with paragraph 26.6.

26.8 A Member remains fully responsible and carry full liability for the accuracy of all relevant information concerning such Member to be provided to the Association.

## **27. REGISTERS**

27.1 The Association shall keep at the place prescribed by the Act and maintain in proper form and in the manner prescribed by the Act all such registers as are required by the Act.

27.2 In addition, the Association's register of Members shall be kept updated with each Member's email address and telephone contact detail, to enable the Association to despatch notices as contemplated by paragraph 26.4.

27.3 The Association shall not be entitled nor obliged to disclose the e-mail addresses or telephone contact details of any Members to any person, including another Member. Upon the written request of any Member, the Association may despatch any notice or communication on behalf of such Member to any other Member or Members. Such request shall not be unreasonable refused.

27.4 The Association shall not be bound to enter any person in the register of Members until that person furnishes the Association with a physical address as well as a postal address, a telefax number and e-mail address for entry in the register as set out in paragraph 26.2 of this Memorandum and as per the Statutes.

## **28. COMMON AREAS OF THE ASSOCIATION AND CLEARANCES**

28.1 The Association may not sell or sub-divide any of the fixed assets, open spaces, or other natural surrounds (the "common Property") which are registered in its name without a special resolution supported by 75% of the Members.

28.2 The Directors of the Association may let any portion of common Property, provided that the lease may not be for longer than 3 (three) years, including any option of renewal.

28.3 A Member may not apply to the Local Town Council or equivalent authority for a change in land use rights (including home enterprises), subdivision or consolidation applications without first obtaining the consent of the Directors of the Association.

28.4 A Member may not transfer his Unit without first obtaining a clearance certificate from the Association.

28.5 Before issuing a clearance certificate the Member must satisfy the Association that:-

28.5.1 the Member does not owe the Association any money;

28.5.2 the transferee has bound himself to be a Member of the Association, and has signed his agreement to this Memorandum; and

28.5.3 at the time of making the application the Member does not contravene any of the Rules of the Association or that any request for any corrective action requested by the Association is outstanding or any provision of the Act.

- 28.6 The special conditions which shall apply to the Association in addition to those prescribed in the Act are as follows:
- 28.6.1 The income of the Association, from all sources, shall be applied solely toward the achievement of its main objectives, as specified in paragraph 3 and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Association or to its holding or subsidiary companies; provided that nothing herein contained shall prevent the payment, in good faith, of reasonable remuneration to any officer or servant of the Association or to any Member thereof in return for services rendered to the Association.
- 28.6.2 Upon its winding up, deregistration or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution having objects similar to its main object, to be determined by the Members of the Association at or before the time of its dissolution or, failing such determination, by the Court.
- 28.6.3 The construction of all houses and structures in the Township shall comply with the basic design criteria prescribed by the Association from time to time, with special reference to the design, materials to be used, and layout of buildings and structures. The construction and siting of all buildings and structures will be subject to the prior approval of an aesthetics committee to be appointed by the Board of Directors of the Association. Such construction is to comply with the National Building Regulations and Conditions of Establishment of the Township.

## 29. GENERAL

- 29.1 The Directors may serve notice on any Member to the effect that the Directors consider the appearance or condition of any land, building, structure or installation owned by or on a Member's Unit as unsightly or hazardous to the amenities of the neighbouring Units and/or surround areas.
- 29.2 In such notice the Director shall specify the steps that are required to be taken by the Member to rectify such unsightly or hazardous conditions within a period considered by the Directors to be reasonable and should the Member fail to comply therewith within the period specified in such notice, the Directors may enter upon the Unit concerned and take such steps as they may deem necessary to rectify the appearance and/or remove the hazard and to recover the reasonable costs thereof from the Member concerned, which costs shall be a debt due and owing to the Association.
- 29.3 The Directors shall be obliged in giving such notice and, if relevant, in ensuring compliance, to act reasonably.
- 29.4 No person shall commence with the construction of any building, structure or any additions or alterations thereto or any Works of whatsoever nature (as referred to in paragraph 13.22 and elsewhere in this Memorandum) in the Township, unless he has complied with the procedure set out in the Rules of the Association and submitted to the Directors for examination and approval of plans for such building, structure, alteration or addition as the Directors may require may require and the Directors shall in approving any plan be entitled and have the power to lay down such reasonable condition as they deem fit.
- 29.5 the Association may require any Member to maintain the sidewalk adjacent to his Unit and in the event of such Member failing to maintain such sidewalk to the reasonable satisfaction of the Directors, the Association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to recover the charges reasonably incurred form such Member concerned, without derogating from the right of the Directors to impose, in addition, the appropriate penalty in terms of the Rules.

**30. BOOKS OF ACCOUNT**

30.1 The provisions of paragraph 4 of this Memorandum are applicable insofar as relevant to the books of account of the Association.

30.2 The financial year of the Association ends on the last day of February of each year.

**31. MEMBERS RIGHTS TO INFORMATION**

31.1 A Member has the right to inspect at the office of Management at all reasonable times during normal business hours of the Association as contemplated in sections 24, 26 and 85 of the Act:

- 31.1.1 this Memorandum (as amended);
- 31.1.2 The Estate Rules
- 31.1.2 the record of Directors;
- 31.1.3 reports presented at an Annual General Meeting;
- 31.1.4 annual financial statements;
- 31.1.5 minutes of all Board of Directors' meetings;
- 31.1.6 written communications sent generally by the Association to all Members;

**32. AGREEMENTS**

The Association may enter into agreements with Members and any third party for the provision of amenities and services to the Members and to levy a reasonable charge in respect of the provision thereof.

**33. SECURITY AND BOUNDARY WALLS**

33.1 Should the Association provide security services and/or other services for the benefit of Members in the Township, all Members shall be obligated to:

33.2 Permit the installation of equipment in the Units required for the purposes of such services, determined by the Association from time to time;

33.3 To make payment of the charges raised by the Association in respect of such services;

- 33.4 Abide by such Rules as may be laid down by the Association in accordance with paragraph from time to time with respect for such services.
- 33.5 Where the boundary of a Member's Erf or Sectional Title Development also constitutes the boundary of the Township, such Member shall be obliged to permit the Association to erect upon such Member's Erf and/or the Sectional Title Development immediately adjacent to such boundary, such walling, fencing or any other security measures and installation as the Association may determine.
- 33.6 Such Member shall not be entitled to interfere in any manner whatsoever with such walling, fencing or measures save to effect such repairs as may be necessary from time to time, with the consent of the Directors.

#### **34. ALTERATION OF MEMORANDUM OF INCORPORATION**

- 34.1 Notwithstanding any Alterable Provision to the contrary, this Memorandum may be amended only if the proposed amendment is preceded by a Special Resolution passed at a properly quorate meeting of Members.
- 34.2 If the Memorandum is amended then the Board must file a Notice of Amendment of the Memorandum and the amendment will take effect on the date the Notice of Amendment is Filed or such later date as is specified in the Notice of Amendment.
- 34.3. The Board, or any individual authorised by the Board, may alter this Memorandum in a manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by providing written notice of the proposed alteration to each Member. If none of the Members raise any objection to the proposed alteration to the effect that the proposed alteration exceeds the authority provided for in this paragraph 34 within 5 (five) business days of receiving the notice of the proposed alteration, the Board may file the required Notice of Alteration. If any Shareholder objects to the proposed alteration on the grounds aforesaid, the proposed alteration must be preceded by a Special Resolution.
- 34.4. The Board must publish a copy of the relevant alteration or amendment to the Memorandum to each Member.

## 35 MEDIATION AND ARBITRATION

- 35.1 Should any dispute of whatsoever nature arise at any time between members of the Association, then the members concerned should attempt to, as far as possible, settle the dispute between themselves in an expeditious manner exercising respect, due tolerance, fairness and consideration before proceeding with paragraph 35.2.
- 35.2 Should any dispute arise at any time between the members, or between one or more members and the Association, then either party:
- 35.2.1 may declare a dispute by delivering the details thereof in writing to the other party and to the Association; and
- 35.2.2 in the event that the dispute pertains to a challenge by a member of an alleged breach by the member of any of the applicable Rules of the Association, the member shall also deliver written submissions to the Association within a period of not more than 7 (seven) days from being notified by the Association of the breach setting out why the member is of the view that he is not in breach of the rule and the Association be given the opportunity to consider the written submissions and respond in writing whether they withdraw the alleged breach, and
- 35.2.3 request that such dispute be referred without legal representation to mediation by a single mediator at a place and time to be determined by the mediator.
- 35.3 The mediator will convene and conduct the mediation process at such venue, date and process as he in his sole discretion may determine.
- 35.4 The costs of mediation shall be determined by the mediator and shall comprise:
- 35.4.1 the mediator's expenses; and
- 35.4.2 any fee which shall have been previously paid by the parties.
- 35.5 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.
- 35.6 If, within 14 (fourteen) days of the appointment of a mediator or such extension as the parties may agree, the dispute remains unresolved, or despite mediation the dispute has not been resolved, then the dispute shall be determined by arbitration as hereinafter prescribed.
- 35.7 The arbitrator 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 Pretoria Society of Advocates or his nominee within 14 (fourteen) days of the failure of mediation.
- 35.8 The arbitrator shall, at his entire discretion, determine whether the reference to him shall be made in the form of written and/or oral representations and/or such other procedure or rules 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.
- 35.9 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.

- 35.10 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.
- 35.11 The arbitrator shall, within a reasonable period thereafter, hand down in writing an award and shall include in his award detailed reasons leading to the award.
- 35.12 The arbitrator shall deliver a copy of his award to each party.
- 35.13 The award of the Arbitrator shall be final and binding on the parties hereto unless the parties agreed to a right to appeal.
- 35.14 The arbitration clause contained herein does not preclude the owners from approaching a Court for any interim or urgent relief.
- 35.15 The Association and members will first exhaust the internal dispute resolution mechanism created in this paragraph 35 before approaching the CSOS.