

**Memorandum of Incorporation**

**of**

**Ptn 456 of Erf 61 Homeowners Association NPC**

**(The Dunkirk Estate Homeowner's Association)**

Registration No. 2004/028222/08

## INDEX

<b>No.</b>	<b>Description</b>	<b>Page no.</b>
1.	Adoption of this Memorandum of Incorporation	5
2.	Incorporation and nature of the company	5
3.	Definitions	5
4.	Main object	9
5.	Powers of the company	9
6.	Alterations to this Memorandum of Incorporation	10
7.	Membership	10
8.	Termination of membership	11
9.	Sale and transfer of units	11
10.	Co-ownership of units	12
11.	Member's rights	13
12.	Rights and the benefits of membership	13
13.	Member's meetings	13
14.	Notice of member's meetings	14
15.	Member's right to requisition a meeting	14
16.	Venue of member's meetings	14
17.	Quorum for member's meetings	15
18.	Agenda at annual general meetings	16
19.	Procedure for proposing resolutions	17
20.	Proxies	17
21.	Electronic participation in member's meetings	18
22.	Member's voting	19
23.	Member's resolutions	20
24.	Round robin resolutions: shareholders	20
25.	Member's right to information	20
26.	Member's authority to act	21
27.	Record date for exercise of member rights	21
28.	Composition of the Board of Directors	22
29.	Term of office	22
30.	Election of directors	22
31.	Co-opting of directors onto board	22
32.	Qualification to act as a director	23

33.	Vacation of office as director	23
34.	Electronic participation in director's meetings	23
35.	Notice of director's meetings	23
36.	Director's right to requisition a meeting	24
37.	Quorum for director's meetings	24
38.	Voting at director's meetings	24
39.	Round robin resolutions: directors	24
40.	Appointment of chairperson and vice-chairperson	24
41.	Control of meetings	25
42.	Proceedings at meetings of directors	25
43.	Functions and powers of the Board of Directors	26
44.	Director's expenses	26
45.	Professional advisors	26
46.	Managing agent	26
47.	Delegation of powers of estate manager	27
48.	Indemnification of directors and officers	28
49.	Variation of decisions	28
50.	Appointment and authority of committees	28
51.	Composition of committees	29
52.	Finance committee	29
53.	Budget	29
54.	Levies	30
55.	Purpose of levies	30
56.	Calculating levies	30
57.	Payment of levies	31
58.	Interest on levies	31
59.	Increase of levies	31
60.	Special levies	32
61.	Beach Club	32
62.	Capital expenditure	33
63.	Levy Stabilisation Fund	33
64.	Accounts	33
65.	Application of optional provisions of the Companies Act	33
66.	Building committee	34
67.	Compliance with the building code	35

68.	Building on land owned by the developer & on common property	36
69.	Powers of the building committee	37
70.	Maintenance of units and open space	38
71.	Building period	38
72.	Build-by date	39
73.	Building deposit	39
74.	Medium density properties	40
75.	House rules	41
76.	Compliance with the house rules; objects of the company	43
77.	Legal remedies	43
78.	Common property	44
79.	Use of common property	44
80.	Service of notices	45
81.	Access to the estate	46
82.	Selling mandate	46
83.	"For sale" signs	46
84.	Sale of developer's rights	47
85.	Disclaimer	47
86.	Winding up	47

## **1 Adoption of this Memorandum of Incorporation**

1.1 The company resolved by a special resolution of the members passed on ..... to amend its existing Memorandum and Articles of Incorporation by replacing those documents in their entirety with this Memorandum of Incorporation.

1.2 This Memorandum of Incorporation is a form unique to the company, as contemplated in section 13(1)(a)(ii) of the Companies Act.

## **2 Incorporation and nature of the company**

2.1 The company is a non-profit company as defined in the Companies Act.

2.2 The company is also a "pre-existing company" as defined in paragraph (a)(i) of the definition of "company" in section 1 of the Companies Act. As such, the company continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Companies Act (as provided for in item 2 of Schedule 5 to that Act).

2.3 The company is incorporated in accordance with and governed by –

2.3.1 The unalterable provisions of the Companies Act, subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum of Incorporation; and

2.3.2 The alterable provisions of the Companies Act, subject to any negation, restriction, limitation, qualification, extension or other alteration contemplated in an alterable provision and noted in this Memorandum of Incorporation; and

2.3.3 The provisions of this Memorandum of Incorporation.

## **3 Definitions**

3.1 In this Memorandum of Incorporation -

3.1.1 A reference to a section by number refers to the corresponding section of the Companies Act; and

- 3.1.2 Words that are defined in the Companies Act bear the same meaning in this Memorandum as in that Act.
- 3.2 In this Memorandum of Incorporation, unless the context indicates otherwise,
- 3.2.1 "**auditors**" means the auditors of the company;
- 3.2.2 "**the architectural scheme**" means the decision of the Development Tribunal which approved the scheme and which approval included controls as set out in the building code;
- 3.2.3 "**the beach club**" means the beach club on Portion 297 of the Farm Salt Rock No. 1521, situated at 1 Hotel Road, Salt Rock, and which is owned by the company;
- 3.2.4 "**building code**" means the rules setting out the architectural guidelines and building controls applicable to the Estate (also known as the Dunkirk Estate Architectural Guidelines);
- 3.2.5 "**building committee**" means the committee appointed in terms of clause 66 to ensure compliance with the building code;
- 3.2.6 "**bulk**" means the maximum building area which may be built on a unit in terms of the applicable zoning certificate issued by the Municipality;
- 3.2.7 "**business erf**" means a subdivision of the property which allows for commercial or mixed usage in terms of the building code;
- 3.2.8 "**chairperson**" means the chairperson of the Board of Directors;
- 3.2.9 "**the common property**" means all those areas that fall outside the residential erven, the business erven and sectional title schemes;
- 3.2.10 "**the company**" means Ptn 46 of Erf 61 Homeowner's Association NPC (the Dunkirk Estate Homeowner's Association);
- 3.2.11 "**the developer**" means the Dunkirk Development Trust (Registration No. IT 999/03) or its successor in title as developers of the property;

- 3.2.12                    **"development period"** means the period from the establishment of the company until:
- 3.2.12.1                    the developer has sold all erven owned by it and completed all its obligations in terms of the conditions of establishment or 10 years have elapsed since the registration of the general plan, whichever is the earlier;  
or
- 3.2.12.2                    the developer completes all its obligations in terms of the conditions of establishment and notifies the company that it has ceased development of the Estate (provided that the developer cannot give notice until the developer has sold at least 150 units);
- 3.2.13                    **"the Estate"** means the Dunkirk Estate which includes all the amenities built or to be built on the property, as well as the beach club and its amenities;
- 3.2.14                    **"estate manager"** means the person appointed by the Company, from time to time, to undertake the management of the Estate;
- 3.2.15                    **"financial year"** means the financial year of the company which shall run from the first day of July in any year to the last day in June in the subsequent year;
- 3.2.16                    **"freehold unit"** means an erf or a registered portion of an erf;
- 3.2.17                    **"the Levy Stabilisation Fund"** means the fund established in terms of clause 63;
- 3.2.18                    **"managing agent"** means the managing agent appointed in terms of 46;
- 3.2.19                    **"medium density property"** means a property which is indicated as medium density in the KwaZulu-Natal Development Tribunal judgement (development application number: 2003/653), read with the layout plan referred to in that judgement, regardless of the method of ownership of that property;
- 3.2.20                    **"member"** means a member of the company in terms of clause 7;

- 3.2.21 **"the Municipality"** means the KwaDukuza Municipality, which has jurisdiction over the Estate;
- 3.2.22 **"the office"** means the registered office of the company;
- 3.2.23 **"the open space"** means those erven zoned as public open space;
- 3.2.24 **"the property"** means Portion 456 (of 100) of Erf 61 No. 1521, Registration Division FU, Province of KwaZulu-Natal, in extent 51, 4151 hectares;
- 3.2.25 **"residential erf"** means a subdivision of the property which allows for residential usage (but excludes a medium density property);
- 3.2.26 **"the roads"** means the roads which have been constructed on the property;
- 3.2.27 **"sectional title unit"** means a dwelling unit the tenure of which is in terms of the Sectional Titles Act No. 95 of 1986, as amended;
- 3.2.28 **"town planning scheme"** means the town planning scheme applicable to the Estate;
- 3.2.29 **"unit"** means any business erf, residential erf or sectional title unit on the Estate and, in relation to a medium density property, means each of the number of units proposed for that property in the KwaZulu-Natal Development Tribunal judgement (development application number: 2003/653), read with the layout plan referred to in that judgement, regardless of the number of units actually established and irrespective of the number of structures erected on that property;
- 3.2.30 **"VAT"** means value added tax at the ruling rate as defined in the Value Added Tax Act (No. 89 of 1991); and
- 3.2.31 **"vice-chairperson"** means the vice-chairperson of the Board of Directors.
- 3.2.32 Unless the context otherwise requires:
- 3.2.32.1 Words in the singular number shall include the plural and words in the plural number shall include the singular;



- 3.2.32.2 Words importing the masculine gender shall include female gender; and
- 3.2.32.3 Words importing natural persons, shall include juristic persons, corporate entities and bodies corporate.
- 3.2.33 Whenever a number of days is prescribed in this Memorandum of Incorporation, the number of days must be calculated –
  - 3.2.33.1 By excluding the first day and including the last day; and
  - 3.2.33.2 So as to include Saturdays, Sundays and public holidays unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next ensuing day which is not a Saturday, Sunday or public holiday.

#### **4 Main object**

- 4.1 The main object of the company is to manage, promote, advance and protect the communal interests, safety and welfare of the members of the company as owners of units on the Estate, and anything necessary or incidental to this object.
- 4.2 The Company—
  - 4.2.1 Must apply all of its assets and income, however derived, to advance its main object; and
  - 4.2.2 Subject to paragraph 4.1, may directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its main object.

#### **5 Powers of the company**

In terms of section 19(1)(b) of the Companies Act a company has all the legal powers and capacity of an individual (except to the extent that a juristic person is incapable of exercising these powers and having these capacities) and except to the extent that a company's Memorandum of Incorporation provides otherwise. This company's legal powers and capacity are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1)(b), provided that this company must restrict itself to the main object set out in clause 4.

## **6 Alterations to this Memorandum of Incorporation**

6.1 This Memorandum of Incorporation may be amended only by a special resolution adopted by the members or in terms of a court order.

6.2 No provision of this Memorandum of Incorporation requires that the amendment of a provision of this Memorandum is subject to any special requirements (i.e. requirements in addition to the requirements for amending a Memorandum as set out in section 16 of the Companies Act). Nor does any provision of this Memorandum of Incorporation prohibit the amendment of a provision of this Memorandum.

6.3 Amendments to this Memorandum of Incorporation may be proposed by –

6.3.1 The board of directors; or

6.3.2 Members entitled to exercise at least 25% of the voting rights on the resolution (see section 16 of the Act).

6.4 The board shall nevertheless have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in section 17(1) of the Companies Act. A notice of such alteration must be published by –

6.4.1 delivering a copy of the notice of alteration to each member by ordinary mail; or

6.4.2 delivering a copy of the notice of alteration to each member by email (provided that a member shall be deemed to have received a copy of the rules if sent to his or her last known email address).

## **7 Membership**

7.1 The following people shall be members of the company:

7.1.1 The developer (for as long as the developer is the registered owner of a unit); and

7.1.2 Any person who is the registered owner of any unit in the Estate.

7.2 No person, other than a person referred to in this clause 7 shall be entitled to be a member of the company.

7.3 The board of directors may from time to time issue a member's certificate which shall be in such form as prescribed by the directors.

## **8 Termination of membership**

8.1 A member remains a member for as long as he or she is the registered owner of a unit in the Estate, and may not resign or otherwise terminate membership.

8.2 A member does not have any claim to the funds or other property of the company when he or she ceases to be a member of the company. Nor shall any member's executors, curators, trustees or liquidators have such a claim.

8.3 The company may claim from any member or his estate any arrear levies, special levies, beach club levies, VAT, interest, legal fees or other sums due by him to the company at the time of his ceasing to be a member.

8.4 Levies, special levies, beach club levies, VAT, interest, legal fees and any other sums due by a member shall not be repayable by the company to the member upon his ceasing to be a member.

8.5 A member's successor in title to a unit shall be liable to pay the levies, special levies, beach club levies, VAT, interest, legal fees or any other sums attributable to that unit as from the date upon which he becomes a member pursuant to the transfer of that unit.

## **9 Sale and transfer of units**

9.1 A member shall not sell or otherwise agree to alienate a unit in the Estate (or an undivided share in a unit) unless it is a condition of the agreement of sale that:

9.1.1 The buyer is obliged, to the satisfaction of the company, as a contract for the benefit of the company, to become a member

of the company upon registration of transfer of the unit to him;  
and

9.1.2 Registration of transfer of that unit into the name of the buyer will automatically constitute the buyer as a member of the company.

9.2 No member shall transfer a unit of which he is the registered owner unless the company has certified in writing that –

9.2.1 All levy contributions and other amounts owing by the member to the company have been paid prior to the transfer or that prior provision has been made to the satisfaction of the directors for payment at registration;

9.2.2 The purchaser's contribution to the Levy Stabilisation Fund has been paid or that prior provision has been made to the satisfaction of the directors for payment at registration;

9.2.3 The proposed transferee has agreed in writing, to the satisfaction of the company, to become a member of the company; and

9.2.4 The purchaser has notified the company in writing of his or her address and contact details as required in clause 80.

9.3 A condition of title has been registered against each unit in the Estate to give effect to clause 9.2.

9.4 The company shall be entitled to charge an administrative fee for its effort and cost in providing a certificate in terms of this clause. Until amended by the board of directors from time to time, the administrative fee shall be R500 (plus VAT).

## 10 **Co-ownership of units**

10.1 Where a unit is owned by more than one registered owner all the owners of that unit shall together be deemed to be one member of the company.

10.2 The co-owners must –

- 10.2.1 Elect one of the co-owners as the contact person for the unit;  
and
- 10.2.2 Notify the company of the name and address of the contact person.
- 10.3 Any notices served by the company on the contact person shall be deemed to be service upon all the co-owners.
- 10.4 If the co-owners fail to elect a contact person, or to notify the company of the contact person's details, then service of notices by the company may be upon any one of the co-owners and this shall be deemed to be service upon all the co-owners.

## 11 **Member's rights**

- 11.1 The rights and obligations of a member are not transferable, but may be ceded as security for a mortgage loan on that member's unit.
- 11.2 The member shall at all times further the objects and interests of the Company to the best of his ability and shall observe all the rules made by the Company and the directors.

## 12 **Rights and the benefits of membership**

- 12.1 A member who is in default of his obligation to pay any levies, special levies, beach club levies, VAT, interest, legal fees or any other sums due to the company, or who is in breach of any rule of the company or of this Memorandum of Incorporation –
  - 12.1.1 Shall not be entitled to attend, speak or vote at any meeting of the company, or to hold office as director; and
  - 12.1.2 Shall not be entitled to use the club house, the club house facilities, the beach club house, the dams or any other recreational facilities on the Estate (the member's guests, tenants and family members shall, likewise, be precluded from using these facilities).
- 12.2 Where a member has leased out his unit, the tenant (and the tenant's guests and family members) shall have the right to use of the club house, the club house facilities, the beach club house, the dams and

any other recreational facilities on the Estate to the exclusion of the member.

### **13 Member's meetings**

13.1 The Companies Act provides when member's meetings must be held, but allows a company's Memorandum of Incorporation to provide for additional member's meetings. As contemplated in section 61(2) of the Companies Act, the company is required, in addition to the member's meetings required in terms of the Companies Act, to hold its annual general meeting within 6 months after the end of each financial year.

13.2 Other general meetings shall be called at the discretion of the directors (subject to the provisions of the Companies Act and of this Memorandum of Incorporation) and shall be called extraordinary general meetings.

### **14 Notice of member's meetings**

The minimum number of days' notice which this company is required to give for a member's meeting is as follows:

14.1 An annual general meeting and a meeting called for the passing of a special resolution: 21 clear days' notice in writing; and

14.2 Any other extraordinary general meeting: 14 clear days' notice in writing.

### **15 Member's right to requisition a meeting**

The board of directors of the company must call a member's meeting if a demand is made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter concerned (see section 61 of the Companies Act). [In order to propose an amendment to this Memorandum of Incorporation, members entitled to exercise at least 25% of the voting rights on the resolution must, in terms of paragraph 6.3, propose the amendment].

## 16 **Venue of member's meetings**

The authority of the company's board of directors to determine the location of any member's meetings, as set out in section 61(9) of the Companies Act, is limited or restricted as follows: members' meetings of this company must be held within a ten kilometre radius of the Estate.

## 17 **Quorum for member's meetings**

17.1 A member's meeting may not begin, and a particular matter shall not begin to be considered at a member's meeting, unless a quorum is present. The quorum for a meeting to begin is as follows:

17.1.1 During the development period: the developer must be represented and sufficient other members must be present to exercise 5 votes; and

17.1.2 After the development period: sufficient people must be present to exercise at least 10% of all the voting rights.

17.2 If within thirty minutes after the appointed time for a meeting to begin, the quorum is not present, the meeting is adjourned, without motion, vote, or further notice, for one week, subject to clause 17.4.

17.3 If within thirty minutes after the appointed time for consideration of a particular matter the requirements for that matter to begin to be considered have not been satisfied –

17.3.1 If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; and

17.3.2 If there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, for one week.

17.4 The person intended to chair a meeting that cannot begin because a quorum is not present may extend the thirty minute limit for a reasonable period on the grounds that –

17.4.1 Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of shareholders to be present at the meeting; or

- 17.4.2 One or more particular shareholders, having been delayed, have communicated an intention to attend the meeting, and those shareholders together with those already present would satisfy the quorum requirements.
- 17.5 The company shall not be required to give further notice of a meeting that has been postponed in terms of clauses 17.2 and 17.3, unless –
- 17.5.1 The location of the meeting is different from the location of the adjourned meeting or from the location as announced at the time of the adjournment; or
- 17.5.2 The starting time of the meeting is different from the starting time of the adjourned meeting or from the starting time as announced at the time of the adjournment.
- 17.6 If, at the time appointed for an adjourned meeting to resume the quorum requirements are again not met, the members present in person or by proxy will be deemed to constitute a quorum.
- 17.7 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one member with voting rights entitled to be exercised at the meeting, or on that matter, is present.

## **18 Agenda at annual general meetings**

The following matters shall be dealt with at every annual general meeting:

- 18.1 The consideration of the chairperson's report (or, should the chairperson so direct, the report of the managing agent);
- 18.2 The election of directors;
- 18.3 The consideration of any resolutions proposed for adoption by such meeting (including special resolutions), and the voting upon any such resolutions;
- 18.4 The consideration of the audited annual financial statements of the company for the financial year of the company preceding the date of such meeting;
- 18.5 The consideration of the report of the auditors;



- 18.6 The noting of the levy and budget for the financial year during which such annual general meeting takes place; and
- 18.7 The appointment of auditors.

**19 Procedure for proposing resolutions**

No member shall propose a resolution for voting on at an annual general meeting or other general meeting, or raise a matter for discussion or consideration, unless written notice of the proposed resolution or matter has been given to the company at least 48 hours before the meeting concerned.

**20 Proxies**

- 20.1 A member may be represented at an annual general meeting or extraordinary general meeting by proxy who need not be a member of the company.
- 20.2 The instrument appointing a proxy must be in writing, dated and signed by the member or his duly authorised agent, but need not be in any particular form. A proxy appointment remains valid for a period of one year from the date on which it was signed, unless it is revoked in writing or substituted by a later inconsistent appointment and a copy of the revocation instrument is delivered to the company.
- 20.3 Where a unit is owned by more than one registered owner, the proxy instrument must be signed by a majority of these owners. Where a unit is owned by a company, the proxy must be signed by a director of the company or by its secretary, and where a unit is owned by an association of persons, the proxy must be signed by a duly authorised representative of the association.
- 20.4 The instrument appointing a proxy and the power of attorney or other authority [if any] under which it is signed, or a notarially certified copy of these documents, must be deposited or faxed to the company's offices at least 24 hours before the time appointed for the commencement of the meeting concerned (or the adjourned meeting), unless the chairperson directs that a lesser period applies.

- 20.5 A vote given in terms of an instrument of proxy shall be valid even if the principal has died or has revoked the proxy, provided that the company has not received any intimation in writing of the death or revocation by 24 hours before the time for the meeting to begin.
- 20.6 The right of a member of the company to appoint two or more persons concurrently as proxies, as set out in section 58(3)(a) of the Companies Act, is excluded.
- 20.7 The right of a member of the company to appoint more than one proxy to exercise voting rights attached to different securities, as set out in section 58(3)(a), is excluded.
- 20.8 The authority of a member's proxy to delegate the proxy's powers to another person subject to any restriction contained in the instrument appointing the proxy, as set out in section 58(3)(b) of the Companies Act, is excluded.
- 20.9 The authority of a member's proxy to exercise, or abstain from exercising, any voting right of the member without direction from the member (except to the extent that the instrument appointing the proxy provides otherwise), as set out in section 58(7) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

## 21 **Electronic participation in member's meetings**

- 21.1 Any member's meeting may be conducted entirely by electronic communication, or one or more members, or proxies of members may participate by electronic communication in all or part of any member's meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 21.2 Any notice of a member's meeting at which it will be possible for members to participate by way of electronic communication shall inform members of the ability to participate in this way and shall provide the necessary information to enable members or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the member or proxy concerned.

## 22 **Member's voting**

- 22.1 Each voting member of the company, present at every annual general meeting or extraordinary general meeting in person or by proxy, shall have one vote for each unit registered in his or her name.
- 22.2 In addition to the votes set out in clause 22.1, the developer shall during the development period have an additional 140 votes.
- 22.3 The following restrictions apply to voting:
- 22.3.1 A member who is in arrears with levies or any other sum owed to the company, as at the record date, may not vote, in person or by proxy, at any general meeting; and
- 22.3.2 If a unit is registered in the name of more than one person, then all such co-owners shall jointly have one vote.
- 22.4 Every resolution proposed for adoption by a general meeting, and every amendment of a resolution proposed for adoption by a general meeting, shall be –
- 22.4.1 Provided to the company in writing at least 48 hours before the agenda is printed and distributed; and
- 22.4.2 Seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 22.5 At any meeting of the company a resolution put to the vote shall be decided on a show of hands, unless –
- 22.5.1 The chairperson of the meeting directs otherwise; or
- 22.5.2 A member demands a poll.
- 22.6 If voting is decided on a show of hands, then a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, and an entry in the minutes of the meeting recording this fact, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- 22.7 A demand for a poll may be withdrawn.

22.8 If voting is to be decided by a poll, then voting shall be by way of a secret poll taken during the course of the meeting or alternatively in such other manner as the chairperson of the meeting may direct.

22.9 Voting on the election of a chairperson of a general meeting [if necessary] or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy and entitled to vote.

22.10 The chairperson shall not have a second or casting vote at a general meeting.

## **23 Member's resolutions**

23.1 For an ordinary resolution to be adopted at a member's meeting of this company, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution at the meeting.

23.2 For a special resolution to be adopted at a member's meeting of this company, it must be supported by at least 75% of the voting rights exercised on the resolution at a member's meeting.

## **24 Round robin resolutions: shareholders**

Section 60 of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, a resolution may be voted on in writing (without a meeting being held) and will be adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted shareholders meeting. Any business required to be conducted at the company's annual general meeting may not be conducted in this manner.

## **25 Member's right to information**

Section 26(1) of the Companies Act gives every person who has a beneficial interest in a company's securities the right of access to the following information and documents: the company's Memorandum of Incorporation; any amendments to the Memorandum of Incorporation; the company's rules;

certain records relating to directors; reports to annual meetings; the annual financial statements; notices and minutes of annual meetings and other member's meetings and the member's register. Section 26(3) provides that the Memorandum of Incorporation of a company may establish additional information rights for persons who have a beneficial interest in a company's securities. In the case of this company, every person who has a beneficial interest in this company's securities has the following right to access information in addition to those rights set out in section 26(1) of the Companies Act: the right to view the minutes of the meetings of the board of directors at the office of the managing agents after arranging an appropriate time to do so with the managing agents.

## **26 Member's authority to act**

26.1 Section 57(2) of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, if, at any time, there is only one member of a company, that member has the authority to act without notice or compliance with any other internal formalities. The authority of a sole member of this company to act without notice or compliance with other internal formalities as contemplated in section 57(2) of the Companies Act, is excluded.

26.2 Section 57(4) of the Companies Act provides that if, at any time, every member of a company is also a director of that company, then any matter that must be referred by the board of directors to the members may be decided by the members at any time after being referred, without notice or compliance with any other internal formalities. The authority of the members of this company to decide matters in the circumstances contemplated in section 57(4) without notice or compliance with any other internal formalities is excluded.

## **27 Record date for exercise of member rights**

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

27.1 In the case of a meeting, the latest date by which the company is required to give members notice of that meeting; and

27.2 In any other case, the date of the action or event.

## 28 **Composition of the Board of Directors**

28.1 During the development period, the Board of Directors must comprise of not less than 2 and not more than 7 directors, appointed or elected as follows:

28.1.1 A majority of directors appointed by the developer;

28.1.2 The remaining directors elected by the members; and

28.2 After the development period, the Board of Directors must comprise of not less than 2 and not more than 7 directors, elected by the members,

28.3 There are no *ex officio* directors of the company, as contemplated in section 66(4) of the Companies Act.

## 29 **Term of office**

The elected directors of this company serve for a period of one year, but shall be eligible for re-election.

## 30 **Election of directors**

30.1 Where a director is required to be elected, the election must be conducted as a series of votes, with each vote being on the candidacy of a single individual to fill a single vacancy, with the series of the votes continuing until all vacancies on the board have been filled.

30.2 Each vote may be exercised once and the vacancy is filled only if a majority of voting rights exercised support the candidate.

## 31 **Co-opting of directors onto board**

The board of directors may appoint a qualified person to fill any vacancy on the board on a temporary basis until the next annual general meeting, as contemplated in section 68(3) of the Companies Act.

**32 Qualification to act as a director**

A director must be an individual, but need not himself be a member of the company.

**33 Vacation of office as director**

A director shall be deemed to have vacated his office if -

- 33.1 He commits an act of insolvency;
- 33.2 His estate is sequestrated;
- 33.3 He is convicted for any offence involving dishonesty;
- 33.4 He becomes of unsound mind or is found to be lunatic;
- 33.5 He resigns from office in writing;
- 33.6 He dies; or
- 33.7 He is removed from office in terms of the Companies Act.

**34 Electronic participation in director's meetings**

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

**35 Notice of director's meetings**

- 35.1 The board of directors may determine the form in which notice of its meetings is given, as well as the time for giving notice.
- 35.2 The authority of this company's board of directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5)(a) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

**36 Director's right to requisition a meeting**

The chairperson of the board of directors of the company must call a director's meeting if a demand is made by two or more directors.

**37 Quorum for director's meetings**

A director's meeting may not begin unless a quorum is present. A majority of directors must be present in order to constitute a quorum.

**38 Voting at director's meetings**

38.1 Each director of a company has one vote on a matter before the board of directors.

38.2 A resolution is approved if it is supported by a majority of the votes cast at a director's meeting.

38.3 The chairperson of the board of directors has a second or casting vote at director's meetings in event of a deadlock in voting by the directors.

**39 Round robin resolutions: directors**

Section 74 of the Companies Act provides that, except to the extent that a company's Memorandum of Incorporation provides otherwise, a decision of the board of directors of a company may be adopted by written consent of a majority of the directors (without a meeting being held) if each director has received notice of the matter to be decided. The authority of this company's board of directors to consider a matter other than at a meeting, as set out in section 74, is not limited or restricted by this Memorandum of Incorporation.

**40 Appointment of chairperson and vice-chairperson**

During the development period, the chairperson and vice-chairperson shall be appointed by the developer. Thereafter, the directors shall appoint from their number a chairperson and vice-chairperson at the first meeting after each annual general meeting.



## 41 **Control of meetings**

- 41.1 The chairperson presides at all meetings of the Board of Directors, and all general meetings of members, and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the Board of Directors.
- 41.2 If at any meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the start of the meeting, then the vice chairperson shall act as chairperson of that meeting and shall exercise all the powers and duties of the chairperson in relation to that meeting. If the vice chairperson is also not present within 5 minutes after the time appointed for the start of the meeting, then those directors present shall appoint a chairperson for the meeting, who shall also exercise all the powers and duties of the chairperson in relation to that meeting.

## 42 **Proceedings at meetings of directors**

- 42.1 The directors may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Memorandum of Incorporation.
- 42.2 Meetings of the directors shall be held at least once every quarter (but this will not be necessary if all the directors waive this requirement in writing in respect of a particular quarter).
- 42.3 Minutes must be taken of every director's meeting, although not necessarily verbatim minutes. The minutes must be reduced to writing and shall then be certified correct by the chairperson of the next meeting. All minutes of directors' meetings shall, after certification, be placed in a directors' minute book to be kept in accordance with the requirements of the Companies Act. The directors' minute book shall be open for inspection at all reasonable times by a director, the auditors, the estate manager and any member in good standing.
- 42.4 All competent resolutions recorded in the minutes of any directors' meeting shall be valid and of full force and effect, with effect from the passing of such resolutions, and until varied or rescinded.

42.5 Except to the extent set out in this Memorandum of Incorporation, the proceedings at any directors' meeting shall be conducted in such reasonable manner and form, as the chairperson of the meeting shall decide.

#### **43 Functions and powers of the Board of Directors**

43.1 The authority of the board of directors to manage and direct the business and affairs of the company, as set out in section 66(1) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

43.2 Without limiting the generality of clause 43.1, the directors may in their discretion, from time to time, for the purposes of the company borrow or raise such sum or sums of money from members of the company or from such other source as the directors may decide.

43.3 If at any time this company has only one director, the authority of that director to exercise any power or perform any function of the board of directors without notice or compliance with any other internal formalities, as set out in that section 57(3), is excluded.

#### **44 Directors' expenses**

The board of directors shall not be entitled to remuneration for their services, but shall be reimbursed for all reasonable and genuine expenses incurred by them in the performance of their duties as directors, chairperson, or vice-chairperson of the Board of Directors.

#### **45 Professional advisors**

The directors have the right to engage, on behalf of the company, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employees whatsoever for any reason deemed necessary by the directors and on such terms as the directors shall decide, subject to any of the provisions of this Memorandum of Incorporation.

## 46 **Managing agent**

46.1 The developer, in terms of individual sale agreements concluded with members, shall be entitled to manage the affairs of the company, itself or through its agent for a period of not less than 5 years from of registration of the General Plan in respect of Dunkirk Estate. The developer shall then have an option to extend the management period for a further 5 years. As from the end of the renewal period, the board of directors shall be entitled to manage the Estate.

46.2 The developer shall be entitled to hand over the management of the Estate to the company at any time, should both parties agree that it is in the best interests of the Estate.

46.3 The contract appointing any managing agent must include provisions to the effect that:

46.3.1 The company may cancel the contract without notice if the managing agent is in breach of any material term of the contract (or if he is guilty of conduct which at common law would justify the termination of the contract between employer and employee); and

46.3.2 The managing agent shall, in these circumstances, have no claim against the company or any of the members as a result of cancellation.

46.4 A member or a mortgagee of a unit may, if the managing agent is in breach of the provisions of his contract as set out in clause 46.3, request the directors of the company to consider terminating the managing agent's contract.

## 47 **Delegation of powers to estate manager**

47.1 The powers of the company, the board of directors and the committees may be delegated to the estate manager to such extent, and upon such conditions, as the directors may determine from time to time. Any delegation may be revoked.

47.2 The estate manager and the managing agent must take out fidelity insurance to the satisfaction of the directors for all moneys held by them on behalf of the company from time to time.

#### **48 Indemnification of directors and officers**

48.1 The authority of this company to advance expenses to a director or officer of the company to defend legal proceedings arising out of his service to the company, as set out in section 78(4) of the Companies Act, is limited, restricted or extended only to the following extent: if the director or officer is found to be liable for a breach of common law or statutory duty or is found guilty of a criminal offence, then the director or officer shall reimburse the company for these expenses within 30 days of the finding (regardless of whether or not the director or officer appeals the finding and provided that, if the finding is overturned on appeal, then the company shall reimburse the director or officer for expenses incurred in the initial proceedings and in the appeal).

48.2 The company must indemnify a director or officer, as set out in section 78(5) of the Companies Act, for expenses incurred in defending legal proceedings arising out of his service to the company if the legal proceedings are abandoned or the director or officer is not to be liable [a company may not indemnify a director or officer for wilful misconduct, wilful breach of trust or for liability arising in terms of sections 77(3)(a), (b) and (c) of the Companies Act].

48.3 The company must purchase insurance to protect the company, a director or an officer against any liability or expense for which the company is permitted to indemnify the director or officer, as set out in section 78(7) of the Companies Act.

#### **49 Variation of decisions**

The Board of Directors shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

**50 Appointment and authority of committees**

The company's board of directors may appoint committees of directors and delegate to any such committee any of the authority of the board, as set out in section 72(1) of the Companies Act.

- 50.1 The authority of a committee appointed by this company's board of directors to consult with or receive advice from any person, and to exercise the full authority of the board on matters referred to it, as set out in section 72(2)(b) and (c) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

**51 Composition of committees**

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

**52 Finance committee**

There shall be established a finance committee, which shall consist of 3 persons appointed by the board of directors, at least 2 of which shall be directors of the company.

**53 Budget**

- 53.1 The finance committee must prepare a budget to meet the expenses of the company during each financial year. The budget must –

53.1.1 Specify any estimated deficiency which will result from the preceding financial year; and

53.1.2 Include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

- 53.2 The budget must be prepared and delivered to the members not less than 30 days before the end of each financial year (or as soon as reasonably possible thereafter). The budget must be accompanied by a notice specifying the levy payable by each member as a contribution to the expenses and reserve fund.

53.3 If the finance committee fails for any reason to prepare the budget or to notify members of the levies, then every member shall (until the budget and levy notice has been issued) continue to pay the levy imposed in the previous financial year as an interim measure.

#### 54 **Levies**

The finance committee shall, from time to time, but at least annually establish and maintain a levy fund for the purpose of meeting all the expenses which the company has incurred, or which the directors reasonably anticipate the company will incur (which may include a reasonable provision for contingencies) for the ensuing financial year, in the furtherance of the company's objects.

#### 55 **Purpose of levies**

55.1 Levies are intended to cover costs incurred by the company in –

55.1.1 Maintaining, repairing and improving the roads, open space and services, the perimeter fence, the club house, club house facilities, the beach club house, of any buildings, structures, erections and other improvements on common property in the Estate;

55.1.2 Paying rates and other charges payable by the company in respect of the erven vested in the company and services provided to the company;

55.1.3 Paying the salaries and wages of employees; and

55.1.4 Paying all expenses necessarily or reasonably incurred in connection with the management of the company, the Estate, and the company's affairs including any expenses reasonably or necessarily incurred in the attainment of the objects of the company or in the pursuit of its business.

55.2 Levies shall not cover the consumption of water and electricity, sewerage or the maintenance of improvements on the units. These expenses shall be for the account of the member.

## 56 **Calculating levies**

- 56.1 In calculating the levy, the finance committee must establish a base monthly levy, taking into account –
- 56.1.1 All expenses which the company has incurred, or which it reasonably might be anticipated will be incurred; and
- 56.1.2 The total number of units in the Estate on which levies are payable, namely 318 units.
- 56.2 There will be no differential levies. There will be a single levy payable for each unit on the Estate, subject to the provisions of clause 74 in respect of medium density properties.
- 56.3 For the sake of clarity, it is recorded that levies are payable as follows:
- 56.3.1 Residential units: 178 levies;
- 56.3.2 Medium density properties: 120 levies;
- 56.3.3 Lot 97 DASH Apartment: 19 levies;
- 56.3.4 The business erf: 1 levy; and
- 56.3.5 Total levies: 318 levies.
- 56.4 A detailed description of the levies payable in respect of medium density properties is set out in clause 74.

## 57 **Payment of levies**

- 57.1 Every levy shall be payable monthly in advance on the first day of each and every month. Levies are exclusive of VAT (ie VAT is to be added).
- 57.2 Members must pay their levies by stop order or debit order. Failing which, the company shall be entitled to charge an administration fee for each month that payment is made by any other way. The administration fee shall be determined by the Board from time to time and, until varied by the Board, such administration fee shall be R100 (plus VAT) per month.

## 58 **Interest on levies**

Interest at 2% per month (or at such other rate as the finance committee may determine from time to time) shall accrue on levies not paid on due date.

**59 Increase of levies**

The finance committee shall be entitled to review the levies from time to time in its discretion.

**60 Special levies**

The finance committee may from time to time –

- 60.1 Make special levies upon the members in respect of any expenses of the company which were not included in the budget or which were under-estimated in the budget;
- 60.2 Determine the terms of payment of the special levy; and
- 60.3 Determine that a special levy shall be payable exclusively by a specified class of levy payer (or determine that a special levy be allocated on a differential basis between classes of levy payer).

**61 Beach Club**

- 61.1 Each member shall provide the company an interest-free loan in the amount of R30 000, in respect of each unit registered in his name, towards the ongoing funding of the purchase of the beach club property and the construction of the beach club house.
- 61.2 When a member sells his or her unit, the company shall refund the interest-free loan to the selling member against receipt of an interest-free loan in the same amount from the purchaser (and provided that no monies are due and payable by the seller to the company, in which case the company will be entitled to apply set off).
- 61.3 As the beach club forms part of the facilities offered by the company to its members, members shall have the same rights in respect of the beach club property as they have to other common property, subject to any beach club rules which may be made or amended by the board of directors from time to time.
- 61.4 The company shall be responsible for the management of the beach club and for determining the rules which are applicable to the use of the beach club property and any additional amount in levies which will be needed to cover the costs of running the beach club property will be recovered by way of a separate levy from each member.



61.5 The beach club levy shall be payable monthly in advance on the first day of each and every month. Beach club levies are exclusive of VAT (ie VAT is to be added).

## 62 **Capital expenditure**

The finance committee shall not be entitled, without a resolution of members in general meeting, to undertake capital expenditure on any one item which exceeds or is likely to exceed R200 000. This amount shall be increased annually in accordance with the CPIX as published from time to time.

## 63 **Levy Stabilisation Fund**

63.1 A Levy Stabilisation Fund has been established for the purpose of generating funds for capital improvements to the Estate. The Levy Stabilisation Fund may not be used for operating expenses.

63.2 The Levy Stabilisation Fund shall be managed by the board of directors or, should the board so choose, by a Levy Stabilisation Fund Committee comprising 6 members appointed by the board of directors.

63.3 Purchasing members must contribute R3000 (plus VAT) to the Levy Stabilisation Fund in respect of the first transfer of a unit from the developer and in respect of every other transfer. The amount of this contribution may be increased by the board of directors from time to time.

63.4 Contributions to the Levy Stabilisation Fund shall be made on the date of registration of transfer from the funds of the purchaser. The conveyancer shall ensure that the contribution is made.

## 64 **Accounts**

The notice of the annual general meeting shall be accompanied by audited financial statements for the past financial year.

**65 Application of optional provisions of the Companies Act (audit etc)**

65.1 This company elects, in terms of section 34(2) of the Companies Act, to comply voluntarily with the enhanced accountability requirements of Chapter 3 of the Companies Act to the following extent: the financial statements of the company shall be audited once in every financial year. For the sake of clarity, it is recorded that the Company need not comply with section 92 of the Companies Act dealing with the rotation of auditors.

65.2 This company does not elect, in terms of section 118(1)(c)(ii) of the Companies Act, to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act or to the Takeover Regulations made in terms of the Companies Act.

**66 Building committee**

66.1 A building committee has been established for the Estate. The building committee has adopted the building code, which applies to the Estate.

66.2 The building committee comprises:

66.2.1 During the development period: the developer, an architect nominated by the developer and a director of the company;  
and

66.2.2 After the development period: not less than two architects appointed by the company and two directors of the company.

66.3 The building committee must -

66.3.1 Consider and approve building plans in accordance with the applicable bylaws and the building code;

66.3.2 Determine the position of each building to be built on the Estate, whether on common property or on a unit (the position of a building on a unit shall be determined in collaboration with the owner, subject to the condition that the Committee's discretion shall prevail in the event of any disagreement);

- 66.3.3                    Impose height restrictions on buildings; and
- 66.3.4                    Cause minutes to be recorded of all its decisions and cause them to be submitted to the board of directors for noting and recording purposes.
- 66.4                    The submission fee for building plans is -
  - 66.4.1                    In respect of freehold units:
    - 66.4.1.1                    R4000 (plus VAT) per plan where the plans have been prepared by an architect approved by the building committee; and
    - 66.4.1.2                    R5000 (plus VAT) per plan where the plans have been prepared by an architect not approved by the Committee; and
  - 66.4.2                    In respect of medium density properties:
    - 66.4.2.1                    R4000 (plus VAT) for the first unit, plus R500 (plus VAT) for each for the second and subsequent units where the plans have been prepared by an architect approved by the building committee; and
    - 66.4.2.2                    R5000 (plus VAT) for the first unit, plus R500 (plus VAT) for each for the second and subsequent units where the plans have been prepared by an architect not approved by the Committee.
- 66.5                    The plan submission fees may be amended from time to time in the discretion of the building committee.
- 66.6                    The building committee shall be entitled, from time to time, to recommend to the board additional rules or amendments to the building code in order to ensure that a high quality of building standards and aesthetics is maintained. Any additional rules or amendments shall be considered by the board and may be adopted as is, amended or rejected. These additional rules or amendments to the building code will stand until ratified or set aside at the next annual general meeting.
- 66.7                    The building code is subject to whatever building restrictions are imposed by the development tribunal.

**67 Compliance with the building code**

Subject to the provisions of the building code, no member nor body corporate in whom any common property is vested may, without the written consent of the building committee:

- 67.1 change the colour of the exterior walls of the unit or building concerned, nor the colour of the exterior of the doors and window frames thereof, nor any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;
- 67.2 replace any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds shutters, awnings or ornaments upon the exterior walls or surfaces of the building concerned, save only to renew such items as may initially have been so placed upon construction of the unit, with such items of the same nature and of similar appearance;
- 67.3 to make any additions or extensions to the unit or buildings or to erect any further buildings or structures or fences whether of a temporary or permanent nature upon any land vested in him in the township;
- 67.4 to remove any fixtures, fittings, doors, windows nor to demolish any portion of the exterior of any unit or building;
- 67.5 in the event of the destruction of any unit, and the owner thereof deciding to rebuild such unit, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the association, which shall within 21 days of such submission to it, submit any comments which it may have in connection therewith to the building committee and the local authority.

**68 Building on land owned by the developer and on common property**

The developer shall be entitled to, without submitting plans to the building committee -

- 68.1 Build upon any erven owned by it, any buildings of whatsoever nature which it may be entitled to erect in terms of the Building codes and as may be approved by the Municipality;

68.2 Erect upon the land owned by the company such improvements as may be permitted in terms of the Building codes and as may be approved by the Municipality.

**69 Powers of the building committee**

69.1 The building committee may serve notice on any member whose unit is unsightly or injurious to the amenities of the surrounding area or the estate generally, to take such steps as may be specified in the notice to eliminate the unsightly or injurious condition.

69.2 If the member fails to take the specified steps within 30 days of written notice, then estate manager shall be empowered to take those steps or cause such steps to be taken and the board may recover the cost from the owner.

69.3 The building committee must determine the routine maintenance requirements-

69.3.1 Of the exterior of each and every building within the common property on the Estate and to instruct the estate manager to attend to such requirements from time to time;

69.3.2 Of all open spaces and roads in the estate, in accordance with the provisions of the building code; and

69.3.3 Of all other ground within the estate not covered by buildings whether held by the company or by members either individually or in undivided shares.

69.4 The estate manager may, when instructed by the building committee, take such steps as may be required by the committee and recover the cost from the company which shall in turn be entitled to recover the costs from the members concerned.

69.5 The building committee shall have the exclusive right to approve architects, project managers, quantity surveyors, land surveyors and building contractors before they are entitled to undertake building or building-related work or services on or in respect of the Estate. No

member may appoint an architect, project manager, quantity surveyor, land surveyor or building contractor unless the building committee has approved that person.

## **70 Maintenance of units and open space**

70.1 The directors may, notwithstanding the above, enter into an agreement with any member in relation to the maintenance of any land or unit to permit such maintenance to be performed by the member concerned himself, subject to such conditions as the directors may deem fit.

70.2 The maintenance of services and the common property shall be controlled by the estate manager on the instructions of the board of directors.

70.3 For purposes of exercising its functions, the building committee, any of its members and the estate manager, shall be entitled to access to any unit and to the surrounds thereof at all reasonable times.

## **71 Building period**

71.1 Once a member begins building –

71.1.1 On a freehold property, building operations must be continuous and the building must be completed within 15 months from the date of commencement of construction; and

71.1.2 On a medium density property, building operations must be continuous and all buildings must be completed within 24 months from the date of commencement of construction.

71.2 If a member does not complete construction within the period referred to in clause 71.1, then a once-off penalty shall be payable by the member to the company immediately on demand. The penalty shall be calculated as follows:

71.2.1 In respect of a freehold property, R20 000 (plus VAT); and

71.2.2 In respect of a medium density property, R10 000 (plus VAT) multiplied by the number of units not completed within the period referred to in clause 71.1.

(this penalty shall be known as "**the building period penalty**").

71.3 The building period penalty is in addition to the build-by penalty referred to in clause 72 and may be amended from time to time by special resolution of the members.

71.4 The building period penalty shall not be payable –

71.4.1 By the developer for as long as it owns Erf 97 Dunkirk (Lot 97 DASH Apartments); and

71.4.2 By any successor in title for a period of 24 months from the date of registration of transfer of Erf 97 Dunkirk (Lot 97 DASH Apartments) from the developer to the successor in title.

## 72 **Build-by date**

72.1 Members are required to complete construction of all buildings on the Estate by 31 December 2015 ("**the build-by date**").

72.2 The build-by-date applies to first time purchasers from the developer, as well as to any successors in title.

72.3 If a member does not complete construction by the build-by-date, then the member shall pay a double levy (plus VAT) from that the first day of the month following the build-by-date until construction of the building has been completed ("**the build-by date penalty**").

72.4 The build-by date penalty is in addition to the building period penalty referred to in clause 71 and may be amended from time to time by special resolution of the members.

## 73 **Building deposit**

73.1 Before beginning to construct a building on a unit, a member must pay a deposit to the company as security for any damage which may be caused to the Estate, including but not limited to any landscaping required to reinstate any portion of the Estate. The deposit is currently R11 400 and may be amended by the board of directors from time to time.

73.2 Fifty percent of this deposit is non-refundable and will be retained by the company towards the maintenance and upgrading of the services

and the common property. The remainder of the deposit is refundable subject to inspection on completion of the developed property, provided that no damage has been done by the contractor, his agent or sub-contractors to any of the common property during the course of construction.

73.3 The building committee is entitled to access the site for the full duration of the construction period and may call on the member to undertake additional landscaping prior to any portion of the deposit being refunded to the owner.

#### 74 **Medium density properties**

74.1 It is recorded, in order to avoid confusion, that –

74.1.1 Whenever it is necessary to determine the rights and obligations of the owner of a medium density property, these will be determined by reference to the number of units proposed for that property in the KwaZulu-Natal Development Tribunal judgement (development application number: 2003/653), read with the layout plan referred to in that judgement, regardless of the number of units actually established and irrespective of the number of structures erected on that property.

74.1.2 The medium density properties, and the number of units proposed for each of those properties, are as follows:

74.1.2.1 Erf 20 Dunkirk: 6 units;

74.1.2.2 Erf 22 Dunkirk (Kirkwood): 5 units;

74.1.2.3 Erf 29 Dunkirk (The Ridge): 5 units;

74.1.2.4 Erf 73 Dunkirk (The Glades) (representing 8 units plus 18 real rights of extension): 26 units;

74.1.2.5 Erf 96 Dunkirk (Sandwood Hills): 26 units;

74.1.2.6 Erfs 30 and 38 Dunkirk (The Saxony): 40 units; and

74.1.2.7 Erf 208 Dunkirk (Saxon Wood): 12 units

74.1.2.8 Total : 120 units.

74.1.3 The owner of a medium density property is obliged to –



- 74.1.3.1 Pay a levy;
  - 74.1.3.2 Pay a special levy;
  - 74.1.3.3 Pay a beach club levy;
  - 74.1.3.4 Make the interest-free loan referred to in clause 61;
  - 74.1.3.5 Make the contribution towards the Levy Stabilisation Fund referred to in clause 63;
  - 74.1.3.6 Pay the building period penalty referred to in clause 71.2;
  - 74.1.3.7 Pay the build-by date penalty referred to in clause 72.3; and
  - 74.1.3.8 Pay a building deposit referred to in clause 73,  
  
in respect of each of the units proposed for that property in the KwaZulu-Natal Development Tribunal judgement (development application number: 2003/653), read with the layout plan referred to in that judgement.
- 74.2 The owner of a medium density property is entitled to one vote at every general meeting of the company in respect of each of the units proposed for that property in the KwaZulu-Natal Development Tribunal judgement (development application number: 2003/653), read with the layout plan referred to in that judgement.

## 75 House rules

- 75.1 The board of directors may make house rules, as contemplated in section 15(3) of the Companies Act, on the following topics:
  - 75.1.1 The use by members or their households, their guests, and lessees, of the roads, open space and the sporting and other amenities [this power shall include the right to prohibit, restrict or control the use of the roads and open space or any portions thereof as may from time to time be necessary or expedient];
  - 75.1.2 The preservation of the natural environment, vegetation and fauna as appropriate for the Estate which is, in the first instance, a residential estate;

- 75.1.3 The use of parking areas;
- 75.1.4 The right to prohibit, restrict or control the keeping of any animals or pets;
- 75.1.5 The use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
- 75.1.6 The control of business erven;
- 75.1.7 The placing of movable or other objects upon the outside of buildings, including the power to remove any such objects;
- 75.1.8 The keeping of flammable substances;
- 75.1.9 The conduct of any persons within the estate for the prevention of nuisance of any nature to any member; and
- 75.1.10 The use of land within any residential erf in the Estate.
- 75.2 The board of directors may make, and amend, the house rules by -
  - 75.2.1 delivering a copy of those rules or any notice of amendment to each member by ordinary mail or email, provided that a member shall be deemed to have received a copy of the rules if sent to his or her last known email address; and
  - 75.2.2 filing a copy of the rules or any notice of amendment with the Companies and Intellectual Property Commission.
- 75.3 In order to enforce the house rules, the directors may:
  - 75.3.1 Take or cause to be taken such steps as they may consider necessary to remedy a breach of a house rule, and debit the cost to the member concerned (which amount shall then be deemed to be a debt owing by the member concerned to the company); and/or
  - 75.3.2 Impose a system of fines or other penalties (until ratified or set aside at an annual general meeting, a fine or penalty may not exceed R5 000 (plus VAT)); and

- 75.3.3 Take such other action including legal proceedings, as they may deem fit.
- 75.4 A breach of the house rules by a member's household, or his guests, or lessees, shall be deemed to have been committed by the member himself (but, without prejudice to this principle, the board of directors may in its discretion also take or cause to be taken such steps against the person actually committing the breach).
- 75.5 The board of directors shall appoint a disciplinary committee to hear representations from any member who disputes that he is guilty of a breach of the house rules.
- 75.6 The disciplinary committee shall comprise at least one member of the Board of the company and one other person appointed by the board (who need not necessarily be members of the company). The board shall appoint the chairperson of the disciplinary committee.
- 75.7 The disciplinary committee shall adjudicate upon the issue at such time and in such manner and according to such procedure [provided that natural justice shall be observed] as the chairperson may direct.
- 75.8 It shall be the duty of the estate manager, or such other person or body as may be empowered by the directors, to ensure compliance by the members, their guests, lessees, and all other persons within the Estate, with the house rules and to this end, to issue such notices, impose such fines or do such things as may be necessary or requisite.

**76 Compliance with the house rules; the objects of the company**

- 76.1 Each member undertakes to comply with the house rules, and to ensure that their households, their guests, and lessees also comply.
- 76.2 Each member shall, to the best of his ability, further the objects and interests of the company.

## 77 **Legal remedies**

- 77.1 The rights given to the company in terms of this Memorandum of Incorporation are in addition to, and without prejudice to, any of the rights which the company may have to proceed against a member, either to recover any arrear levies or other monies or to claim specific performance, damages or any recourse in law.
- 77.2 A member shall be liable for, and shall pay, all legal costs, including costs on an attorney and client scale, and collection commission, expenses and all other charges incurred by the company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by a member to the company or in obtaining compliance with the house rules or any provision of this Memorandum of Incorporation.
- 77.3 If the member disputes the legal costs incurred by the company, then the parties agree that the company may refer the bill of legal costs prepared by the attorney to the Fee Assessment Committee of the Law Society for consideration and determination, and the decision of the Fee Committee shall be final.

## 78 **Common property**

No common property owned by the company may be –

- 78.1 Sold;
- 78.2 Let;
- 78.3 Alienated or otherwise disposed of;
- 78.4 Subdivided;
- 78.5 Transferred;
- 78.6 Mortgaged; or
- 78.7 Subjected to any rights, whether registered in the Deeds Registry or not (except for servitudes intended to protect the rights of members and ensure that services are maintained and protected for the benefit of members of the company),

except in circumstances laid down in the Conditions of Establishment of the estate or with the support a special resolution of the members of the company.

79 **Use of common property**

The company may, in its discretion, permit the members, subject to the provisions of this Memorandum of Incorporation, to use the common property (unless the members resolve otherwise by special resolution). The directors may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part of the common property, subject to reasonable privacy of members being respected at all times.

80 **Service of notices**

80.1 All members must notify the Association in writing of an address for the services of all legal process, notices and other documents. This address will operate as each member's *domicilia citandi et executandi*. When notifying the Association of an address, each member must provide the following information:

80.1.1 Postal address;

80.1.2 Physical address;

80.1.3 Email address;

80.1.4 Telefax number;

80.1.5 Telephone number; and

80.1.6 Cell phone number.

80.2 A notice may be served by the company upon any member, either personally, by electronic mail or by sending it through the post in a prepaid registered letter, addressed to such member at such address as he may have notified the company in writing, save that such address shall be within the boundaries of the Republic of South Africa, or if such member has failed to notify the company in writing of any such address at the address of any unit owned by him, provided that copies of all notices sent to members shall be sent to the mortgagee [if any] of that member's unit.

80.3 A notice will be presumed, unless the contrary is proved, to have been given:

- 80.3.1 if posted by prepaid registered post, 5 days after the date of posting thereof;
- 80.3.2 if hand delivered during business hours on a business day, on the day of delivery;
- 80.3.3 if sent by telefax, on the first business day following the date of sending; and
- 80.3.4 if sent by electronic mail, on the day of sending.

## 81 **Access to the estate**

The directors shall take such measures as are necessary to ensure that the general public, with the exception of members, their guests, lessees, and members of their families and such other persons as the directors may reasonably permit, are excluded from the estate. No resolution to alter the terms of this clause shall be taken unless simultaneously with the taking of such resolution, a resolution is taken to widen and reconstruct the roads to such specification as may comply with the standard requirements of the Municipality.

## 82 **Selling mandate**

- 82.1 When a member wishes to sell his unit he shall be obliged –
  - 82.1.1 During the development period, to give a listing mandate and a non-exclusive selling mandate to the developer's agent, currently Dunkirk Real Estate (Pty) Ltd; and
  - 82.1.2 After the development period, to give a listing mandate and a non-exclusive selling mandate to either the managing agent or the estate manager as the board of directors determines.
- 82.2 The developer's agent (and, after the development period, the managing agent or the estate manager, as the case may be) –
  - 82.2.1 Shall be entitled to sell the unit; and
  - 82.2.2 Must also list the property with estate agents accredited by the company as soon as reasonably possible (in return for which, the agent or manager, as the case may be, shall be entitled to

a listing agent fee from the commission earned by the estate agent who concludes the sale).

**83 "For sale" signs**

No "For Sale" signs or "Sold" signs shall be erected on the units without the written consent of the developer during the development period and thereafter the company.

**84 Sale of developer's rights**

84.1 If the developer, in one transaction alienates all its rights and all undeveloped land vested in it in respect of the Estate, it shall be entitled to cede to the transferee all its rights in terms of this Memorandum of Incorporation and the transferee shall be entitled to exercise all such rights.

84.2 The developer shall, when it is no longer the owner of any unit in the Estate, cease to be a member of the company.

**85 Disclaimer**

85.1 The company shall not be liable for any injury or death to any person, damage to or loss of any property to whomsoever it may belong, occurring or suffered upon the Estate regardless of the cause thereof nor shall the company be responsible for any theft of property occurring within the Estate. Members shall not, under any circumstances, have any claim or right of action whatsoever against the association for injury, death, damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.

85.2 The company, its directors, employees and agents shall not be liable to any member or any of the member's lessees, or their respective employees, agents, invitees or customers or any member of the public dealing with the member or any lessee for any injury or death or loss or damage of any description which the member or any such other

person aforesaid may suffer or sustain whether directly or indirectly in or about the Estate, regardless of the cause thereof.

**86 Winding up**

86.1 No resolution for the winding-up or dissolution of the company and the transfer of the company's assets shall be taken unless –

86.1.1 The company has made adequate provision for the rights of members to obtain access to their units; and

86.1.2 Their rights to exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the member concerned if the member so requires.

86.2 If the company is wound up, deregistered or dissolved, the assets of the company 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 company at or before the time of its dissolution or, failing such determination, by the court.