REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008 (Act 71 of 2008)

**MEMORANDUM of INCORPORATION**

**of a NON PROFIT COMPANY**

**DAINFERN HOMEOWNERS ASSOCIATION NPC**

**REGISTRATION NUMBER: 1991/04217/08**

**(The “Company”)**

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# 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. PRELIMINARY

 2.1 If the provisions of this Memorandum are in any way inconsistent with the provisions of the Statutes, the provisions of the Statues shall prevail, and this Memorandum shall be read and interpreted in all respects subject to the Statutes.

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

# 3. DEFINITIONS

 **3.1 Unless the context otherwise indicates:**

3.1.1 “**Act**” means the Companies Act No 71 of 2008;

 3.1.2 “**Association**” means the Dainfern Homeowners Association NPC, to which this Memorandum of Incorporation is applicable, duly registered and incorporated according to the company laws of the Republic of South Africa;

3.1.3 “**Association Area**” means the township of Dainfern, comprising the Dainfern Golf and Country Club and Estate, and all of its extensions, including Dainfern extensions 2, 5, 6, 7, 8, 9, 10, 11, 14, 25, 17 18 & 20;

3.1.4 “**Auditors**” means the Auditors of the Association;

3.1.5 “**Chairman**” means chairman of the board of Directors;

3.1.6 “**Directors**” means the Directors of the Association;

3.1.7 **“erf”** means any freehold land or any Sectional Title Unit, in the Association Area, whether same be improved or unimproved;

3.1.8 “**medium**” means any medium of communication 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, entries on the Dainfern web site, facsimile, telephone, short message system, audiovisual and audio cassette;

3.1.9 “**in writing**” or “**written**” includes typewriting, printing, lithography and includes any communication in electronic form transmitted by using any medium;

3.1.10 “**managing agent**” means any person or body appointed by the Association as an independent contractor to undertake any administrative and / or management functions of the Association;

3.1.11 “**Member**” means the persons or entities referred to in paragraph 7 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 and as set out in this Memorandum;

3.1.12 “**Memorandum**” means this Memorandum of Incorporation;

3.1.13 “**register**” means the register of Members kept in terms of the Statutes;

3.1.14 “**Representative”** means the person nominated in terms of clause 7.3 to enjoy the rights or obligations of Membership;

3.1.15 **“Rule or Rules”** means any rules of any kind made by the Association or the Directors in terms of this Memorandum or the Statutes;

3.1.16 “**Sectional Title Unit**” means a section of any Sectional Title Scheme within the Association Area as shown 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;

3.1.17 “**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;

3.1.18 “**surplus**” includes revenue left after all expenses including operating budget and capital items in any particular year, as more full determined by the Auditors of the Association each year;

3.1.19 “**vice chairman**” means the vice chairman of the board of Directors;

* 1. Reference to Members represented by proxy shall include Members represented by an agent appointed under a general or special power of attorney and reference to Members present or acting in person shall include corporations represented or acting in the manner prescribed in the Statutes; and
	2. Expressions defined in the Act, or any statutory modification thereof, in force at the date on which this Memorandum become binding on the Association shall have the meaning so defined; and
	3. Words in the singular number shall include the plural and words in the plural number shall include the singular, words importing and masculine general shall include female gender, and words importing natural persons, shall include juristic persons, corporate entities and bodies corporate.
	4. Reference to a party includes that party's successors and permitted assigns;
	5. 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;
	6. 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. Such periods shall be expressed as “business days”;
	7. Any reference to a document includes an amendment or supplement to, or replacement or novation of that document;
	8. The captions appearing in this agreement are for reference purposes only and do not affect the interpretation hereof;
	9. Where figures are referred to in numerals and words, if there is any conflict between the two, the words prevail.

# 4. NON-PROFIT COMPANY

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

4.2 The Association may only place funds which it has available for investment with a Financial Institution as defined in Section 1 of the Financial Services Board Act, Act 97 of 1990,or in securities listed on a Stock Exchange as defined in the Securities Services Act, Act 36 of 2004.

# 5. MAIN OBJECT AND BUSINESS OF THE ASSOCIATION

5.1 The main object of the Association is to carry on, to promote, advance and to protect, manage and administer the collective interests of its Members, and in particular in so promoting such collective interests to ensure acceptable aesthetic, architectural environmental, security and living standards in the said Association Area (including regulating the conduct of Members and their guests or invitees). The said main object includes (but is not limited to the pursuance of communal interests including the safety and welfare of the Members of the Association, including, but not limited to, by maintaining the open spaces, controlling the aesthetic appearance of land, including landscaping, buildings and improvements in or on the Association Area, controlling traffic, implementing security measures for the controlled access to the Association Area and cutting the grass, trimming the edges, weeding, tidying and watering the private gardens of the freehold residential erven in the Association Area, and controlling the conduct of all persons and animals in the Association Area for the purposes of the main object of the Association.

5.2 The main business which the Association is to carry on the business of promoting, advancing and protecting the collective and communal interests, safety and welfare of the Members of the Association including the collection of levies and payment of expenses incurred in furtherance of the main object aforesaid.

# 6. MEMBERSHIP

* 1. Membership of the Association shall be comprised of and limited to any person who is in terms of the Deeds Registries Act is reflected in the records of the Deeds Office concerned as the registered owner of any land or erf in the Association Area.

6.2 A Member shall include the trustee in an insolvent estate, a liquidator or the trustee 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, the guardian or curator 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.

* 1. Where any erf is owned by more than one person, all the registered owners of that erf shall together be deemed to be one Member of the Association and shall have the rights and obligations of one Member of the Association. Where any erf is owned by a Corporate Body, Close Corporation, Company or the Trustees of a Trust on behalf of that Trust, as the case may be, the Member and its Members, shareholders or Directors or Trustees shall jointly have the rights and obligations of one Member of the Association. The joint owners of an erf or the Members, Shareholders, Directors or Trustees, as the case may be, shall nominate one of their number who shall enjoy the rights and obligations of Membership on behalf of such Member.
	2. The joint owners of an erf or the Members, Shareholders, Directors or Trustees, as the case may be, shall be jointly and severally liable to the Association for the due performance of any obligations of the owner or owners of the erf to the Association.
	3. When a Member becomes the registered owner of an erf, in the Association Area, he shall *ipso facto* become a Member of the Association, and when he ceases to be the owner of any such erf in the Association Area, he shall ipso facto cease to be a Member of the Association.
	4. Every Member of the Association shall be obliged to give prior written notice to the Association of any change in such Member’s Membership, Shareholders, Directors or Trustees. In addition, every new holder of a Members interest, Shareholding, Directorship or Trusteeship in respect of any Member of the Association shall sign and deliver to the Association, prior to his taking office in such capacity, the Association’s standard form suretyship documentation and acknowledgement of its Rules and regulations,
	5. No Member shall let or otherwise part with occupation of his erf, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such erf as a *stiuplato alteri* in favour of the Association that such occupier shall be bound by all the terms and conditions of these presents, and such written agreement is lodged with the Association prior to the proposed occupier taking occupation of the erf in question,
	6. A registered owner of an erf may not resign as a Member of the Association for the duration of his occupation of an erf in the Association Area.

6.9 The rights and obligations of a Member shall not be transferable and every Member shall:

* + 1. Further to the best of his ability the objects and interests of the Association;
		2. not interfere in the day to day management of the Association’s business or interfere in the exercise of the Directors powers in terms of paragraph 19 and this Memorandum generally;
		3. Observe all rules made by the Association or the Directors.
		4. Sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of any access erf or any other erf in the Association Area and including the provision of security and recreational facilties; provided that should it be necessary for a servitude to be registered in favour of the Association over an erf in the Association Area not belonging to the Association, then the owner of such erf shall be entitled to be paid reasonable compensation equal to the extent to which the market value of such erf is reduced as a result of the registration of such servitude.

6.10 Any Member who is indebted to the Association in respect of any levy, interest, penalty or any other sum, which is overdue for payment, or who is in breach of any of the provisions of this Memorandum or the Rules, may be suspended as a Member of the Association on such terms and conditions as the Directors may deem fit. Such suspension shall preclude the Member from the exercise of any voting rights in terms of this Memorandum or in any other manner deriving benefits from his Membership. Such suspension shall however not excuse the Member from the fulfilment of all of his obligations to the Association in terms of this Memorandum or the Rules.

# 7. SUSPENSION FROM MEMBERSHIP

* 1. If a Member, having been duly notified and provided reasonable time to rectify is overdue in paying his levies; or has failed to pay any money to the Association that is owed to it, or has broken the rules of the Association (collectively “the overdue Member”), the overdue Member may be suspended from the benefits of Membership, including use of the paid-for services the Association provides to Members.
	2. The Directors will send a notice to the Member informing him of his suspension, and the reasons for it.
	3. The Member may appeal the suspension by following the arbitration proceedings or dispute resolution processes set out in this Memorandum.
	4. The Member’s suspension remains in force, unless the Directors give notice to the contrary.
	5. If a Member is suspended for any reason, the Member is not entitled to the privileges of Membership of the Association, which include but are not limited to the paid-for services the Association provides to Members, the right to attend or vote at any meeting, or to use any electronic security access systems, or to advertise in official publications or receive news bulletins, or to enjoy estate agent’s or building contractor’s privileges.

# 8. LEVY

8.1 The Directors may from time to time impose levies upon the Members for the purposes of meeting all the expenses which the Association has incurred, or to which the Directors reasonably anticipate the Association will be incur in the attainment of its objects or the pursuit of its business.

8.2 The Directors shall not less than 30 (thirty) days prior to the end of each financial year, or as soon thereafter as is reasonably possible, prepare and serve upon every Member at an address chosen by him, an estimate indicating in reasonable detail the estimated amounts which shall be required by the Association to meet its necessary foreseeable expenses during the following financial year, and as shall result from the preceding year. Such document is hereinafter referred to as “the annual budget”. It shall be sufficient service upon a Member for the Directors to email the annual budget to an e-mail address nominated by the Member and of which the Association is notified in writing.

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8.3 The Directors may include in the annual such budget an amount to be held in reserve to meet anticipated or unanticipated expenditure not forming part of an annual budget (“reserve fund”).

8.4 At the Annual General Meeting to be held in terms of 22 below, the Directors shall propose a resolution in terms of which the Members approve the said annual budget. In the event of such resolution not being passed, then every Member shall continue to pay the levy previously imposed until such time as revised annual budget be approved by the Members in general meeting.

8.5 Each notice to each Member shall specify the contribution payable by that Member in respect of levies, including the reserve fund.

8.6 Every such annual levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year.

* 1. In the event of the Directors for any reason whatsoever failing to prepare and serve the annual budget referred to in 9.2 timeously, every Member shall until service of such annual budget as aforesaid, continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the noticed referred to in 9.2.

8.8 The Directors may from time to time require Members, through Extraordinary General Meetings, to increase levies or to raise special, once-off levies upon the Members for the purpose of meeting all the expenses the Association has incurred, or to which the Directors reasonably anticipate the Association will be put in the attaining of its objects or the pursuit of its business.

8.9 A Member shall not be entitled to withhold payment for any reason whatsoever of any amount owed by him, including (without limitation thereto,) any levy, special levy, contribution, charge or fine due by him to the Association.

8.10 The joint owners of an erf or the Members, Shareholders, Directors or Trustees of the owner, as the case may be, shall be jointly and severally liable to pay all the amounts referred to in 9.7 hereof.

8.11 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.

8.12 Any amount due by a Member by way of levy, interest or any other sum whatsoever shall be a debt due by such Member to the Association. Notwithstanding that a Member ceases to be such, the Association shall have the right to recover arrear levies and interest from such Member or Shareholders, Directors, Trustees as the case may be. No levies or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. Further, a Member on ceasing to be such, shall have no claims whatsoever on any other monies held by the Association whether obtained by way of a sale of Association assets or otherwise. A Member’s successor in title to an erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy and interest thereon attributable to that erf.

8.13 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.

8.14 In calculating the levy payable by Members, the Directors shall as far as reasonable practicable:

* + 1. assign those costs arising directly out of an erf itself to the Member owning such erf;
		2. assign a proportion of those costs attributable generally to a particular number of erven to the registered owners of such erven;
		3. assign those costs relating to the Association Area generally to the owners of all erven.

8.15 Subject to 8.14 the costs of the Association shall be borne by the Members equally provided, however, that the Directors may in any case where they consider it equitable to do so, assign to any Member any greater or lessor share of the costs as may be reasonable in the circumstances.

# 9. RULES

9.1 Subject to any restriction imposed or direction given at a general meeting of the Association, the Directors may from time to time make Rules in regard to:

9.1.1 the standards and guidelines for the architectural design of all buildings and outbuildings, structures of any nature, and all additions and alterations to any such buildings, outbuildings or structures erected in the Association Area, and in particular to control the design of the exterior of such buildings, outbuildings or structure and the materials and colours used on such exterior to ensure an attractive, aesthetically pleasing character to all the buildings in the Association Area.

9.1.2 the positioning of all buildings, outbuildings, structures of any nature and of any additions and alterations thereto#;

9.1.3 the standards and guidelines for the design of all site works, buildings, structures, installations and projections on the erven in the Association Area, including (without limitation thereto) aerials, pergolas, side walls, swimming pools, tennis courts, awnings, Jacuzzis, carports, generators and paved pathways;

9.1.4 the preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of walls, fences and hedges, whether upon or within the boundaries of any erf;

* + 1. the right to prohibit restrict or control the keeping of any animal, bird, reptile or insect which they regard as dangerous or a nuisance;
		2. the use, maintenance, repair and replacement of any private and public open spaces including any roads and road reserves in the Association Area and of any services, connections and equipment in such Areas;
		3. the access to and egress from any of the erven in the Association Area;
		4. the right to determine and control all security measures in the Association Area;
		5. the placing or fixing of ornamentation or embellishments upon the outside of buildings, including the power to remove any such objects;
		6. the conduct of any persons within the Association Area generally and for the prevention of nuisance of any nature to any Member;
		7. the determination and recovery of charges for water and electricity consumed on the erven in the Association Area;
		8. the control and collection of refuse; and

9.1.12 the furtherance and promotion of any of the objects of the Association or its business and/or for the better management of the affairs of the Association and/or for the advancement of the interests of Members and/or residents in the Association Area.

* 1. If the Directors pass a resolution to include, amend or delete (“change”) a Rule or fine, they must publish by any Medium details of the inclusion, amendment or deletion of the rule or fine to the Members of the Association.
	2. Rules currently in effect remain in effect until notice otherwise is published to Members.
	3. Any change to the Rules or a new rule becomes effective on the date specified by the Statutes.

 9.5 The Directors shall be indemnified by the Members in respect of any action performed in proper pursuit of the Rules.

9.6 A Rule and fine contemplated in this Memorandum is binding in the interim as specified in Section 15 (4) (c) (i) of the Act and permanently once it has been ratified by an ordinary resolution of the Association.

9.7 A Member is responsible for the actions or inactions of his household, visitors, employees or contractors, and will be fined by the Association, or the Association may take appropriate legal action against him, as if he had infringed the Association’s Rules.

9.8 The Association may, without affecting its rights, fine or take other steps against the individual who actually infringed the Association’s Rules.

9.9 The Association must advise the Member, and if possible, the individual who infringed the Rule of the fact that a fine has been imposed, and the reason for the fine.

# 10. ASSOCIATION’S POWER TO ENFORCE ITS RULES

* 1. For the enforcement of any of the Rules made by the Directors in terms of hereof and for the payment of any debt due to the Association, the Directors may:
		1. give notice to the Member or resident concerned requiring him to remedy a breach thereof or make payment within such reasonable period as the Directors may determine, and/or
		2. take or cause to be taken such steps as they may consider necessary to remedy the breach of the Rule(s) of which the Member or resident may be guilty of breaching or recover the debt, and debit the cost of so doing to the Member or resident concerned, which amount shall be deemed to be a debt owing by the Member or resident concerned to the Association; and/or
		3. impose a system of fines or other penalties. The amounts of such fines shall be reviewed and confirmed at each Annual General Meeting of the Association; and/or

10.1.4 take such other action including proceedings in Court, as they may deem fit.

* 1. In the event of any breach of the Rules by the members of any Member’s or resident’s household or his guests, employees, agents or invitees, or his lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the aforegoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
	2. In the event of any Member disputing the fact that he has committed a breach of any of the Rules, a committee of 3 (three) Directors appointed by the Chairman for this purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the natural justice shall be observed) as the Chairman may direct.
	3. Any fine imposed upon any Member or resident shall be deemed to be a debt due by the Member or resident to the Association and shall be recoverable by ordinary civil process.
	4. Notwithstanding anything to the contrary herein, the Directors may in the name of the Association enforce the provisions of any Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
	5. In the event of the Directors instituting any legal proceedings against any Member of resident within the Association Area for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover, on demand, all legal costs and disbursements so incurred from the Member’s resident concerned, calculated as between attorney and own client.
	6. The Association may in general meeting itself, make any Rules which the Directors may make and may in general meeting vary or modify any Rules made by it or by the Directors from time to time.
	7. For as long as any amount due by a Member to the Association is overdue or a Member is in breach of any provision 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 faculties of the Association of the Dainfern Country Club.

10.9 The Association may sue its Members to recover fines.

# 11. BUSINESS AND MEETINGS OF THE BOARD of DIRECTORS OF THE ASSOCIATION

11.1 Unless and until otherwise determined by the Association in general meeting, there shall be a board of Directors of the Association which shall consist of not less than 5 (five) nor more than 7 (seven) Members.

* 1. At each Annual General Meeting, at least one third of the Directors must stand down. The longest standing of the Directors must stand down.
	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.
	3. A Director must be a natural person, and must be an individual or co-owner or Representative or their spouse. 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.
	4. Any Director to be appointed to office shall be elected by the Members in general meeting provided that at least 1 (one) of such Directors shall be a Committee member of the General Committee of the Dainfern Country Club.
	5. The chairman of the Golf Committee of the Dainfern Golf Club shall, subject to compliance with these presents, be automatically appointed as one of the Directors referred to in 11.1 hereof. Should the duly elected chairman of the Golf Committee not comply with these presents, the Golf Committee shall nominate from its number a suitably qualified person to serve as a Director. At the end of his term as chairman of the Golf Committee, such Director shall be deemed to have resigned his directorship of the Association and shall be automatically removed.
	6. Except as otherwise herein provided, the Chairman shall preside at all meetings of the Board of Directors and all general meetings of Members and, in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the vice-chairman shall act in his stead, or failing the vice-chairman, a chairman appointed by the meeting.
	7. No person may serve concurrently as the chairman of more than one of the Association, the Golf Committee of the Dainfern Golf Club or the General Committee of the Dainfern Country Club.

# 12. ELECTION OF DIRECTORS

12.1 The Board of Directors may fill casual vacancies on the Board, which arise between Annual General Meetings.

12.2 At the Annual General Meeting Directors holding office must retire in terms of clause 11.2. Retiring Directors may be re-elected.

12.3 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 until he resigns, is removed or retires in terms hereof.

12.4 The Directors will be elected in terms of Section 5 (1) of Schedule 1 of the Act as follows:

12.4.1 nominations for Directors must be submitted to the Secretary on the prescribed form if possible no less than 48 (forty eight) hours prior to the Annual General Meeting. Such nomination must be co-signed by at least 2 (two) Members in good standing.

12.4.2 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.

12.4.3 a Member seeking election as Director must be prepared to address any questions posed to him by the Members.

12.4.4 should the number of nominations exceed the number of vacancies for Directors, voting shall be conducted as a series of votes as provided for in Section 68 (2) of the Act or by ballot if the meeting so directs.

* 1. 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.
	2. The Association may, by ordinary resolution remove a Director from office before the end of his term.

12.7 A Director will not be remunerated for his service.

# 13. INTEREST OF DIRECTORS

13.1 A Director may not:

13.1.1 save as provided herein, hold any other office or place of profit in the Association; or

13.1.2 act by himself or by his firm in a professional capacity for the Association; or

13.1.3 have any direct or indirect interest in any contract of any arrangement entered into or on behalf of the Association unless the Association in 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.

# 14. ROTATION OF DIRECTORS

Each Director appointed in terms of paragraph 13 shall serve on the Board of Directors until he resigns or stands down in accordance with article 12.2 or is removed from office in terms of the Act.

# 15. DISQUALIFICATION OF DIRECTORS FROM THE BOARD OF DIRECTORS

* 1. A Director shall be deemed to have vacated his office upon:

15.1.1 him profiting by his office or having an interest in any contract with the Association, without the prior written consent of the Association in terms of paragraph 14.1.3.

* + 1. his estate is sequestrated or he files a petition for the surrender of his estate or an application for an administration order, or if he commits an act of insolvency as defined in the insolvency laws for the time being in force, or if he makes an arrangement or composition with his creditors generally; or
		2. he is declared a lunatic or becomes of unsound mind; or
		3. he resigns his office by notice in writing to the Association; or

15.1.5 him being removed from office as provided for in Section 71 of the Act; or

15.1.6 he is otherwise removed in accordance with any provisions of this Memorandum; or

15.1.7 in the event of him being a Member of the Association, him being disentitled to exercise a vote in terms of this Memorandum or any Rule made in terms hereof; or

15.1.8 In the event of his Membership of the Association being terminated.

# 16. CHAIRMAN AND VICE CHAIRMAN

* 1. The Directors shall within 15 (fifteen) days after each annual general meeting, appoint from their number a Chairman and Vice Chairman, and a Secretary (who must not be a Director) who shall hold their respective offices until the next Annual General Meeting after the said appointments, provided that the office of Chairman or Vice Chairman shall ipso facto be vacated by a Director holding such office upon his ceasing to be a Director for any reason.
	2. No one Director shall be appointed to more than one of the aforesaid offices.
	3. Should any vacancy occur in either of the aforesaid offices at any time, the Board of Directors shall immediately appoint one of their number as a replacement in such office.

# 17. DIRECTORS’ EXPENSES

Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties, as Directors. Save as aforesaid, Directors shall not be entitled to any remuneration for the performance of their duties in terms hereof.

# 18. POWERS OF DIRECTORS

* 1. Subject to the provisions of this Memorandum, the Directors shall manage and control the business and affairs of the Association, shall have full power in the management and direction of such business and affairs, including their right or appointment and dismissal of the Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by the Act or by this Memorandum required to be exercised or done by the Association in general meeting, subject however to such Rules as may have been made by the Association in general meeting or as may be made by the Directors from time to time.
	2. Save as specifically provided in these present, the Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, a management agent and any other professional firm or person or other employees whatsoever for any reason deemed necessary b the Directors and on such terms as the Directors shall decide.
	3. The Directors shall further have the power:
		1. To require the submission for approval of such plans, drawings, specifications and other information as they may deem necessary to ensure compliance by Members with this Memorandum and the Rules made in terms hereof.
		2. To require that any work being constructed within the Association Area shall be supervised to ensure that the provisions of this Memorandum and the Rules are complied with and that all work is performed in a proper and workmanlike manner.
		3. To determine the access to the Association Area and to the erven therein;
		4. To determine the security facilities to be installed and the operation thereof for the protection of the Association Area;

18.3.5 To make Rules as provided for in this Memorandum or the Statutes;

18.3.6 To co-opt onto the board of Directors any person or persons chosen by it, provided such person complies with the provisions of this Memorandum;

18.3.7 To procure that the Association may borrow any amount from any person(s) on terms acceptable to them, always subject to the best interests of the Association; and subject to any limitation imposed by the Annual General Meeting in each year and subject to any limitation which may be considered at each Annual General Meeting each year.

18.3.8 to secure the payment of monies borrowed in any manner including the mortgaging and pledging of property.

18.4 The Directors shall be entitled to appoint committees consisting of such number of their Members and such non-Members, including the managing agent, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

* 1. The Directors shall appoint an architectural review committee which shall consist of:
		1. an architect duly qualified to practice as such on his own account in the Republic of South Africa;
		2. not less than 1 (one) Director; and

18.5.3 such other Members as the Directors may determine.

* 1. Members of the architectural review committee, need not be Members of the Association.
	2. All plans for all buildings, outbuildings, structures, walkways, fences, additions, alterations and signage shall be submitted for approval by the architectural review committee prior to submission for municipal approval and prior to commencement of any work thereon. The Directors may, if they deem fit, delegate to the architectural review committee their functions and powers in terms of this paragraph 19.

# 19. PROCEEDINGS OF DIRECTORS

19.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of the Act and of these presents.

19.2 The quorum necessary for the holding of any meetings of the Directors shall be a majority of the Directors present personally. Any resolution of the Board of Directors shall be carried on a simple majority of all votes cast.

* 1. When a resolution of the Board is called for, the Secretary must record in writing:-
		1. the proposed resolution;

19.3.2 the manner in which the vote on the proposed resolution was cast; and

* + 1. whether the resolution was approved or not

19.4 Resolutions of the Board may be:

19.4.1 passed by a show of hands;

19.4.2 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;

* + 1. passed on a round-robin basis or in any combination of the above.

19.5 The Chairman does not have a casting vote. In the event of the number of votes being the same, the motion will be defeated.

* 1. Resolutions adopted by the Board are effective as of the date of the resolution.

19.7 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.

19.8 The General Manager or Managing Agent of the Association shall be the Secretary of the Board of Directors and the Association.

19.9 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.

19.10 In the event that the Board of Directors takes an ultra vires decision or acts outside its powers, the Secretary may report such inappropriate decision or action to the Board of Directors with a request to withdraw and rescind such decision or action. Should the Board fail to comply with such demand, the Secretary may call for a Special General Meeting of Members to address the matter.

19.11 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 untill 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.

19.12 The Board of Directors may introduce a system of portfolio committee’s on terms and conditions deemed fit by the Board.

19.13 The Board of Directors may delegate their powers to a committee of Members, or such other persons as they think fit In accordance with this Memorandum. Any delegation of powers must be by a resolution taken by the Board of Directors.

19.14 Any committee’s procedures, and its obligation to minute its meetings, are unless specifically set out in the resolution forming and authorising the committee, exactly the same as those of the Directors as set out in this Memorandum, subject to the authority of the Directors.

19.15 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.

# 20. INDEMNIFICATION OF DIRECTORS

* 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(3) is not limited or restricted by this Memorandum.
	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.
	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.

# 21. GENERAL MEETINGS OF THE ASSOCIATION

* 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.
	2. Such annual general meeting shall be held at such time and place as the Directors shall decide from time to time.
	3. At general meetings other than annual general meetings shall be called extraordinary general meetings.
	4. The Directors may, whenever they deem fit, convene an extraordinary general meeting and an extraordinary general meeting shall also be convened on a requisition made in terms of the Act or it may be convened by the requisitionists as provided by the subject to the provisions of the Act.
	5. A Members’ requisition for a meeting must:
		1. be in writing to the Directors;
		2. describe the specific purpose for which the meeting is to be held; and
		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.
	6. 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.

# 22. NOTICES OF MEETINGS

* 1. 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.
	2. Ordinary Meetings or any other meeting must be called for on at least 10 (ten) business days’ notice.
	3. Notice of meetings must be published by any medium approved by the Directors.
	4. Other General Meetings of the Association may be held from time to time as necessary.
	5. The Directors or Members may call for such a meeting in terms of the procedures set out in the Act.
	6. Participation in General Meetings of the Association by electronic communication as provided for in Section 63 (2) of the Act will not be allowed.
	7. The accidental omission to give notice of a meeting to any Member does not invalidate a resolution passed at that meeting.

# 23. VERIFICATION OF RIGHT TO ATTEND MEETING

* 1. A person wishing to attend or participate in a Member’s meeting (whether as a proxy or Representative or Member), 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 paragraph, 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.
	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.

# 24. QUORUM

No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. A quorum will be present when at any meeting 100 (one hundred) Members are present or represented, provided that there shall be at least 50 (fifty) of such Members present in person and furthermore subject to the provisions of Section 64 of the Act and such further provisions as are applicable to the calling of meetings for the passing of Special Resolutions.

# 25. PROCEDURE AT GENERAL OR ANNUAL MEETINGS

25.1 All business conducted at a meeting, whether at an Annual General Meeting or Extraordinary General meeting, will be considered ordinary business and would be resolved by ordinary resolution as contemplated in Section 65 of the Act unless it is special business.

25.2 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 % of the Members (“special business”).

25.3 The Chairman of a meeting will be the Chairman of the Association or failing him, the Vice-Chairman.

25.4 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.

25.5 The Secretary must keep detailed minutes of the meeting in writing. The Secretary of a meeting will be the Secretary of the Association.

25.6 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 5 (five) business days nor later than 15 (fifteen) business days after the scheduled date of the original meeting. (Section 64 (6) of the Act)

25.7 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.

25.8 A quorum 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.

* 1. 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.
	2. Meetings of the Association are to be convened and conducted in accordance with the Act.

# 26. PROXIES

26.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing, signed by the Member concerned or his agent (duly authorised in writing) and shall, be in the following form or as near thereto as circumstances permit provided that, where a Member consists of or is owned by more than 1 (one) person, a majority of those persons shall sign the instrument appointing a proxy on such Member’s behalf.

|  |
| --- |
| PROXY FORM FOR*………………………………………….**(insert type of meeting)*DATE - …………………….TIME - …..…h……VENUE ………………………………..I ………………………………………………...(full names) ID Number ……………………………….. being the registered owner or Representative of the owner of Erf Number ……….………..Dainfern ( \*Delete inapplicable) and being in good standing (including all levies and other monies owing to the Association having been paid up to date), hereby appoint ……………………………………………. ID Number …………………………… or failing him/her ………………………………….………… ID Number ………………… ………… or failing him/herThe chairman of the Board of Directorsas my/our proxy to act for me/us and on my/our behalf at the Annual General Meeting which will be held and to vote for and/or against any matter as my/our Proxy may deem fit unless specifically instructed below.**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.
* A certified copy of the documentation evidencing the Representative’s power to execute this proxy form and his appointment is to accompany this proxy form.

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.” |

26.2 The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be tabled at the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.

* 1. A vote given in accordance with the term 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.

# 27. VOTES AND POLLS

* 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.
	2. Each Member has one vote for each erf owner by such Member.

* 1. Any matters put to the vote shall be decided on a show of hands, subject to the provisions of 27.4.
	2. 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. A call for a poll may be withdrawn.
	3. 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.
	4. 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.
	5. The Chairman does not have a casting vote. If the number of votes is identical, the resolution is defeated.
	6. 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.
	7. 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.

# 28. BUSINESS OF AN ANNUAL GENERAL MEETING OF MEMBERS

28.1 The Agenda of a Meeting shall be decided by the Directors of the Association.

28.2 The Agenda of an Annual General Meeting must include:

28.2.1 the business prescribed by Section 62 (3) of the Act;

28.2.2 the election of new Directors of the Association;

28.2.3 consideration of the audited financial statements of the Association;

28.2.4 The budget and levy for the year; and

28.2.5 The appointment of auditors and their fees.

# 29. COMMON AREAS OF THE ASSOCIATION, CLEARANCES AND GENERAL

* 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, (Section 2 (2) of Schedule 1).

29.2 The Directors of the Association may let any portion of common Property, provided that the lease shall be on terms acceptable to them and recorded in a written contract.

* 1. A Member may not apply to the Local Town Council or Municipal Authority or any other or equivalent authority for a change in land use rights without first obtaining the written consent of the Directors of the Association.
	2. A Member may not transfer his Property without first obtaining a clearance certificate from the Association.
	3. Before issuing a clearance certificate the Member must satisfy the Association that:-
		1. the Member does not owe the Association any money or other obligation;
		2. the transferee has bound himself to be a Member of the Association, and has signed his agreement to this Memorandum and, if such proposed transferee is a trust or a juristic person, its Members, shareholders, directors or trustees have signed the Association’s standard form suretyship documentation;
		3. at the time of making the application the Member does not contravene any of the Rules of the Association.
	4. The special conditions which shall apply to the Association in addition to those prescribed in the Act are as follows:
		1. The income of the Association, from all sources, shall be applied solely toward the achievement of its main objectives, as specified herein 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.
		2. Upon its winding up, deregistration or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities, shall be given or transferred to some other Association or institution or Associations or institutions having objects similar to its main 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.
		3. The construction of all houses and structures in the Association Area 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 sitting 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.

# 30. BOOKS OF ACCOUNT

* 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.
	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).
	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.

 30.4 The financial year of the Association ends on the 31st day of March each year.

# 31. MEMBERS RIGHTS TO INFORMATION

* 1. A Member has the right to inspect and make a copy of the following documents as contemplated in sections 24, 26 and 85 of the Act: and this Memorandum (as amended);
		1. the record of Directors;
		2. reports presented at an Annual General Meeting;
		3. annual audited financial statements;
		4. minutes of all Board of Directors’ meetings; and
		5. written communications sent generally by the Association to all Members.

# 32. SERVICE OF NOTICES AND LEGAL PROCESS

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

32.2 A Member shall be bound by every notice given to him in terms of paragraph 33.1.

32.3 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 proviing 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 Office. Any notice given by any electronic Medium or posted to a web site shall be deemed to have been served on the same day of transmittal or posting.

* 1. All legal process may be served by or on behalf of the Association upon any Member at the address of any erf owned by him unless the register of Members has an alternate physical address as provided for in paragraph 33.2. Such physical address, whether at his erf or at the address set out in the register, shall be a Members nominated *domicilium citandi et executandi.* Each Member shall, upon request by the Association, furnish or confirm an email address for such member. If a Member has not confirmed or provided another email address within 7(seven) business days of a request in writing by the Association, the address specified by the Association in its request shall be deemed to be the Member’s *domicilium* email address.

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

Dainfern Estate Office

633 Gateside Avenue

Dainfern

Tel: (011) 875 0400

32.6 The Association or a member 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.

# 33. INDEMNITY

Each Director, servant, agent and employee of the Association and any management agent, his employee’s nominees or invitees shall be indemnified by the Association against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into or any act or deed done or omission by such person or persons in the discharge of their respective duties, including in the case of a Director, his duties as chairman or vice chairman. Without prejudice to the generality of the aforegoing, the Association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or matter done or omitted by him jointly or severally in connection with the discharge of his duties.

# 34. GENERAL

* 1. Whenever they consider that the appearance of any land or building vested in a Member or Members is such as to be unsightly or injurious to the amenities of the surrounding Area or the Association Area generally, the Directors may serve notice on such Member or Members to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the Member or Members failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the property concerned and take such steps as may be necessary and recover the cost thereof from the Member or Members concerned, which costs shall be deemed to be a debt owing to the Association.

34.2 The Directors shall be obliged in giving such notice to act reasonably.

34.3 No person shall commence with the construction of any building or structure within the Association Area, or any additions or alterations to such building or structure unless he has submitted to the architectural review committee for examination and approval or refusal such plans for such building, structure, alteration or addition as are required in terms of the by-laws of the local authority having jurisdiction over the Association Area, and any such additional plan or information relating to the proposed building, structure, alterations or additions as the committee may require and such plans have been approved. The committee shall have the power:

* + 1. to charge a fee for the examination and approval or refusal of building plans;
		2. in approving any plans, to lay down such reasonable conditions as it may deem fit.

34.4 No person shall commence with the construction of any building or structure within the Association Area, or any additions or alterations thereto unless he has made payment of a “construction deposit” as fixed by the Directors from time to time. 80% (eighty *percentum*) of the construction deposit (“the balance of deposit) will be refunded without interest, only when the construction work has been completed and the Directors are satisfied that all loose materials and building rubble has been removed and any damage to any part of the common areas of the Association Area has been repaired. Any cost to the Association to repair or replace any damaged paving, landscaping, walling, fencing or any part of the common Area of the Association Area may be deducted from the balance of the deposit. Any cost exceeding the deposit shall be payable by the Member on demand.

* 1. The Member shall at all times observe all laws, and by-laws, regulations, the provisions of the town planning scheme and any other provisions in force relating to the erf or the use thereof. In the event of any Member failing so to do, such failure shall be deemed to be a breach of this Memorandum and the Directors shall be entitled to take such action as they may be empowered and as they may deem fit in terms hereof to remedy such breach or to prevent the continuation thereof. In the event of any town planning scheme laying down any conditions in relation to the matters dealt with herein which are more onerous than the conditions laid down herein or in any Rule, the provisions of such town planning scheme shall prevail.
	2. Each Member shall comply fully with all security measures introduced by the Directors.

34.7 The Directors in issuing any certifications or clearances referred to herein shall be entitled to charge a reasonable fee therefore to be determined by the Directors from time to time subject to review by the Association in general meeting.

* 1. The provisions of this Memorandum shall be binding upon all Members and insofar as they may be applicable, to all persons occupying any erf by, through or under any Member, whatever the nature of such occupation. No Member shall let or otherwise part with occupation of his erf without the prior written consent of the Association which consent shall only be withheld if the Association is not satisfied that the proposed occupier of the erf has complied with the provisions hereofof or of any Rule.
	2. 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.
	3. The Directors may delegate such of their powers to a managing agent as they may determine subject to any restriction imposed or direction given at any general meeting of the Association.
	4. It is recorded that the Association Area and individual townships within the Association Area will be fenced and/or walled and certain parts of such fences or walls will be erected on the boundaries of certain erven. The owner of any such erf shall be obliged to maintain that part of the wall or fence facing his erf in fair, good and proper conditions and should he not carry out any necessary maintenance and repair work the Directors shall be entitled to procure that such work is done and to recover the cost thereof from such owner.

34.12 The exterior of such wall shall be maintained by the Association at the cost of Members. Any Member whose erf abuts such wall shall not be entitled to interfere in any manner whatsoever with any such walling (or any fencing erected) and shall permit the Association from time to time access to such Member’s erf in order to inspect such walling or fencing and to effect such repairs as the Member may not have carried out from time to time. Further, the Association through the Directors, shall be entitled to erect security equipment or devices on top of such wall or fencing.

34.13 In the event of the Association electing to provide security equipment and a security service and/or other services for Members in the Association Area, all Members shall be obliged:

* + 1. to permit the installation of any equipment on the erven or in the buildings on the erven for the purpose of such services as may be determined by the Association from time to time.
		2. to make payment of the charges raised by the Directors in respect of such services;
		3. abide by such terms and conditions as may be laid down by the Directors from time to time in respect of such equipment and services.
	1. It is recorded that the maintenance and control of public and private open spaces including the road reserve from the road kept to the property boundaries and the common facilities and amenities shall be the responsibility of the Association.

# 35. THE DAINFERN COUNTRY CLUB

It is recorded that all Members of this Association, or the person nominated to enjoy the benefits of Membership in terms of 7 Hereof, shall automatically be Members of the Dainfern Country Club.

# 36. PUBLIC AND PRIVATE PARK

 It is recorded that the maintenance and control of public and private open spaces including the road reserve from the road kerb to the property boundaries shall be the responsibility of the Association.

# 37. ALTERATION OF MEMORANDUM OF INCORPORATION

37.1 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.

37.2 If this Memorandum is amended then the Board must file a Notice of Amendment of the Memorandum in accordance with the Act 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.

37.3. 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 38 within five Business Days of receiving the notice of the proposed alteration, the Board may file the required Notice of Alteration. If any Member objects to the proposed alteration on the grounds aforesaid, the proposed alteration must be preceded by a Special Resolution.

37.4. The Board must publish a copy of the relevant alteration or amendment to the Memorandum to each Member.

37.5 Any amendments to this Memorandum shall be submitted to the South African Revenue Services.