

I hereby certify that these Articles of Association which I have initialled for identification purposes, was adopted in substitution of the existing Articles of Association of the Company at an extraordinary general meeting of the Company held on 28 February 2012.

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Director

Form CM 44B

REPUBLIC OF NAMIBIA
COMPANIES ACT 2004
(Section 64) (Regulation 18(3))

**ARTICLES OF ASSOCIATION
OF A COMPANY NOT HAVING SHARE CAPITAL
NOT ADOPTING SCHEDULE 1**

NAME OF COMPANY:

**THE ELISENHEIM OWNERS ASSOCIATION
(NON-PROFIT ASSOCIATION INCORPORATED UNDER SECTION 21)**

- A. The articles of Table A contained in Schedule 1 to the Companies Act, 2004, shall not apply to the Company.
- B. The articles of the company are as follows:

1. **DEFINITION**

1.1 In these Articles and unless the context indicates otherwise the following words and expressions shall have the following meanings:

1.1.1 "the Act" means the Companies Act, No 28 of 2004 as amended from time to time;

1.1.2 "approved extension" means an extension of the township which has been proclaimed as such in the *Gazette* as contemplated in the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963);

1.1.3 "authorised representative" means a person authorised in writing to act as the representative of any natural person, body corporate, company or an association of persons as the case may be;

1.1.4 "architectural and town planning design manual" means the Architectural and Development Guidelines embodied in Annexure "A" hereto in respect of the development approved by the DEVELOPER

and the ASSOCIATION, as it may be amended from time to time;

- 1.1.5 "Articles" means the Articles of Association for the time being of the ASSOCIATION;
- 1.1.6 "ASSOCIATION" means the ELISENHEIM OWNERS ASSOCIATION;
- 1.1.7 "auditors" means GRANT THORNTON NEUHAUS, WINDHOEK or any other auditor appointed from time to time by the ASSOCIATION;
- 1.1.8 "Board of Representatives" means the Board of Representatives of an approved extension contemplated in Article 15A.1;
- 1.1.9 "common facilities" means all facilities and amenities which form part of the Development and which are intended for the shared use of all Home Owners (and their invitees) in the Township which may include any such facilities as the Developer and/or the ASSOCIATION may determine from time to time, and includes the common properties;
- 1.1.10 "common properties" mean the whole of the development area or township and all improvements thereon, including any access roads and/or servitudal rights of access, and include all those areas which are intended for shared use of all owners, including their invitees but excluding the following parts thereof:
- commercial or light industrial erven;
 - the sectional title scheme /s;
 - the residential erven
- 1.1.11 "Companies Act" means the Companies Act No 28 of 2004 and any amendment or modification thereof or substitution thereof from time to time;
- 1.1.12 "constitution" means the constitution of the ASSOCIATION (with all annexures thereto) which is also referred to as the Articles;
- 1.1.13 "Council" means the Municipal Council of Windhoek and its successor/s in title;
- 1.1.14 "design review committee" means the Design Review Committee to be

appointed by the DEVELOPER and which shall have such powers and functions as may be assigned to it by the DEVELOPER and upon expiry of the development period a committee to be appointed by the Trustees;

- 1.1.15 “DEVELOPER” means ELISENHEIM PROPERTY DEVELOPMENT COMPANY (PROPRIETARY) LIMITED, REGISTRATION NUMBER 2001/621 and includes its successor in title or assigns;
- 1.1.16 “DEVELOPER trustee” means a trustee appointed by the DEVELOPER;
- 1.1.17 “development area” means the land comprising certain PORTION 5 AND 6 OF THE FARM ELISENHEIM NO 68, REGISTRATION DIVISION "K", and such adjoining land as may be acquired by the DEVELOPER for the purposes of incorporation into the township;
- 1.1.18 “development period” means the period from the establishment of the ASSOCIATION until completion of the whole proposed ELISENHEIM development in accordance with the approved master plan or subsequent amendments thereto;
- 1.1.19 “erf” means any erf, portion or subdivision of the development area and includes all improvements thereon;
- 1.1.20 “estate manager” means the estate manager appointed by the DEVELOPER or trustees from time to time in terms of article 25 below;
- 1.1.21 “facilities” means all and any facilities or amenities of whatsoever nature which may be provided within the development area and forming part of the common property and intended for the shared use of all Home Owners including their invitees and common facilities have the corresponding meaning;
- 1.1.22 “financial year” means the financial year of the ASSOCIATION which shall run from the first day of March in each year until the last day of February in the subsequent year;
- 1.1.23 "Home Owner" means the registered owner of an erf or unit;

- 1.1.24 “levy” means the levy or levies referred to in Article 6 below;
- 1.1.25 "Local Authority" means the Local Authority having jurisdiction over the development area;
- 1.1.26 “member” means a member of the ASSOCIATION or of an approved extension concerned, as the case may be;
- 1.1.27 “member trustee” means a trustee appointed by the members;
- 1.1.28 “member representative” means a representative appointed by the members of an approved extension;
- 1.1.29 "memorandum" means the Memorandum of Association from time being of the ASSOCIATION;
- 1.1.30 “minutes” means the minutes of a general meeting or a trustees’ meeting, as the case may be;
- 1.1.31 “person” means a natural person, juristic person (whether incorporated or unincorporated) and includes a close corporation, company, trust or an association of persons, as the case may be;
- 1.1.32 “Prime Rate” means the prime overdraft rate levied by the ASSOCIATION’S bankers from time to time;
- 1.1.33 “registered owner” means a registered owner of an erf or sectional title unit as registered in the relevant Deeds Office and home owner or owner shall have the corresponding meaning;
- 1.1.34 “Representative” or “Representatives” means a member or members of a Board of Representatives, consisting of the DEVELOPER Representatives and Member Representatives;
- 1.1.35 "Rules" means the rules made by the Trustees;
- 1.1.36 “Sectional Titles Act” means the Sectional Titles Act No 66 of 1971 and any amendment or modification thereof or substitution thereof from time to time;

- 1.1.37 “services” means such infrastructural services, utilities and amenities as may be provided by or on behalf of the Council and/or the ASSOCIATION for the registered owners and residents within the township and/or the development area which services include road network, sewer and stormwater, electrical and water network and reticulation water and any such Municipal related services;
- 1.1.38 “township” means the township to be known as ELISENHEIM being the development area and comprising all the approved extensions thereof;
- 1.1.39 “trustees” means the trustees of the ASSOCIATION consisting of the DEVELOPER trustee/s and member trustee/s;
- 1.1.40 “unit” means a section shown as such on an approved Sectional Plan together with an undivided share in the common property as determined in accordance with the participation quota applicable to such section (and, if relevant, together with any exclusive use of a defined area of the common property), and as defined more fully in terms of the Sectional Titles Act;
- 1.1.41 “writing” or “written” means written, printed, typewritten, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.

In these Articles:

- 2.1 The Article headings are for convenience and shall be disregarded in construing or interpreting this Article and Constitution.
- 2.2 Unless the context clearly indicates a contrary intention -
- 2.2.1 the singular shall include the plural and vice versa;
- 2.2.2 a reference to any one gender shall include the other genders; and
- 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 Words and expressions defined in any Article herein shall, for the purpose of

that Article and in subsequent Articles, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the Article in question.

- 2.4 When any number of days is prescribed in these Articles, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of Namibia, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of these Articles is in conflict or inconsistent with any law of the Republic of Namibia, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of these Articles.
- 2.7 If any provision in a definition in these Articles is a substantive provision conferring rights or imposing obligations on any of the members then, notwithstanding that it is only in the definition Article of these Articles, effect shall be given to it as if it were a substantive provision in the body of these Articles.
- 2.8 The annexures to these Articles are deemed to be incorporated in and form part of these Articles.
- 2.9 Any words defined in the Companies Act No. 28 of 2004 shall bear the same meanings in these Articles and any words defined in the Sectional Titles Act 66 of 1971, as amended, shall bear the same meaning in these Articles in relation to Sectional Title matters referred to herein.

3. COMMENCEMENT DATE AND STATUS

- 3.1 The ASSOCIATION will be established as a legal persona in accordance with the Companies Act with the registration of the first transfer of an erf or unit in the township to a third party other than the DEVELOPER and/or the ASSOCIATION.
- 3.2 Pursuant to its Articles the ASSOCIATION shall:

- 3.2.1 be a legal entity and exist independently of its members;
- 3.2.2 enjoy perpetual succession;
- 3.2.3 be capable of being sued or to sue with reference to any agreement entered into by the ASSOCIATION, any damage caused to any property of the ASSOCIATION or any matter arising from these Articles;
- 3.2.4 not operate for profit but for the benefit of the members;
- 3.2.5 no member in his personal capacity shall have any right, title or interest to or in the funds or assets of the ASSOCIATION, which shall vest in and be controlled by the trustees.

4. POWERS, OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 4.1 It is recorded that the Development of the whole township is of a homogenous nature and that notwithstanding the fact that members hold title to their erven and/or units individually the ASSOCIATION, through its trustees, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the ASSOCIATION, including, but not limited to the powers specifically contained in these Articles.
- 4.2 The ASSOCIATION shall have the following objectives:
 - 4.2.1 to act as an Owners Association established in terms of the Companies Act for the township which is being developed on the development area;
 - 4.2.2 to take transfer of those portions of the common property that are to be owned by the ASSOCIATION for the benefit of its members;
 - 4.2.3 to enter into agreements of servitude for the benefit of its members or any adjacent property development;
 - 4.2.4 to manage, oversee and control all security aspects of the township;
 - 4.2.5 to enter into agreements if so required for the provision of any services with any competent authority or any other third party, *inter alia*

including the provision of access to the township, water, electricity and sewerage services to the ASSOCIATION and where required to supply such services to the various members of the ASSOCIATION;

- 4.2.6 to administer and enforce the architectural and development guidelines, and the estate rules;
- 4.2.7 to control the registration of transfer of erven and units in the township and ensure compliance within the township with all conditions imposed by the Local Authority, the DEVELOPER or the ASSOCIATION when approving the rezoning and / or subdivision of the property / ies comprising the development area;
- 4.2.8 to act as assignee of all the powers and functions of any body corporate in any sectional title scheme forming part of the township;
- 4.2.9 in general, to do all such things, and perform all such acts, as may be necessary or expedient to ensure that the Township is developed and maintained in the interests of all Members thereby ensuring that the Township will be and remain one of premier status.
- 4.3 The ASSOCIATION shall be responsible to ensure compliance, implementation, and enforcement, in respect of the township, of any condition imposed by its members or any authority in terms of the Townships and division of Land Ordinance, Ordinance 11/1963 or 18/1954 or any other planning -or environmental law, including any Environmental Management Plan approved in respect of the township.
- 4.4 Without limiting the generality of 4.2.1 to 4.2.9, the ASSOCIATION shall have the following powers and functions:-
- 4.4.1 The responsibility to maintain, repair, improve and keep in good order and condition the common property and amenities and the responsibility for the payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the common property and/or for payment of the salaries and/or wages of the employees of the ASSOCIATION and/or to manage and control the security of the Township and the developments and generally for the payment of all expenses necessarily or reasonably incurred in connection with the

management of the ASSOCIATION, and the ASSOCIATION'S affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the ASSOCIATION or the pursuit of its business.

- 4.4.2 The right to impose levies upon the members of the ASSOCIATION for the purpose of meeting all the expenses that the ASSOCIATION has incurred or to which the trustees reasonably anticipate the ASSOCIATION will incur in the attainment of the objects of the ASSOCIATION or the pursuit of its business, including any special levy determined by the ASSOCIATION from time to time: provided that the DEVELOPER is not obliged to pay any levy during the development period.
- 4.4.3 To ensure that all provisions of these Articles are complied with by all members/parties bound thereby.
- 4.4.4 It is recorded that the body corporate of any Sectional Title Scheme shall be liable as members of the ASSOCIATION to pay the levies imposed on them in terms of these Articles.
- 4.4.5 To promote, advance and protect the township and the interests of the ASSOCIATION and all members.
- 4.5 Pursuant to the objectives of the ASSOCIATION, the body corporate of any sectional title development in the township will not function independently, but shall assign its functions and powers to the ASSOCIATION.
- 4.6 The responsibility for the management and control of the common property shall be transferred from the DEVELOPER to the ASSOCIATION upon completion of the infrastructure services in respect of a phase or phases to the satisfaction of the ASSOCIATION or Council (as the case may be) and when transfer of such responsibility is tendered to the ASSOCIATION by the DEVELOPER. The DEVELOPER will however remain obliged and responsible to complete the development programme in accordance with the conditions of approval imposed by the relevant authorities.
- 4.7 The sole object of the ASSOCIATION is to manage the collective interests common to all its Members, which includes expenditure applicable to security and the common property of such Members and the collection of levies for

which such Members are liable.

- 4.8 The ASSOCIATION is not permitted to distribute its funds to any person other than to a similar association of persons.
- 4.9 On dissolution, the remaining assets of the ASSOCIATION must be distributed to a similar association of persons, which is also exempt from Income Tax.
- 4.10 Funds available for investment may only be invested with an approved and registered financial institution or in any listed financial instrument of a company contemplated in the definition of a “listed company”.

5. MEMBERSHIP OF THE ASSOCIATION AND OF APPROVED EXTENSION

- 5.1.1 Subject to these articles, membership of the ASSOCIATION shall be obligatory and limited to any party who is in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act) reflected in the records of the Deeds Registry concerned as the registered owner of a Unit or an Erf.
- 5.1.2 A person who is a member of the ASSOCIATION is also a member of the approved extension in which he is the registered owner of a Unit or an Erf.
- 5.2 Subject to these articles, a person shall become a Member of the ASSOCIATION and of the approved extension concerned upon transfer of a Unit or Erf into his name and such membership shall *ipso facto* terminate when a Member ceases to be the owner of a Unit or an Erf, unless such Member owns any other Unit/s/Erf/Erven. If a Member ceases to be a Member, the Trustee or Liquidator or other legal representative (as the case may be) of such Member shall, for all purposes, be recognized and be bound as the Member under these articles.
- 5.3 Upon a person becoming a home owner that person shall automatically be and become a Member of the ASSOCIATION and of the approved extension concerned and shall remain a Member of the ASSOCIATION and of the approved extension concerned until he ceases to be a home owner.
- 5.4 Membership of the ASSOCIATION and of the approved extension concerned shall be limited to the registered owners of erven or units in the township provided that the DEVELOPER shall be deemed to be automatically a

member of the ASSOCIATION and of the approved extension concerned during the full development period.

- 5.5 Where a Unit or Erf is owned by more than 1 (one) person all the registered owners of that Unit or Erf shall together be deemed to be collectively one Member of the ASSOCIATION and of the approved extension concerned and have the rights and obligations of one Member of the ASSOCIATION and of the approved extension concerned: provided however that all co-owners of any Unit or Erf shall be jointly and severally liable for the due performance of any obligation to the ASSOCIATION.
- 5.6 If a home owner comprise more than 1 (one) person such persons shall nominate one of them to be a Member for purposes of these Articles provided that the joint owners shall be bound by these Articles as if they were Members. Such nomination shall be made in writing to the ASSOCIATION within 7 (seven) days of such joint owners becoming Home Owners.
- 5.7 The rights and obligations of the members shall rank in accordance with the provisions of these Articles.
- 5.8 A home owner may by written notice to the ASSOCIATION nominate any occupant of an erf or unit to represent it in all matters relating to the ASSOCIATION.
- 5.9 Anything to the contrary herein before contained or implied notwithstanding, the cessation of his membership shall in no way release a member from any obligation undertaken by him prior to the cessation of his membership pursuant to:
- 5.9.1 any provision of the Articles of the ASSOCIATION; or
- 5.9.2 any further or ancillary guarantee, commitment or obligation, which such member may have undertaken.
- 5.10 The fact that a person ceases to be a Member of the ASSOCIATION and of the approved extension concerned as a result of the transfer of a Unit or Erf to another person, shall not release such Member from any liability to the ASSOCIATION in respect of any debt, the cause of which arose prior to the transfer of such Unit or Erf nor otherwise relieve such erstwhile Member from any other obligations owed to the ASSOCIATION during the period of his

membership.

- 5.11 Membership shall be personal to the person in question and may not be assigned or transferred by them to any other natural person or entity.
- 5.12 The ASSOCIATION shall maintain at its registered office, alternatively at the office of Management, -
- 5.12.1 a register of Members of the ASSOCIATION as provided in Section 112 of the Companies Act;
- 5.12.2 a register of members of an approved extension.
- 5.13 The trustees may by regulation provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the trustees.
- 5.14 The trustees may by regulation further prescribe appropriate application documentation including *inter alia* the following:
- 5.15.1 an application to register as a member of the ASSOCIATION and of the approved extension concerned;
- 5.15.2 an undertaking by a proposed member to comply with all the obligations imposed on members in terms of these Articles, which undertaking must be signed by the proposed member and deposited with the ASSOCIATION prior to the ASSOCIATION issuing a clearance certificate or consent to transfer a unit or erf in favour of such a proposed member from any existing member, provided always that this paragraph will not apply in respect of the transfer or alienation by the DEVELOPER of an erf or unit in favour of a proposed member.
- 5.16 The registered owner of an erf or a unit may not resign as a member of the ASSOCIATION and of the approved extension concerned for so long as he remains a home owner.
- 5.17 Every member is obliged to comply with:
- 5.17.1 the provisions of those Articles and any rules or regulations passed by the ASSOCIATION in terms hereof;

- 5.17.2 the provisions of the architectural and town planning design manual and the estate rules;
- 5.17.3 any agreement concluded by the ASSOCIATION insofar as such agreement may directly or indirectly impose obligations on a member in its capacity as a member;
- 5.17.4 any directive given by the trustees in enforcing the provisions of these Articles.
- 5.18 The rights and obligations of a member are not transferable and every member shall to the best of his ability further the objects and interests of the ASSOCIATION.
- 5.19 The Members shall be jointly liable for expenditure incurred in connection with the ASSOCIATION. If a Member consists of more than one person such persons shall be jointly and severally liable in *solidum* for all obligations of that member in terms of these Articles;
- 5.20 A member shall not sell, alienate or give transfer of an erf or Unit or transfer, dispose or alienate in any manner whatsoever any shares or members interest or any other interest in and to any corporate entity being the owner or an erf or unit unless:
- 5.20.1 the proposed transferee has irrevocably bound himself to become a member of the ASSOCIATION and of the approved extension concerned and to observe the provisions of these Articles for the duration of his ownership of the erf and/or unit;
- 5.20.2 the ASSOCIATION acting through the trustees or the estate manager has issued a prior written clearance that all outstanding levies and all amounts of whatever nature owing to the ASSOCIATION by such member have been paid and that the member is not in breach of any of the provisions of these Articles including any management or conduct rule or the provisions contained in Article 5.20.5; and
- 5.20.3 the proposed transferee has acknowledged and agreed that upon the registration of transfer of the erf and/or unit into his name, he shall *ipso facto* and automatically become a member of the ASSOCIATION

and of the approved extension concerned;

- 5.20.4 the proposed Transferee has acknowledged and agreed that any sale, alienation or transfer of any erf or unit shall be in accordance with the standard Deed of Sale approved by the ASSOCIATION which Deed of Sale shall specifically include the condition that transfer shall be effected by the Conveyancers of the ASSOCIATION as defined in the standard Deed of Sale;
- 5.20.5 the conditions set out above are incorporated in the relevant Deed of Sale in terms whereof the transferee acquires the erf or unit in question and that a copy of such agreement be lodged with the ASSOCIATION within 7 (seven) days after signature thereof, failing which the ASSOCIATION shall have the right not to grant any consent or approval for such resale or alienation;
- 5.20.6 the member of the ASSOCIATION and of the approved extension concerned has complied with all provisions contained in these Articles and any annexure thereto or any rule or regulation made in terms of these Articles relating to the architectural and town planning guidelines of the township and with all rules and regulations in relation to the approval and compliance with the approval of building plans;
- 5.20.7 a building has been erected upon the erf in accordance with the architectural and town planning design manual and guidelines within the period of 2 (two) years from date of registration thereof in the name of the member;
- 5.20.8 the member has complied with all the conditions of sale and/or the conditions of title as imposed by the DEVELOPER and/or the ASSOCIATION and registered against the title deed of the Erf or the Unit.
- 5.21 For the avoidance of doubt it is recorded that the provisions of this Article do not apply to the DEVELOPER, that there will be no restriction whatsoever on the ability of the DEVELOPER to pass transfer of any erf or unit and that accordingly the DEVELOPER does not need a clearance certificate from the ASSOCIATION before it will be entitled to alienate or transfer any erf or unit or any person or entity.

- 5.22 A member shall not, without the prior written consent of the ASSOCIATION, who in granting or refusing such consent, shall act in its absolute discretion, apply to the local authority or any other relevant authority for the subdivision, consolidation or rezoning of an erf or unit owned by the Member, or make application for any consent use or waiver or departure or any other dispensation whatsoever in respect thereof, it being recorded that subdivisions and rights pertaining to erven have to be controlled by the ASSOCIATION to ensure that the primary character of the Township is not negatively affected. For the avoidance of doubt it is recorded that this Article does not apply to the DEVELOPER who does not need the consent of the ASSOCIATION in respect of the aforesaid or any other applications.
- 5.23 A member is required to ensure that the occupant of his erf or unit, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of these Articles and the regulations. Without detracting from the foregoing the member shall remain bound by these Articles and any rules or regulations adopted by the ASSOCIATION notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under these Articles;
- 5.24 To ensure compliance with Article 5.23 each member shall, if it leases out any property:
- 5.24.1 enter into a written lease with the tenant in which the tenant is required to accept compliance with the estate rules, and to give an undertaking that he will abide by the estate rules, and in which the tenant is required to report to the ASSOCIATION and register his full details for security reasons prior to the taking of occupation;
- 5.24.2 be responsible to ensure that the tenant does thus register himself with the ASSOCIATION prior to taking occupation.
- 5.25 Each Member shall be required to provide the ASSOCIATION with written details of his postal address and if he so indicates, any facsimile number and/or email address to facilitate delivery, it being competent for any Member to alter any such details by written notice to the ASSOCIATION at its registered office or care of management provided, however, that any physical address and/or postal address for delivery purposes shall be in the Republic of Namibia. The Members acknowledge that the postal authority(ies) shall act

as their agent and not as the agent of the ASSOCIATION.

- 5.26 Members who are in good standing (i.e. have paid all debts due and payable to the ASSOCIATION) shall have the right to vote, either personally or by proxy, at meetings of the ASSOCIATION as provided for in these articles. Members who are not in good standing shall not be entitled to attend any meetings of the ASSOCIATION or to exercise any voting rights.
- 5.27 Members shall diligently and promptly comply with the obligations imposed in terms of these Articles and observe all rules referred to in these Articles, and shall be responsible for and obliged to ensure compliance therewith by their families, employees, agents, contractors, tenants (including any other occupiers of a Unit or Erf), visitors and guests (which shall include, in the case of any Member who conducts any form of business or profession on or from a Unit or Erf, his customers, clients and patients).
- 5.28 Members shall not interfere with nor give instructions to any officers, employees, agents or contractors of the ASSOCIATION and management, and any complaints shall be addressed in writing to management.
- 5.29 Subject to the rights of membership as prescribed by the Act, membership of the ASSOCIATION shall confer upon Members, unless otherwise stipulated, the following rights -
- 5.29.1 the right to inspect and/or receive copies of the annual financial statements of the ASSOCIATION;
- 5.29.2 the right to representation through the representatives referred to in Article 15A1.1, at meetings of the ASSOCIATION in accordance with and subject to the provisions of these Articles;
- 5.29.3 the right to receive notices of, and to attend and speak, with special written permission of the Board of Representatives of the approved extension concerned, at meetings of the ASSOCIATION in respect of which members have the right to representation as contemplated in Article 5.29.2;
- 5.29.4 should Members holding between them, in aggregate, not less than 25% (twenty five percent) of the voting rights in the meeting in respect of which members have the right to vote in accordance with and subject to these articles, collectively to decide, the right to convene the meeting concerned.

5.30 No member shall, by reason of membership of the ASSOCIATION, be entitled to share in or receive any profit of the ASSOCIATION.

6. FINANCIAL AND LEVIES

6.1 The ASSOCIATION shall establish and maintain a levy fund for the purposes of meeting all expenses of the ASSOCIATION in respect of:

6.1.1 the control, management and administration of the township in respect of those items and areas not performed or delivered by Council;

6.1.2 in general the attainment of its main objects as described in these Articles;

6.1.3 the maintenance of common property and the costs of common services such as electricity, water and sewerage consumed or used on the common property;

6.1.4 the supply of any services specifically rendered by the ASSOCIATION with specific reference to security;

6.1.5 payment of all expenses necessary or reasonably incurred in connection with the management of the ASSOCIATION;

6.1.6 the costs of the provision of security to the township; and

6.1.7 in general the cost of fulfilling any of the obligations of the ASSOCIATION.

6.2 The Trustees shall not later than 14 (fourteen) days prior to each Annual General Meeting have prepared a draft budget in respect of the levies payable during the affected financial year, indicating in detail the estimated amounts which shall be required by the ASSOCIATION to meet its necessary and other reasonably foreseeable expenses during the affected financial year (including a provision in respect of reserve funds catering for annual and otherwise nonrecurring costs (including capital expenditure)) which budget shall further specify, separately, the estimated deficit, if any, carried forward from the preceding financial year.

- 6.3 The budget shall be available for collection at the offices of management not later than 14 (fourteen) days prior to the date of the Annual General Meeting.
- 6.4 The budget shall otherwise comply with the prescriptions which apply in terms of the Sectional Titles Act to a budget prepared in respect of a Sectional Title Scheme.
- 6.5 Subject to the hereinafter stated provisions, the levies payable by the Members will be determined by dividing the budgeted expenditure (after deducting non-attributable levy income including any deficit carried forward from the previous financial year) by the number of Units and Erven.
- 6.6 Notwithstanding the general principles applicable to the apportionment of the levies as aforementioned, the Trustees shall be entitled to determine, in accordance with the criteria hereinafter referred to, a differentiated and/or weighted levy with respect to any Units and/or Erven.
- 6.7 The Trustees shall advise each Member, in writing, as soon as practically possible after the Annual General Meeting, of the amount of the levies payable by such Member for the affected financial year.
- 6.8 The budget shall be tabled at the Annual General Meeting for approval on behalf of the Members, in the form as tabled or with such amendments or modifications as the AGM may resolve.
- 6.9 The Trustees shall, in their administration of the ASSOCIATION, not exceed the budget as approved, nor increase the levies or impose any additional levies and/or raise any special levies (with respect to any unforeseen and/or extraordinary expenditure, special projects or otherwise) unless a due motivation accompanied by a detailed feasibility study has been made available to members (on the same basis *mutatis mutandis* as referred to above) and such additional levies and/or special levies, as the case may be, have been approved by the Members at an Annual General Meeting or Extraordinary General Meeting.
- 6.10 Pending the approval of the budget (including any budget with respect to any additional levies and/or special levies, as the case may be), the Members shall continue to pay the levies (on a monthly basis, as is hereinafter indicated) which were due and payable in terms of the previously approved budget/s.

- 6.11 With effect from the commencement of a new financial year of the ASSOCIATION, and pending the approval of the levies in terms of the budget for the affected year, Members shall continue to pay the levies as were payable in respect of the preceding financial year and shall be obliged to pay:
- 6.11.1 the newly imposed levies with effect from the date stipulated in the written notice as delivered to the Member, consequent upon the approval of the budget; and
- 6.11.2 within 30 (thirty) days of receipt of such written notice, the deficit (comprising the difference between the levies paid from the commencement of the (new) financial year and the newly imposed levies, to the date on which such newly imposed levies become payable), shall be paid to the ASSOCIATION.
- 6.12 The annual levies shall be payable in equal monthly installments, due in advance on the first day of each and every month.
- 6.13 Additional levies and special levies imposed upon Members shall, unless otherwise stipulated by the Trustees, similarly be payable in monthly installments over the period indicated by the ASSOCIATION in its written notice delivered to Members (after approval of such additional levies and/or special levies, as the case may be).
- 6.14 Members shall be liable for and shall pay interest on any debt due to the ASSOCIATION (including but not limited to any arrear levies of whatsoever nature), such interest to be calculated monthly in advance at the Prime Rate plus 2 (two percent) per month from the due date, to the date of actual payment, both days included.
- 6.15 The levies (and any other debt) shall be payable to the ASSOCIATION free of exchange, deduction or commission at Windhoek.
- 6.16 The obligation of a Member to pay levies shall terminate upon his ceasing to be a Member without prejudice to the ASSOCIATION'S rights to recover any debt.
- 6.17 No levies (or other debt) paid by a Member shall under any circumstances be repayable by the ASSOCIATION upon his ceasing to be a Member.

- 6.18 A Member's successor in title shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of an Erf or Unit to him, to pay the levies attributable to that Erf or Unit with effect from the date of transfer.
- 6.19 In circumstances where a Member has sold or otherwise disposed of an Erf or Unit or if registered in a corporate or other entity than an actual person, where a member has sold or otherwise dispose of his shares and/or interest, he shall be obligated to inform the management in writing of the impending transfer and shall furthermore similarly confirm the date on which such transfer is registered in the name of the Member's successor in title in order to enable the Trustees (and management) to determine the date of responsibility for payment of levies and any other amounts comprising of a debt.
- 6.20 No Member shall be entitled to transfer a Unit or Erf or any share or interest as envisaged in 6.19 without a Clearance Certificate first having been obtained from management on behalf of the ASSOCIATION, confirming that all levies (including any other amounts comprising of a debt) have been paid up to and including the end of the month during which such contemplated registration of transfer of such Unit or Erf will take place.
- 6.21 Management shall be entitled to levy an administration fee (to be determined by the Trustees from time to time) in respect of the issue of each such Clearance Certificate and similarly in respect of any extended Clearance Certificate.
- 6.22 The principles applicable in terms of the Sectional Titles Act with regard to the issue of a Clearance Certificate shall apply *mutatis mutandis* to any Clearance Certificate required to be obtained in respect of the transfer of any Erf or Unit in the Township.
- 6.23 In keeping with the principles referred to in 6.22, the amount of any debt shall enjoy the preference accorded any similar debt due to the Body Corporate in terms of the Sectional Titles Act in conformity with the provisions of the Insolvency Act, No. 24 of 1936, as amended, and as otherwise apply in law or in respect of any transfer of any share or interest as envisaged in 6.19 hereof.
- 6.24 DIFFERENTIATED AND WEIGHTED LEVIES:

- 6.24.1 Having regard to the nature, extent of occupation, type of Unit or Erf, use of the Unit or Erf (residential and/or business or recreational or industrial), the size /composition of the erf and further taking into account such other relevant criteria as the Trustees shall in their sole discretion determine, the Trustees are entitled to differentiate with regard to the levy responsibility attaching to any Unit or Erf and/or to weight the levies payable in respect of any Unit or Erf (these rights extending to any additional levies and special levies).
- 6.24.2 In effecting a determination, the Trustees shall take into account and apply, to the extent deemed relevant, the following principles and prescriptions:
- 6.24.2.1 the allocation of costs directly attributable to a Unit or Erf, to the Member (as owner of such Unit or Erf) and which directly attributable costs shall include, but not be limited to any municipal and/or other local authority related service charges and other expenses, and which such directly attributable expenditure shall be payable by the affected Member in addition to the levies;
- 6.24.2.2 assign a proportion of the costs relating to the Township generally to all Units and Erven (including unsold/undeveloped erven) equitably; and
- 6.24.2.3 take into account and effect a weighting and/or differentiation where a Unit or Erf is occupied by more than one household/family and/or where any business is conducted on or from the Unit or Erf (and if necessary, to impose additional levies in respect thereto).
- 6.24.3 A Member shall be entitled to deliver an objection in writing to the Trustees within not more than 30 (thirty) days after delivery of the written notification of the levies payable by such Member (as the owner of the affected Unit or Erf) and the following further provisions shall apply in respect thereof:
- 6.24.3.1 the Trustees shall not entertain any objection which is not received within the aforementioned prescribed period;

- 6.24.3.2 the Trustees shall review the determination with respect to the affected levy and take into account the objection received;
- 6.24.3.3 the complainant Member shall be entitled to be provided with the calculation and determination as effected by the Trustees;
- 6.24.3.4 the Trustees shall convene, as soon as reasonably possible, a meeting with the complainant Member (and should there be more than one complainant, those complainants collectively (who attend such meeting)) and hear such further representations as the complainant Member/s may wish to make;
- 6.24.3.5 the Trustees shall, in consequence of such processes, either reject the complaint (and confirm the determination of the effected levies) or review the determination and deliver their written determination to the complainants within a reasonable period;
- 6.24.3.6 in all events the Trustees' determination (whether confirming the (original) determination or revising same), shall be final and binding upon the ASSOCIATION and the affected complainant Member/s.

7. ENTRENCHED PROVISIONS

- 7.1 The DEVELOPER, during the development period and thereafter the ASSOCIATION have a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the development of the township. Accordingly none of the following provisions of Articles 7.1.1 to 7.1.8 (both inclusive) may be deleted or varied in any way in terms of these Articles, without the prior written consent of the DEVELOPER during the development period and thereafter by way of a Special Resolution of the ASSOCIATION:
- 7.1.1 the DEVELOPER during the development period and thereafter the ASSOCIATION may register, in their entire and sole discretion and where necessary, services servitudes, including those referred to in

Article 9.3.7 below, in favour of the local authority, the DEVELOPER, the ASSOCIATION, and/or any adjacent property development over any separate erf in the township, the common property (as defined herein), any unit, building or common property in any sectional title scheme or any other part of the township;

- 7.1.2 the DEVELOPER shall be entitled to incorporate adjacent immovable property into the development area and the DEVELOPER shall be entitled to develop the said property as it may deem fit, in which event all persons who become owners of erven or units in such development shall be entitled to or subject to as the case may be to the benefits, rights or obligations of members of the ASSOCIATION;
- 7.1.3 no member shall be entitled to object to the subdivision and/or development of any part of the development area provided that such subdivision and/or development is not inconsistent with the development plan approved by the relevant authorities for that part of the development area, nor shall they be entitled to object to any such new development;
- 7.1.4 ownership of an erf or unit does not confer any right, including that of access, in respect of property owned by the DEVELOPER, including any right of way or access across such property;
- 7.1.5 the members acknowledge and agree that the DEVELOPER, its successor/s in title and its employees have certain rights, including rights of access across the common property;
- 7.1.6 all building contractors and architects must be approved by the DEVELOPER (and after the development period by the ASSOCIATION) before construction of any building or dwelling commences;
- 7.1.7 all estate agents marketing and / or selling property in the Township must be approved by the DEVELOPER and after the development period by the ASSOCIATION before such estate agents commence any marketing or sales initiatives at the Township.
- 7.2 In the event of any member deciding to sell his erf or unit or his share or interest in any corporate entity being the owner thereof, the ASSOCIATION or

its nominee shall as long as the member remains of the intention to sell his erf or unit have a mandate to sell the property of such member on similar terms and conditions as mandated to any estate agent. The aforesaid member shall forthwith inform the ASSOCIATION of his intention to sell his erf or unit and let the ASSOCIATION or its nominee have the written particulars of any mandate given to any other estate agent, which particulars shall then be considered as a written mandate to the ASSOCIATION or its nominee.

8. RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES

8.1 Rates and Taxes:

8.1.1 The ASSOCIATION shall be responsible to pay all rates and taxes in respect of the common properties to the Council or any other responsible authority.

8.1.2 The body corporate of any sectional title scheme in the township shall be responsible to pay all rates and taxes in respect of the property comprising any sectional title scheme to the Council or any other responsible authority.

8.1.3 All other members as owners of erven shall be responsible to pay rates and taxes in respect of their property to the Council or any other responsible authority.

8.2 Services:

8.2.1 The responsibility for payment of services and the method of service supplies shall be as regulated in Article 9 below.

8.2.2 The supply of services to the township shall be subject to all such terms and conditions as imposed by the ASSOCIATION.

9. SERVICES

9.1 Potable Water Supply:

9.1.1 Water will be supplied and metered at the boundary of every erf within the township by the Council or any other responsible authority except insofar as such supply has been made by the ASSOCIATION.

- 9.1.2 The management and maintenance of the complete internal water supply system will be the responsibility of Council and all supplies of water will be managed and administered by Council except insofar as such management and administration has been contracted by the ASSOCIATION.
- 9.1.3 The DEVELOPER shall install the infrastructure for the water supply to the boundary of each erf in the township, including the Body Corporate of any Sectional Title Scheme. The Council and/or the ASSOCIATION, insofar as such services have not become the property of Council, will be responsible for the cost of maintenance and servicing of pipelines, pumps, meters, equipment and materials in respect of the internal water supply system up to the boundary of each erf.
- 9.1.4 The members of the ASSOCIATION, including the Body Corporate of any Sectional Title Scheme shall be liable for and shall pay to the Council and/or the ASSOCIATION on demand all charges arising from water supplied to or consumed in or on an erf or unit and the Building thereon and the common property of the Sectional Title Scheme.
- 9.1.5 The liability of members of the ASSOCIATION for such charges shall be in accordance with separate sub meters serving the erven of members, including any Sectional Title Scheme, which the DEVELOPER and/or the ASSOCIATION shall be entitled to install at the cost of such member, as the case may be.
- 9.1.6 Where water charges are calculated and payable in terms of this Article 9, any value-added tax levied in respect of the supply of such water shall be paid by the member in question.
- 9.1.7 The ASSOCIATION will be entitled to charge interest at the prime rate (as levied by the ASSOCIATION'S bankers from time to time) plus 3 (three) percentage points on any charges payable by a Member in terms of this Article which interest will be calculated from the due date on the balance of the charges owing from time to time until it has been paid in full.

- 9.1.8 The Council or any other responsible authority will be responsible for the maintenance of the water supply system inclusive of the supply system up to the bulk supply point at the boundary of the township.
- 9.2 Electricity:
- 9.2.1 The Council or any other responsible authority will supply electricity in bulk at the boundary of the township. This will be known as the Point of Supply (POS). The ASSOCIATION will be responsible for paying Council or any other responsible authority the monthly electrical consumption charges as metered at the POS until such time as such services have become the property of Council.
- 9.2.2 The POS will contain an intake substation with the necessary switchgear and a bulk supply meter to the development. Ownership of this equipment (together with the responsibility to operate, maintain and repair) will vest in the Council or any other responsible authority.
- 9.2.3 The DEVELOPER shall install the internal infrastructure from the POS for the electricity supply to a distribution box in the vicinity of each erf in the township, including the Body Corporate of any Sectional Title Scheme after which such installation will become the property of Council.
- 9.2.4 COUNCIL and/or the ASSOCIATION insofar as it is not performed by Council will be responsible for the operation and maintenance of the internal reticulation of electricity and shall further be responsible to appoint a responsible person to exercise this function on its behalf.
- 9.2.5 The liability of members of the ASSOCIATION for such charges shall be in accordance with separate sub-meters serving the erven of members, including any Sectional Title Scheme, which the DEVELOPER and/or ASSOCIATION shall be entitled to install at the cost of such member, as the case may be.
- 9.2.6 Where electricity charges are calculated and payable in terms of this Article, any value-added tax levied in respect of the supply of such electricity shall be paid by the member in question.

- 9.2.7 Lighting on the common property shall be supplied through separate electricity supply meters and the cost incurred by the ASSOCIATION in respect thereof shall be recovered from members as part of the levies imposed by the ASSOCIATION.
- 9.3 General:
- 9.3.1 The DEVELOPER and/or ASSOCIATION will provide the necessary connections to the infrastructure services to the boundary of each erf in the township, including the Body Corporate of any Sectional Title Scheme by means of sub-meters or otherwise.
- 9.3.2 Each member of the ASSOCIATION shall from date of transfer be responsible for any connection charges to the infrastructure of the township, including the costs of any metering device and the maintenance and replacement of any such device.
- 9.3.3 The ASSOCIATION shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the ASSOCIATION.
- 9.3.4 The DEVELOPER during the development period and thereafter the ASSOCIATION shall have the right to convey water, electricity, sewerage, telephone information technology, telecommunication, security communication, and any other services over any erf or building or any other portion of the township, whosoever is the owner thereof, and shall have the right of access to such premises for the purposes of installing, replacing and/or repairing such services.
- 9.3.5 The members of the ASSOCIATION and the Body Corporate of any Sectional Title Scheme will allow reasonable access to employees or representatives of the DEVELOPER or the ASSOCIATION (as the case may be) into the buildings, units or erven for purposes of maintaining any pipes or equipment or in general any of the systems necessary for the conveyance or provision of the services referred to above.
- 9.3.6 Without limiting the generality of the provisions of 9.3.4, every member shall allow gas mains, electricity, telephone and television cables and/or wires, and main and/or other waterpipes and the

sewerage and drainage, including stormwater, of any other land unit or units to be conveyed across the relevant land unit, and surface installations such as mini-substations, metre boxes and service pillars to be installed thereon, if considered necessary by the ASSOCIATION and/or the DEVELOPER (during the development period) and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the land unit at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the above.

- 9.3.7 Without limiting the generality of the provisions of Article 7.1.1 the DEVELOPER during the development period and thereafter the ASSOCIATION shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The members accept and shall be bound by and consents to the registration of the servitudes referred to in this Article and Article 7.1.1.
- 9.3.8 Council and/or the ASSOCIATION insofar as such maintenance is not properly performed or performed at all by Council will be responsible for the maintenance of the internal sewer reticulation serving the township as well as for the maintenance of the sewerage treatment plant. The maintenance costs in respect of such services rendered by the ASSOCIATION relating to the internal sewer reticulation and the sewerage treatment plant, as well as sewerage services costs insofar such maintenance services are not rendered by Council will be recovered by means of levies imposed by the ASSOCIATION.
- 9.3.9 Council and/or the ASSOCIATION insofar or as such maintenance is not properly performed or performed at all by Council, will be responsible for the maintenance of the internal storm water system serving the township as well as for the maintenance of any storm water catchment dams. The maintenance costs insofar such maintenance is not rendered by Council will be recovered by means of levies imposed by the ASSOCIATION.

- 9.3.10 The Local Authority shall not be liable for the malfunction of the servicing of any internal roads and/or storm water drainage system and/or essential services forming part of the Township unless responsibility for such roads, drainage system and/or essential services is specifically assumed and taken over by the Local Authority.

10. ARCHITECTURAL AND DEVELOPMENT GUIDELINES

- 10.1 The architectural and town planning design manual constitute an integral part of these Articles. It is recorded that the architectural and town planning guidelines contain the procedures, requirements and guidelines to be adhered to by every member who wishes to effect construction, improvements or alterations to or undertake any renovation of any erf or unit. The architectural and town planning guidelines that will be in force and effect are those contained in Annexure "A" hereto and as may be amended from time to time by the Trustees.
- 10.2 All improvements shall be of sound construction and shall comply with the provisions of the architectural and town planning guidelines contained in these Articles;
- 10.3 No construction or erection of any improvements or alterations to and no renovation of any erf or unit that is undertaken by any party other than the DEVELOPER or any landscaping on any property may commence prior to the due and proper approval of plans for such construction, improvements, alterations or renovation by both the design review committee and, where required, the local authority, in accordance with the following provisions:
- 10.3.1 the member shall submit to the design review committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
- 10.3.2 the member shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the design review committee;
- 10.3.3 after the approval of such plans by the design review committee the plans shall be submitted to the local authority for approval. No plan

shall be submitted to the local authority unless it bears the endorsement of approval of the design review committee, clearly dated, certifying that the plan complies with both the architectural and development guidelines.

- 10.4 When effecting the construction, improvements or alterations or renovations contemplated in 10.3, the member shall at all times comply strictly with the architectural and town planning guidelines as well as all conditions and standards imposed by the local authority insofar as these may be additional to the provisions of the architectural and town planning guidelines. No member shall be entitled to deviate in any manner whatsoever from any plan approved by the design review committee and the local authority unless the prior written approval of both the design review committee and the local authority for such proposed deviation has been obtained.
- 10.5 No member shall be entitled to challenge or contest any of the provisions of the architectural and town planning guidelines. No application for the amendment of the architectural and development guidelines shall be made to the local authority or the ASSOCIATION unless prior written consent of the DEVELOPER in the developing phase and thereafter the design review committee of the ASSOCIATION has been obtained thereto.
- 10.6 No Body Corporate shall adopt any conduct rules in terms of the provisions of the Sectional Titles Act, which are in conflict with any of the architectural and town planning guidelines, unless the prior written consent of the DEVELOPER in the developing phase and thereafter the design review committee of the ASSOCIATION has been obtained thereto.
- 10.7 The DEVELOPER and after the development period, the Trustees may amend the architectural and town planning guidelines from time to time and in respect of each phase of the development.

11. ESTATE RULES

- 11.1 In order to promote and implement the main business and main object of the ASSOCIATION, and to ensure the beneficial management and conduct of the business of the ASSOCIATION and to further advance the interests of Members, the Trustees shall formulate and enforce rules (and protocols) (collectively known as and referred to in these Articles as “rules”) as follows:

- 11.1.1 Estate Rules dealing with such matters pertaining to the ASSOCIATION and as more fully detailed hereunder (for convenience “the Estate Rules”).
- 11.1.2 Rules applicable to the determination of levies and matters relating thereto (as dealt with more fully above in these Articles) (for convenience, “the Levy Rules”).
- 11.1.3 Rules dealing with disciplinary matters, sanctions and fines (for convenience “the Disciplinary Code”).
- 11.1.4 To the extent considered necessary and in addition to any provisions contained in the Estate Rules and Rules relating to safety and security (for convenience “the Security Code”).
- 11.2 All Rules, including any amendment, addition or deletion thereto, shall require the approval of Members at an AGM.
- 11.3 The Estate Rules shall deal with the following matters, without circumscribing the nature and extent of the Rules which may comprise thereof (including, if relevant, any matters which ought to be dealt with in any other Rules):
 - 11.3.1 the conduct of Members and all persons within the Township including the control of operations and movements of estate agents, building contractors, sub-contractors, project managers, other agents (e.g. architects, engineers, landscapers and the like), project managers and the employees and agents of the foregoing;
 - 11.3.2 the conduct of Members and all persons within the Township for the prevention of nuisance of whatsoever nature and in order to maintain good neighbourly relations, including the regulation of the use of any noise-making/generating equipment/appliances (e.g. lawnmowers, power tools, tv/radio);
 - 11.3.3 the control of all visitors to the Township including tenants, other occupiers of any Erf or Unit, customers, clients and patients of any business conducted on or from within the Township;
 - 11.3.4 the operations and activities of all businesses whatsoever conducted on or from within the Township, including the methods of sale and

advertising within the Township;

- 11.3.5 the nature, method and location of any signage, posters or other form of advertising;
- 11.3.6 in particular and without derogating from the generality of the other provisions herein contained, regulating the conduct of estate agents within the Township, show properties, the control and movement of the estate agents and prospective clients (purchasers);
- 11.3.7 the maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable (encroaching/toxic) flora;
- 11.3.8 the construction and material specification of all improvements and in particular, without derogating from the generality of the foregoing, structures of whatsoever nature, paving, pavements/sidewalks, installations of whatsoever nature (including without limiting the generality thereof, air-conditioning units, swimming pool pumps/filters, tv aerials/dishes, lighting, washing lines, refuse bins, carports, awnings, security systems and landscaping features as well as the maintenance of all of the foregoing;
- 11.3.9 the control of vehicular traffic of whatsoever nature, including parking;
- 11.3.10 access to and egress from the Township including any particular facilities or amenities within the Township;
- 11.3.11 safety and other regulations applicable to the playing of any sport or engagement in any other recreational activity including, but not limited to, the use of balls and other sporting equipment, cycles, scooters, skateboards, etc;
- 11.3.12 the control and recycling of refuse, littering and other safety and anti-pollution related measures;
- 11.3.13 the keeping of any animals (including pets, birds, fish, reptiles or insects) and in addition, the control of pets in and about the Township, the prevention of foulment, the rights being further

- granted to the ASSOCIATION to enforce the removal of any animal which creates a nuisance and/or constitutes a danger;
- 11.3.14 the use of any recreational facility or other amenities;
- 11.3.15 the use by the Home Owners of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 11.3.16 the keeping of pets;
- 11.3.17 conditions and restrictions, landscaping of Erven or Units and common properties;
- 11.3.18 generally in regard to any other matter which the Trustees from time to time considers appropriate.
- 11.4 The Security Code shall, in addition to the Estate Rules, deal with the following:
- 11.4.1 all security related matters affecting any persons in or about the Township, access and egress to and from the Township;
- 11.4.2 security installations affecting the Township, its perimeter and access points, and security installations (burglar alarms, CCTV, electrical fencing and other related equipment);
- 11.4.3 crime prevention and monitoring procedures;
- 11.4.4 fire prevention and control measures;
- 11.4.5 vehicle security.
- 11.5 The Trustees may take or cause to be taken such steps as they may consider necessary to remedy the breach of any Rules of which the Members may be guilty and debit the costs of so doing to the Member concerned which amount shall be deemed to be debt owing by the Member of the ASSOCIATION. In addition the Trustees may impose a system of fines or other penalties as herein provided for. The amounts of such fines and/or penalties shall be determined by the Trustees from time to time.

- 11.6 In the event of any breach of the Rules by any Member, other than the home owner, such breach shall be deemed to have been committed by the home owner concerned and the Trustees shall be entitled to take such action as they may deem fit against the responsible Member.
- 11.7 The Disciplinary Code:
- 11.7.1 the Trustees shall be responsible for the enforcement of all Rules including the Disciplinary Code;
- 11.7.2 the Trustees shall be entitled to impose upon Members fines in respect of non-compliance with or a breach of the Rules and/or with respect to a breach of the obligations imposed upon Members in terms of these Articles.
- 11.7.3 the Disciplinary Code shall contain:
- 11.7.3.1 a protocol relating to warnings providing for the delivery of a written notice (demand) requiring offenders to remedy any stipulated breach of these Articles and/or Rules to be remedied within a reasonable period and failing which, a prescribed process of enforcement of sanctions (including the imposition of a fine/s shall be implemented);
- 11.7.3.2 a schedule indicating the sanctions and specifying the fines or other penalties which shall be imposed or levied in the event of an unremedied breach, as specified, or otherwise to be imposed in the discretion of the Disciplinary Committee;
- 11.7.4 a process shall be prescribed whereby a Member who disputes that he has committed a breach of any obligation in terms of these Articles and/or the Rules, shall be entitled:
- 11.7.4.1 to deliver a submission, in writing, to the Disciplinary Committee within a period of not more than 7 (seven) days from the date of expiry of the period of demand contained in the notice delivered to the affected Member;
- 11.7.4.2 providing for the convening of a sitting of the Disciplinary Committee (which shall comprise of not less than 3 (three)

Members, one of whom shall be a Trustee (who shall function as the Chairperson of such Disciplinary Committee);

- 11.7.4.3 the Disciplinary Committee proceedings shall comply with the principles of natural justice;
- 11.7.4.4 the decision of the Disciplinary Committee shall be binding upon the ASSOCIATION and the affected Member, who shall, if he is aggrieved by the decision of the Disciplinary Committee (and/or the sanction or fine imposed) be entitled, within 10 (ten) days of receipt of delivery of written notification of the Disciplinary Committee's decision, to require same to be reviewed by an arbitrator (who shall be an independent attorney or advocate of not less than 10 years standing, whose identity shall mutually be agreed between the Disciplinary Committee and the affected Member, and failing agreement appointed by the President for the time-being of the Law Society of Namibia;
- 11.7.4.5 such arbitration shall be dealt with in an informal manner in accordance with the format prescribed by the arbitrator;
- 11.7.4.6 the arbitrator shall be entitled to make an award with respect to the costs of the arbitration;
- 11.7.4.7 the arbitrator shall act as an expert and his decision shall be final and binding upon the parties;
- 11.7.4.8 either party to the dispute (the ASSOCIATION) or the affected Member) shall be entitled to make the arbitrator's award an order of a competent Court;
- 11.7.4.9 notwithstanding the convening of a meeting of the Disciplinary Committee, in circumstances where the affected Member has delivered a written submission and/or the submission to arbitration (as hereinabove provided), neither the ASSOCIATION nor the affected Member shall be prevented from seeking any urgent or interim relief from a competent Court.

- 11.8 The provisions of this Article 11 shall continue to apply in circumstances where the affected Member ceases to be a Member at any time after receipt of the written notice referred to in Article 11.7.3.
- 11.9 Nothing to the contrary herein contained excepted, should a Member fail to remedy a breach of these Articles and/or Rules despite written notice, it shall be competent for the ASSOCIATION to take such steps as are deemed necessary to remedy such breach (and where relevant, prevent any further recurrence) and to recover all reasonable costs incurred in connection therewith from the affected Member (and which amounts shall comprise of a debt).
- 11.10 The Member remains responsible and liable for any breaches committed by or any damages caused by a family member, employee, agent, contractor, sub-contractor, visitor or guest (including any customer, client or patient) whilst in or about the Township.
- 11.11 The Trustees shall ensure that management delivers or otherwise publicises the Rules in a manner which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of all Rules.
- 11.12 Any fines levied against the Members shall be payable together with the levies due at the commencement of the month following upon the month during which such fine was imposed.

12. TRUSTEES

- 12.1.1 There shall be a Board of Trustees of the ASSOCIATION consisting of 5 (five) Trustees who shall be nominated to the portfolios of Chairperson, Vice-Chairperson, Finances, Security and Environment/Building Standards, and elected by the Members at an Annual General Meeting. The Trustees of the ASSOCIATION shall for the development period be divided into two classes, namely DEVELOPER Trustees and Member Trustees. Upon expiry of the development period there shall only be Member Trustees.
- 12.1.2 The portfolio of Environment/Building Standards includes affairs relating to aesthetics, design and building control.

- 12.2 During the full development period 2 (two) Trustees shall be Member Trustees appointed by the Representatives and the remaining 3 (three) Trustees shall be DEVELOPER Trustees appointed by the DEVELOPER.
- 12.3 After termination or expiration of the development period all the trustees shall be appointed by the members.
- 12.4 A trustee shall be a natural person and shall not necessarily be a member of the ASSOCIATION or of an approved extension concerned. A trustee, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of these Articles.

13. REMOVAL AND ROTATION OF TRUSTEES

- 13.1 Each Trustee shall continue to hold office as such from the date of his election until the second Annual General Meeting following such election, at which meeting, and subject to the hereinafter set out provisions, each Trustee shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Trustees.
- 13.2 A Trustee shall be deemed to have vacated his office as such upon:
- 13.2.1 his having become disqualified to act as a director in terms of the provisions of the Companies Act;
 - 13.2.2 his estate being sequestrated, whether provisionally or finally;
 - 13.2.3 the commission by him of any act of insolvency;
 - 13.2.4 his conviction for any offence involving dishonesty or any other serious criminal offence;
 - 13.2.5 his becoming of unsound mind or being found lunatic;
 - 13.2.6 his resigning from such office in writing;

provided that anything done in the capacity of a trustee in good faith by a person who ceases to be a trustee, shall be valid until the fact that he is no longer a trustee has been recorded in the minute book of the ASSOCIATION.

- 13.3 The DEVELOPER may revoke the appointed Trustee and remove and replace any DEVELOPER trustee at any time upon written notice to the remaining trustees.
- 13.4 Any Trustee, with the exception of a Trustee appointed by the DEVELOPER, may be removed by a majority Trustee decision, for any reason whatsoever.
- 13.5 The Chairperson shall preside at all meetings of the Board of Trustees as well as all General Meetings of the Members and in the event of him not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson shall act in his stead, or failing the Vice-Chairperson, a Chairperson shall be appointed by the meeting to act in his stead for such meeting and any adjournment thereof.
- 13.6 Trustees shall be entitled to be reimbursed in respect of all reasonable and vouched expenses necessarily incurred by them respectively in or about the performance of their duties as Trustees.
- 13.7 If, as a result of retirement, resignation or otherwise, the total number of Trustees falls below the prescribed number, the Trustee shall act promptly to bring the number of Trustees up to the required number as specified in these Articles. If the Trustee so retiring or resigning was a nominee of the DEVELOPER, then his successor shall be appointed by the DEVELOPER. Any resolutions taken or acts performed by the Trustees during a period when the number falls short of that provided in 12.1 above shall not be invalidated by such shortfall.
- 13.8 The Trustee shall have the power to co-opt persons into the board for the purposes of assisting the Trustees in carrying out any of their functions.

14. POWERS OF TRUSTEES

- 14.1 Unless otherwise resolved by way of a Special Resolution at any General Meeting, Trustees are authorised and empowered to:
- 14.1.1 Formulate and enforce the Estate Rules.
- 14.1.2 Appoint and dismiss management.

- 14.1.3 Delegate powers to management (including the power to appoint and dismiss employees other than senior employees).
- 14.1.4 Co-opt onto the Board, in an advisory capacity, any persons who need not be a Member/s for such purpose and period (which shall not extend beyond the Annual General Meeting following upon such co-option) as may be determined.
- 14.1.5 Institute and defend legal proceedings for the recovery of any debt and defend any legal proceedings brought against the ASSOCIATION; the institution of any legal proceedings (other than for the recovery of a debt) and engagement in any other legal proceedings, however, requires the approval of the Members at an Extraordinary General Meeting by way of a special resolution.
- 14.1.6 Open and conduct a banking account/s for purposes of the ASSOCIATION'S business.
- 14.1.7 Disburse, from the bank account/s such operational and capital expenditure as approved in the budget (and/or as raised by way of any additional and/or special levies) and as otherwise may be authorised by a General Meeting.
- 14.1.8 Enforce compliance with the provisions of these Articles.
- 14.1.9 Enter into contracts necessary for the purposes of the main business and implementation of these Articles.
- 14.1.10 Appoint Standing Committees with respect to Security, Environment, Building Control and Management, Design Review and Disciplinary and such ad hoc Committees as deemed necessary, and to delegate to such Committees such powers and authorities as may be considered necessary, subject to any restrictions imposed or directives given at any General Meeting.
- 14.1.11 Terminate any Committee and/or revoke and/or amend any appointments to such committees and/or the delegations of authority to such Committee from time to time, as deemed necessary.
- 14.1.12 Meet to attend to their business, adjourn, and otherwise regulate

their meetings, as they think fit, subject to the provisions of these Articles.

- 14.1.13 Collect or cause to be collected the levies referred to in Article 4.4.2.
- 14.1.14 Execute the resolutions of the ASSOCIATION and conduct the day-to day administration of the ASSOCIATION.
- 14.2.1 The quorum for any meeting of the Trustees shall be 3 (three) Trustees present personally of which 2 (two) Trustees shall be DEVELOPER Trustees during the development period.
- 14.2.2 A Trustee shall not be entitled to appoint any alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfill his functions and duties.
- 14.2.3 A Trustee may not otherwise delegate any of his obligations, save as approved by a majority of the (other) Trustees.
- 14.3 Any resolution passed by the Board of Trustees shall be carried by a simple majority.
- 14.4 Should there be an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated. In the case of an equality of votes the Chairperson shall have a second or casting vote.
- 14.5.1 The Trustees shall cause the minutes of each meeting to be kept in accordance with Section 212 of the Companies Act, which minutes shall be reduced to writing within 7 (seven) days and certified as correct by the Chairperson at the next meeting.
- 14.5.2 A copy of each minute shall be delivered by the Chairperson to each Trustee within 14 (fourteen) days of the meeting to which such minutes relate.
- 14.5.3 All minutes of Trustees meetings shall, after certification, be placed in the Trustees Minute Book which shall be kept by management in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies.

- 14.6 The Trustees' Minute Book shall be open for perusal at all reasonable times by any Trustee, the Auditors and Members.
- 14.7 Subject to the provisions of these Articles, the proceedings of any Trustees meeting shall be conducted in such reasonable manner and form as the Chairperson shall direct.
- 14.8 A resolution signed by all the Trustees shall be valid in all aspects as if it had been duly passed at a meeting of the Board of Trustees.
- 14.9 The Trustees shall ensure that each Standing Committee is under the Chairperson-ship of a Trustee or the Estate Manager.
- 14.10 For the duration of the development period the committee appointed by the DEVELOPER will be the members of the Design Review Committee.

15. PROCEEDINGS AT MEETINGS OF TRUSTEES

- 15.1 The trustees may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these Articles.
- 15.2 The quorum necessary for the holding of all meetings of the Trustees shall be 3 (three) Trustees present personally, provided that during the development period at least 2 (two) DEVELOPER Trustees shall be present at all meetings of Trustees to form a quorum. If no quorum is present within 30 (thirty) minutes after the time for commencement of the meeting then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those Trustees present at the adjourned meeting shall constitute a quorum.
- 15.3 At any meeting of the trustees during the development period, each member trustee shall have one (1) vote and each DEVELOPER trustee shall have three (3) votes.

15A. BOARD OF REPRESENTATIVES OF APPROVED EXTENSION

- 15A.1.1 There shall be a Board of Representatives of each approved extension consisting of 5 (five) Representatives to fill the portfolios of Chairperson, Vice-Chairperson, Finances, Security and Environment/Building Standards, and

who shall, in the case of a first election of Representatives, be elected by the members of the approved extension at a General Approved Extension Meeting (GAEM), and, in the case of a subsequent election of Representatives, be elected at an Annual General Approved Extension Meeting (AGAEM). A Board of Representatives shall for the development period be divided into two classes, namely DEVELOPER Representatives and Member Representatives. Upon expiry of the development period there shall only be Member Representatives to be elected as provided in Article 16.

- 15A1.2 The portfolio of Environment/Building Standards includes affairs relating to aesthetics, design and building control.
- 15A.2 During the development period 2 (two) Representatives shall be Member Representatives appointed by the members of an approved extension concerned and the remaining 3 (three) Representatives shall be DEVELOPER Representatives appointed by the DEVELOPER: provided that a DEVELOPER Representative does not necessarily have to be a homeowner.
- 15A.3 After termination or expiration of the development period all the Representatives shall be appointed by the members of the approved extension concerned.
- 15A.4 A Representative shall be a natural person and shall not necessarily be a member of the ASSOCIATION or of an approved extension concerned. A Representative, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of these Articles.

15B. REMOVAL AND ROTATION OF REPRESENTATIVES

- 15B.1 Each Representative shall continue to hold office as such from the date of his election until the second AGAEM following the election, at which meeting, and subject to the hereinafter set out provisions, each Representative shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Representatives.
- 15B.2 A Representative shall be deemed to have vacated his office as such upon:
- 15B.2.1 his having become disqualified to act as a director in terms of the

provisions of the Companies Act;

- 15B.2.2 his estate being sequestrated, whether provisionally or finally;
- 15B.2.3 the commission by him of any act of insolvency;
- 15B.2.4 his conviction for any offence involving dishonesty or any other serious criminal offence;
- 15B.2.5 his becoming of unsound mind or being found lunatic;
- 15B.2.6 his resigning from such office in writing;

provided that anything done in the capacity of a Representative in good faith by a person who ceases to be a Representative, shall be valid until the fact that he is no longer a Representative has been recorded in the minute book of the Board of Representatives concerned.

- 15B.3 The DEVELOPER may revoke the election of any DEVELOPER Representative and remove and replace any DEVELOPER Representative at any time upon written notice to the remaining Representatives.
- 15B.4 Any Representative, with the exception of a Representative appointed by the DEVELOPER, may be removed by a majority representative decision, for any reason whatsoever.
- 15B.5 The Chairperson of a Board of Representatives shall preside at all meetings of that Board as well as all General Meetings of members of an approved extension and in the event of him not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson concerned shall act in his stead, or failing the Vice-Chairperson, a Chairperson shall be appointed by the meeting concerned to act in his stead for the meeting and any adjournment thereof.
- 15B.6 Representatives shall be entitled to be reimbursed in respect of all reasonable and vouched expenses necessarily incurred by them respectively in or about the performance of their duties as representatives.
- 15B.7 If, as a result of retirement, resignation or otherwise, the total number of Representatives falls below the prescribed number, the Representatives shall

act promptly to bring the number of Representatives up to the required number as specified in these Articles. If the Representative so retiring or resigning was a nominee of the DEVELOPER, then his successor shall be appointed by the DEVELOPER. Any resolutions taken or acts performed by the Representatives during a period when the number falls short of that provided in 15A.1 above shall not be invalidated by the shortfall: provided that the DEVELOPER Representatives have voted in favour of the resolution concerned, failing which the resolution shall lapse.

- 15B.8 The Representatives shall have the power to co-opt on to the Board of Representatives in an advisory capacity any person who need not be a Member for the purpose of assisting the Representatives in carrying out any of their functions or for such other purpose and period (which shall not extend beyond the AGAEM following upon the co-option) as may be determined.

15C. POWERS OF REPRESENTATIVES

- 15C.1 Unless otherwise resolved by way of a Special Resolution at any General Meeting of members of an approved extension, Representatives are authorised and empowered to:
- 15C.1.1 Determine which 3 (three) of them will represent the approved extension concerned at any AGM or EGM: provided that during the development period 2 (two) of the 3 (three) Representatives must be Developer representatives.
- 15C.1.2 Formulate and enforce any Extension Rules: provided that Extension Rules may not be in conflict with any Estate Rule dealing with or providing for a specific matter and that in the case of conflict of any Extension Rule with an Estate Rule, the Estate Rule shall prevail.
- 15C.1.3 Enforce compliance with the Extension Rules.
- 15C.2.1 A Representative shall not be entitled to appoint any alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfill his functions and duties.
- 15C.2.2 A Representative may not otherwise delegate any of his obligations, save as approved by a majority of the (other) representatives.

- 15C.3 Any resolution passed by the Board of Representatives shall be carried by a simple majority.
- 15C.4 Should there be an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated. In the case of an equality of votes the Chairperson shall have a second or casting vote.
- 15C.5.1 The Representatives shall cause the minutes of each meeting to be kept in accordance with Section 212 of the Companies Act, which minutes shall be reduced to writing within 7 (seven) days and certified as correct by the Chairperson thereof at the next meeting.
- 15C.5.2 A copy of each minute shall be delivered by the Chairperson to each Representative within 14 (fourteen) days of the meeting to which the minutes relate.
- 15C.5.3 All minutes of meetings of a Board of Representatives shall, after certification, be placed in the minute book of the Board of Representatives concerned which shall be kept by management in accordance with the provisions of the laws relating to the keeping of minutes of meetings of directors of companies.
- 15C.6 The minute book of a Board of Representatives shall be open for perusal at all reasonable times by any Representative, any Trustee and members of the approved extension concerned.
- 15C.7 Subject to the provisions of these Articles, the proceedings of any meeting of a Board of Representatives shall be conducted in such reasonable manner and form as the Chairperson thereof shall direct.
- 15C.8 A resolution signed by all the Representatives shall be valid in all aspects as if it had been duly passed at a meeting of the Board of Representatives: provided that resolutions by Representatives are subject to these Articles and may not be in conflict with any resolution taken by the Trustees.

15D. PROCEEDINGS AT MEETINGS OF REPRESENTATIVES

- 15D.1 The Representatives may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these Articles.

- 15D.2 The quorum necessary for the holding of all meetings of the Board of Representatives shall be 3 (three) Representatives present personally, provided that during the development period at least 2 (two) DEVELOPER Representatives shall be present at all meetings of the Board of Representatives to form a quorum. If no quorum is present within 30 (thirty) minutes after the time for commencement of the meeting then it shall stand adjourned for 7 (seven) days, or if that is not a business day, then to the next business day thereafter, and those Representatives present at the adjourned meeting shall constitute a quorum: provided that at least 2 (two) DEVELOPER Representatives shall be present.
- 15D.3 At any meeting of the Representatives during the development period each member representative shall have one (1) vote and each DEVELOPER Representative shall have three (3) votes.

16. MEMBERS MEETINGS

- 16.1 Types of members meetings:
- 16.1.1 Approved Extension Meetings
- 16.1.1.1 General Approved Extension Meeting (GAEM):
- 16.1.1.1.1 Subject to Article 16.1.1.2, the Chairperson of the Trustees shall convene and hold, as soon as practicable, but not later than 1 (one) month after 50% (fifty per cent) of the erven or units in an approved extension have been transferred, a GAEM of the members of that approved extension.
- 16.1.1.1.2 The Chairperson of the Trustees shall in the case of an approved extension which has already been proclaimed in the Gazette prior to the commencement of these amendments, convene and hold the GAEM referred to in Article 16.1.1.1 as soon as practicable, but not later than 1 (one) month after the date on which the amendments came into operation.
- 16.1.1.1.3 The notice convening a GAEM shall be delivered to the members of the approved extension concerned and shall contain an agenda of the business to be conducted as follows:

➡ the election, subject to Article 15A.2, of Representatives to fill the portfolios of the Board of Representatives concerned as contemplated in Article 15A.1;

subject to the proviso to Article 15C1.1, the election of 3 (three) Representatives to represent the approved extension concerned at AGM's and EGM's;

subject to Article 15C1.2, the formulation of Extension Rules;

➡ any other relevant business.

16.1.1.2 Annual General Approved Extension Meeting (AGAEM):

16.1.1.2.1 The Chairperson of the Board of Representatives of an approved extension concerned shall use his best endeavours to convene and hold the AGAEM within 1 (one) calendar month of the end of each financial year of the ASSOCIATION.

16.1.1.2.2 The notice convening an AGAEM shall be delivered to the members of the approved extension concerned and shall contain an agenda of the business to be conducted as follows:

➡ tabling of the report of the chairperson of the extension;

➡ if applicable, the election, subject to Article 15A.2, of Representatives to fill the portfolios of the Board of Representatives concerned as contemplated in Article 15A.1;

if applicable, the election, subject to the proviso to Article 15C1.1, of 3 (three) Representatives to represent the approved extension concerned at AGM's and EGM's;

subject to Article 15C1.2, the formulation or amendment of Extension Rules;

➡ any other relevant business.

16.1.1.3 Extraordinary General Approved Extension Meeting (EGAEM):

16.1.1.3.1 An approved extension may convene an EGAEM for the passing of a Special Resolution dealing with special business not dealt with at the (preceding) AGAEM or in respect of matters which a Board of Representatives concerned (or requisitionists, as dealt with in Article 16.4) believe shall fall to be resolved by the passing of a Special Resolution (and which may further include any matters required to be dealt with by the approved extension which are considered to be *ultra vires* the powers of the Board of Representatives, as referred to in these Articles).

16.1.1.4 Requisition by Members for the holding of an EGAEM:

16.1.1.4.1 A Board of Representatives shall within 14 (fourteen) days of receipt of a written requisition signed by members of the approved extension holding not less than 10% of the voting rights in the approved extension (and based on 1 (one) vote per Unit or Erf), convene an EGAEM.

16.1.1.4.2 The written notice of the requisitionists shall set out in detail a draft of the Special Resolution/s required to be tabled at such EGM.

16.1.1.5 Informal approved extension meetings of an informative nature where no resolutions may be passed:

All informal approved extension meetings referred to in Article 16.1.5 shall be held at a date, time and place as the Board of Representatives shall determine.

16.1.2 ASSOCIATION Meetings

16.1.2.1 Annual General Meeting (AGM):

16.1.2.1.1 The Trustees shall use their best endeavours to convene and hold the AGM within 2 (two) calendar months of the end of each financial year of the ASSOCIATION;

16.1.2.1.2 The notice convening the AGM shall be delivered to the Members and

shall contain an agenda of the business to be conducted as follows:

- ➡ tabling of the Chairperson's report;
- ➡ consideration of the annual financial statements (for the previous financial year) and the approval thereof;
- ➡ the budget for the affected financial year and the determination of levies and the approval thereof;
- ➡ the appointment of the ASSOCIATION'S Auditors and the remuneration payable to the Auditors;
- ➡ the election of the Trustees (to designated portfolios);
- ➡ the election of a Chairperson and a Vice-Chairperson;
- ➡ any other relevant business.

16.1.2.2 Extraordinary General Meeting (EGM):

The ASSOCIATION may convene an EGM for the passing of a Special Resolution dealing with special business not dealt with at the (preceding) AGM or in respect of matters which the Trustees (or requisitionists, as dealt with in Article 16.2) believe shall fall to be resolved by the passing of a Special Resolution (and which may further include any matters required to be dealt with by the ASSOCIATION which are considered to be *ultra vires* the powers of the Trustees, as referred to in these Articles).

16.1.2.3 Informal meetings of an informative nature where no resolutions may be passed.

All such aforementioned Meetings shall be held at a date, time and place as the Trustees shall determine, subject to the provisions of the Companies Act read together with these Articles.

16.2. Requisition by Members for the holding of an EGM.

- 16.2.1 The Trustees shall within 14 (fourteen) days of receipt of a written requisition signed by at least five members per approved extension (and based on 1 (one) vote per Representative), convene an EGM, within not less than 21 (twenty one) and not more than 35 (thirty five) days from the date of such notice in conformity with the requirements set out in Sections 189(1) (b), 189 (2) and 189 (3) of the Companies Act.
- 16.2.2 The provisions as set out in sections 193 and 194 of the Companies Act shall otherwise apply thereto.
- 16.2.3 The written notice of the requisitionists shall set out in detail a draft of the Special Resolution/s required to be tabled at such EGM.
- 16.3 Notice of Meetings – Further Provisions:
- 16.3.1 Subject to the other provisions of these Articles, each GAEM, AGAEM, EGAEM, AGM and EGM shall be called by written notice at least 21 (twenty one) clear days before the date set for the meeting.
- 16.3.2 The notice convening each such meeting shall specify the place, the day and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.
- 16.3.3 In the event that special business is to be conducted at a meeting, the notice convening the meeting shall contain adequate motivation and information to enable the Members to make an informed decision.
- 16.3.4 In the event that less than 21 (twenty one) clear days notice was provided in respect of the proposed passing of a Special Resolution, the majority of the Members having the right to attend and vote at such meeting (present in person or represented by proxy) shall be entitled, by way of a majority vote, to condone and consent to such shorter notice.
- 16.4 Quorum:
- 16.4.1 No business shall be transacted at any GAEM, AGAEM, EGAEM,

AGM and EGM unless a quorum is present within 30 (thirty) minutes of the commencement of the meeting.

16.4.2 The quorum necessary for the holding of the following meetings shall comprise the hereinafter set out percentages of the Members or Representatives, as the case may be, entitled to vote, present in person and by proxy:

16.4.2.1 GAEM (on the basis of 1 (one) vote per member): 25% (twenty five percent);

16.4.2.2 AGAEM (on the basis of 1 (one) vote per member):: 25% (twenty five percent);

16.4.2.3 EGAEM (on the basis of 1 (one) vote per member):: 25% (twenty five percent);

16.4.2.4 AGM (on the basis of one vote per Representative): 25% (twenty five percent);

16.4.2.5 EGM (on the basis of one vote per Representative): 25% (twenty five percent).

16.4.3.1 Subject to the provisions of Article 16.5.1.1, if within half-an-hour from the time appointed for the holding of a meeting referred to in Article 16.4.2.1 to 16.4.2.5 a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time (or such other place as the Chairperson of the meeting shall direct), and if at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

16.4.3.2 If the same day in the next week is not a business day (any day other than a Saturday, Sunday or proclaimed public holiday), the adjourned meeting shall be held, as indicated, on the immediately succeeding business day.

16.5 Adjournment of Meetings – Further Provisions:

- 16.5.1.1 Subject to the provisions of Article 16.4.3.1, the Chairperson shall, with the approval of a majority of the Members at any meeting referred to in Article 16.4.2.1 to 16.4.2.5 at which a quorum is present, adjourn the meeting from time to time and place to place.
- 16.5.1.2 No business shall be transacted at any adjourned meeting other than the business which fell to be transacted at the meeting from which the adjournment took place.
- 16.5.1.3 Save where a meeting is adjourned for a period of 10 (ten) days or longer, notice of the adjourned meeting shall not be required to be given to the Members.
- 16.5.1.4 Where notice of the adjourned meeting is required to be given as provided in these Articles, same shall be given in the same manner as for a new meeting.
- 16.5.1.5 Any AGAEM, EGAEM, AGM or EGM at which a Special Resolution is required to be passed shall, notwithstanding anything to the contrary contained in these Articles, be adjourned to a day not earlier than 7 (seven) days and not later than 21 (twenty one) days after the date of such meeting.
- 16.5.2 Save as aforesaid, the Members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.

17. PROXIES

- 17.1 A Member may be represented at a GAEM, AGAEM, EGAEM, AGM or an EGM by a proxy, who need not be a Member.
- 17.2 The instrument appointing a proxy shall be in writing duly signed by the Member concerned (or his appointed agent duly authorised in writing), and be substantially in the form as set out in Article 17.5.
- 17.3 The original instrument appointing a proxy (and the power of attorney or any

other authority under which it is signed) shall be delivered to the Trustees or the Board of Representatives concerned, as the case may be, by no later than 17h00 on the last business day prior to the commencement of the meeting at which the person named in the proxy instrument proposes to vote, such instrument to be tabled at the meeting and filed with the Minutes thereof, in the Minute Book concerned.

17.4 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date when it was signed, unless so specifically stated in the proxy itself.

17.5 In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form be substantially in the following form and indicate the instructions to the proxy holder in an unambiguous manner:

“PROXY FORM

I/We,, the undersigned and the registered owner of (or duly authorised by the registered owner of, in which event a copy of the authorising power of attorney and where relevant, authorising resolution shall be attached to this proxy form) being a Member of the ELISENHEIM Owners Association / the approved extension of # do hereby appointof or failing him of or failing himof as my proxy to vote for me and on my behalf at the GAEM of the approved extension of / AGAEM of the approved extension of / EGAEM of the approved extension of / AGM / EGM # to be held on the day of 20....., and at any adjournment thereof as follows:

1. Motion to
.....
.....
..

(See attached draft resolution, if relevant)

in favour Against Abstain

2. Motion to

.....
.....
..

in favour Against Abstain

3. Motion to

.....
.....
..

in favour Against Abstain

* Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification without modification

* If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.

Signed this _____ day of _____ 20____

SIGNATURE

Delete whichever is not applicable.”.

17.6 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no intimation of the death or insolvency, or revocation shall have been received by the Trustees or a Board of Representatives and the proxy at any time prior to the vote being taken in respect of which the proxy exercises such vote.

17.7 If a Member is a Close Corporation, Company, Trust or other juristic person, such Member shall lodge at the Offices of the ASSOCIATION, a resolution authorizing a particular natural person to represent the Member generally and to exercise the Members vote on its behalf. Such resolution shall be lodged

at the Offices of the ASSOCIATION at least 48 (forty eight) hours before the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

18. RESOLUTIONS

- 18.1 Every motion and every amended motion proposed for adoption as a resolution by a GAEM, AGAEM, EGAEM, AGM or EGM shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.
- 18.2 An amendment proposed shall also require to be seconded, and if approved by the meeting, will replace the initial proposal, and such amended proposal must then be put to the vote.
- 18.3.1 An ordinary motion or the amendment of any ordinary motion shall be carried by a simple majority of all votes cast.
- 18.3.2 Should there be an equality of votes for and against any ordinary motion, the motion shall be deemed to have been defeated.
- 18.3.3 A Special Resolution shall be carried by 75% (seventy five percent) of the votes of Members (in good standing) present in person or by proxy at a GAEM, AGAEM, EGAEM, AGM or EGM, and in the event of no quorum being present by 75% (seventy five percent) of the votes of the Members (in good standing) present in person or by proxy at any adjourned meeting in accordance with the provisions of Article 16.4.
- 18.4 All matters or motions set down for adoption at a GAEM, AGAEM, EGAEM, AGM or EGM, except those referred to in Article 16.1.2.1.2 hereof shall be regarded as special matters or motions requiring a Special Resolution.
- 18.5 Where less than 21 (twenty one) days' clear notice was provided in respect of the relevant GAEM, AGAEM, EGAEM, AGM or EGM, the consent, if relevant, with respect to the waiver of due notice by a majority of the Members (as referred to in Article 16.4), shall be signed in the prescribed form (as required in terms of the Companies Act) together with a copy of the Special Resolution so passed (if relevant).

- 18.6 A copy of the notice convening the meeting together with the consent/waiver in respect of short notice, as referred to above, shall be kept in the Minute Book concerned.
- 18.7 The Trustees or Board of Representatives concerned, as the case may be, shall deliver a copy of all Special Resolutions to the Members, alternatively ensure that the text thereof is accessible on the ASSOCIATION'S website.

19. **VOTING RIGHTS OF MEMBERS**

19.1 At every GAEM, AGAEM and EGAEM:

- 19.1.1 Subject to Article 19.1.3, every member of the Association who is in good standing (who is not in arrears with respect to any levies or other debt), shall in respect of the approved extension in which he is a homeowner, be entitled to vote in person or by proxy and shall have 1 (one) vote for each Erf registered in his name, subject to the provisions of section 205(1) and (2) of the Companies Act.
- 19.1.2 If an Erf or a Unit is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
- 19.1.3 The body corporate of every sectional title complex has in respect of the extension in he is a homeowner one vote in respect of all the units in the complex: provided that the owner of a unit is in good standing (in other words is not in arrears with respect to any levies or other debt),

19.2 At every AGM or EGM:

Every Representative of an approved extension elected to represent his approved extension at AGM's or EGM's as contemplated in Article 16.1.1.1.3 or 16.1.1.2.2 who is in good standing (who is not in arrears with respect to any levies or any other debt), shall be entitled to vote in person or by proxy and shall have 1 (one) vote, subject to the provisions of section 205(1) and (2) of the Companies Act.

19.3 Voting-Determination

- 19.3.1 At any GAEM, AGAEM, EGAEM, AGM or EGM a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded by the Chairperson or Members as provided in terms of section 198(1)(b) of

the Companies Act.

- 19.3.2 Unless a poll is demanded before or on the declaration of the result of a show of hands, a declaration by the Chairperson of the meeting concerned that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or defeated, an entry to that effect in the Minute Book concerned shall be conclusive evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against such resolution.
- 19.3.3 A demand for a poll may be withdrawn.
- 19.3.4 Should a poll be demanded, it shall be taken in such a manner as the Chairperson of the meeting concerned directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 19.3.5 Scrutineers shall be elected by the meeting to determine the result of the poll.
- 19.3.6 Should there be an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 19.3.7 A poll demanded with respect to the election of a Chairperson and/or a Trustee and/or a member of a Board of Representatives or on the issue of any adjournment shall be taken forthwith.
- 19.3.8 A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs.
- 19.3.9 The demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 19.3.10 Unless any Member present in person or by proxy at a GAEM, AGAEM, EGAEM, AGM or EGM prior to closure of the meeting, objects to any declaration made by the Chairperson, with regard to the result of any voting at the meeting, whether by show of hands or otherwise, or to the correctness or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly

constituted and conducted and an entry in the Minute Book concerned to the effect that the motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

- 19.3.11 Notwithstanding any condition or provision to the contrary hereinbefore, a DEVELOPER Trustee and a DEVELOPER Representative shall, during the whole development period, be entitled to three times the total number of votes of all the other members of the ASSOCIATION or an approved extension provided that upon completion of the development or abandonment thereof by the DEVELOPER, the DEVELOPER shall cease to have the additional votes as provided for herein.

20. ACCOUNTING RECORDS

- 20.1 The trustees shall cause such accounting records as are prescribed by section 292 of the Companies Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the ASSOCIATION and to explain the transactions and financial position of the trade or business of the ASSOCIATION.
- 20.2 The accounting records shall be kept at the registered office of the ASSOCIATION or at such other place or places as the trustees think fit, and shall always be open to inspection by the trustees.
- 20.3 The trustees shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the ASSOCIATION or any of them shall be open to inspection by members not being trustees, and no member (not being a trustee) shall have any right of inspecting any accounting records or documents of the ASSOCIATION except as conferred by the Companies Act or authorised by the trustees.
- 20.4 The trustees shall from time to time cause to be prepared and laid before the ASSOCIATION in general meeting such financial statements as are referred to in sections 294 and 296 of the Companies Act.
- 20.5 A copy of the audited annual financial statements which are to be laid before the ASSOCIATION in annual general meeting shall, not less than seven (7)

days before the date of the meeting, be available for members at the office of the Estate Manager.

21. SERVICE OF NOTICES

21.1 The ASSOCIATION may give notices to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic of Namibia supplied by him to the ASSOCIATION for the giving of notices to him.

21.2.1 Notice of every GAEM, AGAEM or EGAEM shall be given to every member of an approved extension.

21.2.2 Notice of every AGM or EGM shall be given:

21.2.2.1 to every member of the ASSOCIATION;

21.2.2.2 to the auditors for the time being of the ASSOCIATION;

provided that no other person shall be entitled to receive a notice of general meetings.

21.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

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

21.5 When a given number of days' notice or notice extending over any other period is required to be given, the period shall be calculated by excluding the first day and including the last day.

22. INDEMNITY

22.1 Every Trustee, Representative, servant, agent and employee of the ASSOCIATION and management (and their employees), shall be indemnified by the ASSOCIATION against all costs, losses and expenses (inclusive of travelling expenses), which such person or person may

reasonably and necessarily incur or become liable for by reason of any contract entered into or by any act or deed done by such person or persons in the discharge of their respective duties and obligations to the ASSOCIATION and an approved extension, and in the case of a Trustee or representative, including his duties as Chairperson or Vice-Chairperson and otherwise as a Member of any Committee.

- 22.2 The provisions as set out in Article 22.1 shall similarly apply insofar as every co-opted Trustee and member of any committee appointed by the Trustees are concerned and the ASSOCIATION indemnifies all such persons accordingly.
- 22.3 Without prejudice to the generality of the foregoing, the ASSOCIATION indemnifies every such Trustee, Representative or other person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.
- 22.4 Members conversely indemnify the ASSOCIATION (including management) and their respective officers, employees and agents in respect of any claims, damages or losses (including costs and interest) suffered or sustained as a result of any unlawful act, negligence (including any act or omission) and/or as a result of any breach of the provisions of these Articles and/or the Rules, by the Member, his family, employees, agents, contractors, subcontractors, tenants (and other occupiers of the Erf or Unit), guests and visitors (including any customer, client or patient) and which act, omission and/or breach occurs, if relevant, in and about the Township.
- 22.5 The Trustees shall further be entitled to implement such measures and effect such insurances pertaining to all risks, whether insurable or otherwise and shall procure that the ASSOCIATION is covered by such short-term insurances (including, but not limited to, public liability cover) as is determined necessary from time to time, the right further being reserved to deal with the foregoing in terms of the Rules.

23. GENERAL

- 23.1 Whenever the trustees or a Board of Representatives concerned consider that the appearance of any erf or unit or building in the township vested in a member is such as to be unsightly or injurious to the amenities of the

surrounding area or the township generally, they may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the member fail within a reasonable time, to be specified in such notice, to comply therewith, the trustees may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the ASSOCIATION.

the trustees or a Board of Representatives shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the trustees or a Board of Representatives acted unreasonably.

- 23.2 Any member as registered owner of an erf shall construct and complete the buildings and improvements thereon within two (2) years after the first registration (irrespective of whether such transfer was into his name or into the name of any predecessor), unless an extension is allowed by the DEVELOPER or ASSOCIATION.
- 23.3 Should any member fail to comply with the provisions of Article 23.2, the DEVELOPER shall be entitled to repurchase the Erf or Unit at the original purchase price without any interest and if the DEVELOPER does not exercise its rights of repurchase, the ASSOCIATION shall be entitled to impose triple the amount of levies due by such member in terms of Article 9.
- 23.4 The ASSOCIATION may enter into agreements with any third party for the provision of facilities and services to or for the members and may levy charges in respect of the provision thereof, or may pass on such costs direct to the members.
- 23.5 Any person using any of the services, land or facilities of the ASSOCIATION does so entirely at his own risk.
- 23.6 The ASSOCIATION may at its pleasure permit the members, subject to the provisions of these Articles, to use the open space and roads, and shall do so unless by special resolution taken at an extraordinary general meeting called for the purposes, it is otherwise resolved for good reason.
- 23.7 The ASSOCIATION may from time to time and whenever they deem it

necessary, limit, restrict, or suspend such use in relation to any part of such roads and open space for good reason.

24. DISPUTES

- 24.1 Any dispute arising between a Member and the Trustees (as representatives of the ASSOCIATION) or between a Member and a Board of Representatives concerned (as representatives of an approved extension) as to the construction, meaning or interpretation of any of the provision of these Articles or as to the rights, obligations or liabilities of the ASSOCIATION or any Member in terms of these Articles shall be determined in terms of this Article, except when an interdict is sought for urgent relief, which may be obtained from a court of competent jurisdiction.
- 24.2 On a dispute arising, the party who wishes to have the dispute determined must notify the other party thereof in writing. Unless the dispute is resolved amongst the parties to that dispute within fourteen (14) days of such notice, either of the parties may refer the dispute to determination in terms of this Article.
- 24.3 If a party exercises his right in terms of this Article to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of ten (10) years' experience in their field:
- 24.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
- 24.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
- 24.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
- 24.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising professional engineer;
- 24.3.5 if the dispute relates to any other matter, such other independent and suitably qualified person.

- 24.4 If the parties are unable to agree either on the person referred to in this Article or on the classification of the dispute within a period of seven (7) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Law Society of Namibia.
- 24.5 Any person agreed upon and nominated as aforesaid (“the expert”), shall in all respects act as an expert and not as an arbitrator.
- 24.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 24.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within twenty one (21) days or so soon thereafter as possible, after it has been demanded.
- 24.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 24.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
- 24.10 The provisions of this Article constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
- 24.11 The provisions of this Article shall be deemed to be severable from the rest of these Articles and shall remain binding and effective as between the parties notwithstanding that these Articles may otherwise be cancelled or declared of no force and effect for any reason.

25. ESTATE MANAGER

- 25.1 The DEVELOPER shall for the duration of the development period and thereafter the trustees be entitled to appoint an estate manager to control, manage and administer the development and the common property and to

exercise such powers and duties as may be entrusted to the estate manager, including the right to collect levies.

- 25.2 The terms and conditions of the appointment of the estate manager shall be in the discretion of the DEVELOPER or the trustees as the case may be.

26. AMENDMENT

- 26.1 Notwithstanding the provisions of this Article the DEVELOPER shall during the development period have the right to amend these Articles without the prior approval of the local authority or any other relevant authority and shall further have the right to veto any proposed amendment of these Articles if there is a reasonable apprehension that such amendment could detrimentally affect the DEVELOPER'S ability to complete the development in accordance with its development plans. Notwithstanding the provisions of this Article the DEVELOPER shall not have the right to vary the provisions relating to qualification for membership of the ASSOCIATION, the proportionate liability of members for the payment of levies or the voting rights of members.

- 26.2 Subject to the provisions of the Article above, every amendment of these Articles of whatever nature including any addition thereto, deletion therefrom or substitution thereof shall require the approval of at least 75% (seventy-five per centum) of the total number of votes allocated to members of the ASSOCIATION which majority shall be expressed at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to comply with the requirements for the convening of a meeting, set out in specific terms the proposed amendment.

27. WINDING-UP OF ASSOCIATION

In the event of the ASSOCIATION being wound up, its assets shall devolve upon such other corporation as the Members in such winding-up order determine, provided that such corporation has aims and objects similar to those of the ASSOCIATION.

28. REPAIR, UPKEEP, ADMINISTRATION, MANAGEMENT AND CONTROL OF THE TOWNSHIP

28.1 **Building and Improvements**

In order to procure compliance with the nature and amenity of the Township nothing shall be placed on or attached to a building or any other structure, visible from outside of the building or such other structure without the consent of the Design Review Committee.

28.2 **Landscaping**

Save as may be expressly permitted in terms of the Rules or Extension Rules, no home owner shall be entitled to undertake any landscaping on or about the Township. Without limiting the generality of the foregoing no home owner shall have any rights to plant any tree, shrub, grass, flower or to remove or cut same or attempt to erect any fence or wall or any other structure or remove same on the Township without the prior written consent of the Design Review Committee.

28.3 **Provision of Services**

The ASSOCIATION may, from time to time, contract with suppliers of services to provide services to the Township, subject to the limitation contained in Article 28.

28.4 **Open Spaces and Rights of Access**

Home Owners shall be entitled to use all Common Facilities subject to the Rules and Extension Rules from time to time.

28.5 **Occupation and use of Erven or Units**

28.5.1 Occupation and use of Erven or Units shall, at all times, be in compliance with these Articles, the Rules and Extension Rules. The Trustees may, in their sole discretion, determine that any person, not being a Member, be denied access to the Township and be required to leave in the event of such person breaching these Articles or the Association's Rules made in terms hereof. No Member shall use any Erven or Unit or part or any building or allow any other person to use such Erven or Unit or part of any building, for purposes not permitted by these Articles and/or the Rules and/or Extension Rules.

28.5.2 Without limiting the generality of any of the provisions of the Rules and Extension Rules the following provisions will apply to every Member, Home Owner and their invitees -

28.5.2.1 the Member or home owner shall not carry on, and will not allow to be carried on or about the Erf or Unit, as a primary business any business which sells or distributes liquor or potable alcohol or which carries on any form of gaming or lottery, or any form of escort agency, strip show or similar entertainment and shall use its best endeavours to use the Erf or Unit (and not to allow the use thereof) in such manner which is not offensive to the laws of Namibia. The provisions of this 28.5.2.1 do not prohibit the serving of alcohol to guests or invitees of a home owner for bona fide recreational purposes;

28.5.2.2 the Member or home owner will not use the Erf or Unit or permit the same to be used for any illegal or improper purposes or any manner which creates an unlawful nuisance or disturbance to other persons;

28.5.2.3 no Member or home owner will be entitled to object to the DEVELOPER and/or any third party to any governmental or other authority relating to or in connection with any further development to take place on the remainder of the development area provided that such development is substantially in accordance with the requirements of the Local Authority and/or any other relevant authority.

28.6 **Services**

Inasmuch as the provision, establishment, maintenance and repair of services may be required to take place within the Township, the Members hereby consent to the provision of such services in such places as the Trustees may determine from time to time and to persons authorising by them entering with the Township or any part thereof for the purpose of providing, establishing, maintaining and/or repairing the services, provided that such work shall be carried out with as little inconvenience to Home Owners as reasonably possible.

28.7 **Security of the Village**

The ASSOCIATION will not be liable to any Member or home owner or any of their respective invitees for any breach in security and/or by reason of any security provided by the ASSOCIATION not being adequate.

28.8 **Maintenance of Open Spaces and Public Road Verges**

The ASSOCIATION shall be responsible for the maintenance, upkeep and repair of the Common Facilities.

29. **LIMITATIONS WITH REGARD TO SERVICES**

29.1 The following services shall be provided by service providers nominated or approved by the DEVELOPER and/or the Local Authority, provided that such services are of a reasonable and acceptable standard in all the circumstances

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29.1.1 waste management, removal and sanitation services;

29.1.2 any broad band based services which shall include voice (internal and external) services, data (internet) services, video services (including video on demand and television) and fibre optic networks, and the design, implementation, operation and maintenance of the infrastructure required to provide such services; and

29.1.3 security services,

it being the intention to standardise the provision of all such services in respect of all developments to take place on the development area.

30. **ARTICLES BINDING ON INVITEES**

The provisions of these Articles (including in particular but without limiting the generality of the foregoing restrictions and conditions relating to the use of Erven or Units and Common Facilities) shall be binding on all invitees as if they were Members.

31. RESTRICTIONS IN FAVOUR OF LOCAL AUTHORITY

- 31.1 The ASSOCIATION shall not be deregistered without the prior written consent of the Local Authority.
- 31.2 The ASSOCIATION shall allow the Local Authority (acting through any relevant department) access to the Township at any time for purposes of maintaining and/or installing any facility for which the Local Authority is responsible (if any) and for purposes of providing services to residents of the Township.

32. ENFORCEMENT OF OBLIGATIONS OF MEMBERS

Should any Member or guest or invitee of a Member fail to perform any obligation incumbent upon him, if applicable, within the period of any notice given for compliance, the ASSOCIATION shall be entitled, but not obliged, to do such things and incur such expenditure as is, in the opinion of the ASSOCIATION, necessary and/or requisite to procure compliance. The costs thereby incurred by the ASSOCIATION shall be recoverable from the Member, which amounts shall be deemed to be part of the levy due by the Member concerned.

33. DISCLAIMER RESPONSIBILITY

- 33.1 The ASSOCIATION shall not be liable for any injury to any person, damage to or loss of any property, to whomsoever it may belong, occurring or suffered, upon the Township regardless of the cause thereof nor shall the ASSOCIATION be responsible for any theft of property occurring on the Township. Members hereby acknowledge that they shall not, under any circumstances have any claim or right of action whatsoever against the ASSOCIATION for damages, loss or otherwise, nor be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.
- 33.2 The ASSOCIATION and/or its agents shall not be liable to any Member or any of the Member's Lessees, or their respective employees, agents, servants, invitees or customers or any Member of the public dealing with the Member or any Lessee for any injury or loss of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly in or about the Township, regardless of the cause thereof.

33.3 Members hereby accept responsibility for and indemnify the ASSOCIATION and its employees, servants and agents and lawful invitees against all claims by any person arising from any injury or loss or damage as contemplated in this Article 33.

34. CONFLICTING PROVISIONS

If there is any conflict between any of the provisions of the Articles and any of the provisions of the Rules, Extension Rules and/or the Agreements of Sale or title conditions then the provisions of these Articles shall prevail.