

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008, as amended

MEMORANDUM OF INCORPORATION OF A NON PROFIT COMPANY WITH VOTING
MEMBERS

Registration No. of Company:

2012/048824/08

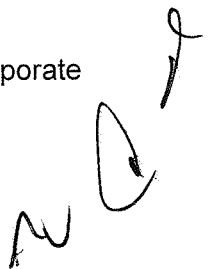
NAME OF COMPANY:

MACADAMIA @ THE ALOES HOMEOWNERS ASSOCIATION NPC

1. Definition

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

- 1.1.1 **"the Act"** means the Companies Act, 2008, as amended;
- 1.1.2 **"the association"** means Macadamia @ The Aloes Village Homeowners NPC;
- 1.1.3 **"ALEMA"** means the Aloes Lifestyle Estate Homeowners Association (NPC), Registration no 2012/065761/08, the umbrella home owners Association of the Aloes development area of which the association is a member.
- 1.1.4 **"association area"** means portions Sectional Title: 7467, 7468, 7469, 7470, 7471, 7472. Freehold: 7559 to 7565, 7534 to 7543, 7544 to 7549, 7458 to 7465, Bendor Ext. 120;
- 1.1.5 **"auditors"** means the auditors of the association;
- 1.1.6 **"body corporate"** means a sectional title body corporate established in terms of the Sectional Titles Act;



- 1.1.7 "**care centre**" means **Macadamia Clinic Proprietary Limited** Registration No 1999/001205/07, trading as Macadamia Care Centre or its successors in title;
- 1.1.8 "**care centre portion**" means portion 7470;
- 1.1.9 "**chairman**" means the chairman of the Board of Directors of the association;
- 1.1.10 "**council**" means Polokwane Local Municipality;
- 1.1.11 "**the developer**" means Always Trading 012 CC, registration number 2004/021796/23;
- 1.1.12 "**directors**" means the directors of the association;
- 1.1.13 "**the initial period**" means the period from the establishment of the association until all of the portions in the association area have been developed, alternatively, until the developer notifies the association in writing that the initial period has ceased, whichever is the earlier;
- 1.1.14 "**in writing**" means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- 1.1.15 "**managing agent**" means any person or body appointed by the association as an independent contractor to undertake any of the functions of the association;
- 1.1.16 "**member**" means a body corporate or a registered owner of a portion and who has agreed to and consented to such membership in writing;
- 1.1.17 "**portion**" means any stand in respect of which a body corporate has not been established;
- 1.1.18 "**portion owner**" means a registered owner of a portion reflected in the records of the Deeds Office concerned as the registered owner of that portion within the association area;

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- 1.1.19 "**the Sectional Titles Act**" means the Sectional Titles Act 95 of 1986, as amended;
- 1.1.20 "**sectional title unit**" means a unit in a scheme in respect of which a body corporate has been established in terms of the Sectional Titles Act";
- 1.1.21 "**scheme**" means a sectional title scheme established in terms of the Sectional Titles Act;
- 1.1.22 "**unit**" means a portion , with or without outbuildings, or where applicable, a sectional title unit in a sectional title scheme, tenure of which has been registered in f the Deeds Registry;
- 1.1.23 "**unit owner** and/ or **sectional title owner** " means the owner of a unit and being a member of a Sectional Title Body Corporate "STBC" within the association area of Macadamia, as the case may be.
- 1.1.24 "**vice-chairman**" means the vice-chairman of the board of directors.
- 1.1.25 "**Person**" includes a juristic person.

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

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

2. **Objects**

2.1 The main object of the association shall be to promote, advance and protect the communal interests of the owners of portions and sectional title units lying within the association area and in particular in so promoting such communal interests

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to ensure acceptable aesthetic appearance of the land and buildings, architectural, environmental, security standards and incidental matters, in the association area, including in particular:

- 2.1.1 to ensure that any portions and any schemes in the association area is developed according to uniform aesthetic standards and that those standards are maintained thereafter;
- 2.1.2 to take ownership of and to control and maintain any private access roadways and private open spaces within the association area;
- 2.1.3 to ensure that the care centre:
 - 2.1.3.1 uses the care centre portion in accordance with the conditions of title of the care centre portion;
 - 2.1.3.2 solely for the provision of care centre facilities and ancillary services; and
 - 2.1.3.3 provides an acceptable level of service and care to unit owners;
- 2.1.4 to maintain any entrance to the association area including any landscaping within the association area, parking areas and the perimeter fence or wall and any common areas in the association area;
- 2.1.5 to protect the use and enjoyment by members of their units;
- 2.1.6 to institute, control and pay for measures to provide security in the association area; and
- 2.1.7 to make house rules in order to promote generally the communal interests of its members.

3. Powers

The association has plenary powers (including all those normally enjoyed by a registered company) to enable it to achieve its objects, except only for the powers expressly or impliedly excluded by this memorandum or by the association's legal status as a common law corporate body.



4. **Membership**

It is recorded that the association (Macadamia) is a member of ALEMA, having voting rights at ALEMA meetings.

4.1 Membership of the association shall be limited to the developer in its capacity as such (and represented by not more than 2 nominees), registered owners of portions and to any Body corporate in the association area.

4.2 It is recorded that a body corporate is, under the Sectional Titles Act, obliged to manage, control and maintain the common property of the scheme and may make management rules and conduct rules in respect thereof. A body corporate shall, on becoming a member of the association, take steps at its first general meeting to ensure that its rules:


4.2.1 oblige its members to comply with the rules of the association from time to time; and

4.2.2 provide for payment by the body corporate of levies and any other amounts due to the association and for the recovery thereof from members in terms of the Sectional Titles Act as part of that body corporate levy.

4.3 Where any unit is owned by more than one person, all the registered owners of that unit shall together be deemed to be one member of the association and have the rights and obligations of one member of the association; provided however that all co-owners of any unit shall be jointly and severally liable for the due performance of any obligation to the association.

4.4 Prior to becoming the registered owner of a unit, a person shall be entitled, on written application to the association, to become a member of the association with effect from the date of registration of transfer of the unit into his name, and when he ceases to be the owner of the unit, he shall ipso facto cease to be a member of the association.

4.5 No transfer of a unit may be effected until the association has confirmed in writing that the transferee has bound itself to the satisfaction of the association, to become a member of the association and ALEMA and has entered into an appropriate service level agreement with the care centre.



- 4.6 No member shall let or otherwise part with occupation of his unit, whether temporarily, or otherwise, unless he has brought to the proposed purchaser or occupier of such unit's attention, as a condition for the benefit of and in favour of the association, that such purchaser or occupier shall be bound by all the terms and conditions of this memorandum and the rules of the association from time to time.
- 4.7 No member may rezone, or if applicable permit a rezoning of, a unit or in any way change the use for which a unit may be utilised whether by way of rezoning or a consent use or otherwise save with the prior written consent of the directors who shall have complete discretion in this regard irrespective of whether such consent is granted by any lawful authority. Further, no member may subdivide or consolidate, or if applicable permit the consolidation or subdivision of, a unit without the prior written consent of the directors, which consent shall be in the sole discretion of the said directors irrespective of whether any lawful authority grants permission for such subdivision or consolidation.
- 4.8 A registered owner of a unit may not resign as a member of the association.
- 4.9 The rights and obligations of a member shall not be transferable and every member shall:
- 4.9.1 further to the best of his ability the objects and interests of the association and ALEMA;
 - 4.9.2 observe all rules made by the association and ALEMA or the directors;
 - 4.9.3 sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of any access erf or any other erf in the association area and including the provision of security facilities and care centre facilities;

provided that nothing contained in this memorandum of incorporation shall prevent a member from ceding, his rights in terms of this memorandum of incorporation as security to the mortgagee of that member's unit.

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4.11 It is recorded that in terms of this MOI, the association shall be a member of ALEMA, having voting rights at ALEMA meetings and represented at these meetings by the Chairman or designated member of the association.

4.12 The association may never resign its membership of ALEMA.

5. **Levies**

5.1 It is recorded that in view of the association's (Macadamia) membership of ALEMA, the board of a ALEMA will impose certain levies upon the members of the association for the purpose of meeting expenses of ALEMA as stipulated in the MOI of ALEMA.

5.2 The directors in addition from time to time, may impose levies upon the members for the purpose of meeting all the expenses which the association has incurred, or to which the directors reasonably anticipate the association will incur in the attainment of its objects or the pursuit of its business.

5.3 The directors shall not less than 30 days prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every member, at the address chosen by him or otherwise at his unit, an estimate in reasonable detail of the amount which shall be required by the association to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.

5.4 Each notice to each member shall specify the contribution payable by that member to such expenses and reserve fund, that is the levy payable by that member.

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

5.6 In the event of the directors for any reason whatsoever failing to prepare and serve the estimate referred to in 5.2 timeously, every member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in 5.2.

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- 5.7 The directors may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in 5.1 and 5.2, which are not included in any estimate made in terms of 5.2, and may in imposing such levies determine the terms of payment thereof.
- 5.8 The directors shall be empowered in addition to such other rights as the association may have in law as against its members to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the maximum prescribed rate.
- 5.9 Any amount due by a member by way of levy and interest shall be a debt due by him to the association. Notwithstanding that a member ceases to be such the association shall have the right to recover arrear levies and interest from him. No levies or interest paid by a member shall under any circumstances be repayable by the association upon his ceasing to be a member. Further, a member on ceasing to be such shall have no claims whatsoever on any other monies held by the association whether obtained by way of a sale of association assets or otherwise. A member's successor in title to a unit shall be liable as from the date upon which he becomes a member pursuant to the transfer of that unit, to pay the levy and interest thereon attributable to that unit.
- 5.10 In calculating the levy payable by any member, the directors shall as far as reasonably practical:
- 5.10.1 assign those costs arising directly in relation to a unit to the registered owner thereof ;
 - 5.10.2 assign those costs arising directly in relation to any body corporate to that body corporate;
 - 5.10.3 assign a proportion of those costs attributable generally to a particular number of units to the registered owners of such units;
 - 5.10.4 assign a proportion of those costs attributable generally to the care centre to such care centre.
 - 5.10.5 assign those costs relating to the association area generally to the owners of all units.
- 5.11 The developer shall, in respect of all registerable portions not yet transferred, be liable to pay levies on the same basis as other members provided that the

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directors shall be entitled to agree with the developer to accept payment of a capital sum or other services to the association, in lieu of the payment of levies by the developer.

6. Rules

6.1 Subject to any restriction imposed or direction given at a general meeting of ALEMA and or a general meeting of the association, the directors may from time to time make rules in regard to:

6.1.1 the standard and guidelines for the architectural design of all buildings and outbuildings, structures of any nature and any additions and alterations to any such buildings, outbuildings or structures erected or to be erected in the association area, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the materials and colours used on such exterior to ensure an attractive, aesthetically pleasing character to all the buildings in the association area;

6.1.2 the siting of all buildings, outbuildings, structures of any nature and of any additions and alterations thereto;

6.1.3 the standards and guidelines for the design of all site works, buildings, structures, installations, projections and parking areas on the properties in the association area, including aeries, pergolas, side walks, swimming pools, tennis courts, awnings, jacuzzis, carports and paved pathways;

6.1.4 the preservation of the environment including the right to control and to require the cultivation of trees and other vegetation and the right to control the design, erection, placement, materials and construction of fences and/or walls, whether upon or within the boundaries of any unit, including the right to prohibit fences and/or walls in any garden area or around any unit;

6.1.5 the placing or fixing of ornamentation or embellishments upon the outside of buildings including the power to remove any such objects;

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- 6.1.6 the conduct of any persons within the association area for the prevention of nuisance of any nature to any member;
- 6.1.7 the design, dimensions, location and number of advertising and other signs on any unit in the association area;
- 6.1.8 the right to determine and control all security measures in the association area;
- 6.1.9 the right to determine access to and egress from the association area and to and from the units or any other area in the association area;
- 6.1.10 for the furtherance and promotion of any of the objects of the association and/or for the better management of the affairs of the association and/or for the advancement of the interests of members and/or residents in the association area.

6.2 For the enforcement of any of the rules made by ALEMA, the directors in terms hereof, may:

- 6.2.1 give notice to the member concerned requiring him to remedy such breach within such reasonable period as the directors may determine;
- 6.2.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the association; and/or
- 6.2.3 impose a system of fines or other penalties; and/or
- 6.2.4 take such other action including a reference to arbitration in terms of clause 24 or proceedings in Court, as they may deem fit and defend any action taken by any member or any other person in terms of arbitration or proceedings in Court.

6.3 In the event of the directors consulting an attorney, taking legal advice and instituting any legal proceedings by arbitration or in Court against any member or resident within the association area for the enforcement of any of the rights of

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the association in terms hereof, the association shall be entitled to recover all legal costs so incurred from the member or tenant concerned, calculated as between attorney and own client including collection commission and tracing agent's fees.

- 6.4 In the event of any breach of the rules of this memorandum of incorporation by a member, his staff, clients, invitees, guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 6.5 In the event of any member disputing the fact that he has committed a breach of any of the rules, such dispute shall be determined by arbitration in terms of clause 24.
- 6.6 Any fine imposed upon any member shall be deemed to be a debt due by the member to the association and shall be recoverable at the option of the directors in terms of clause 24 or by ordinary civil process.
- 6.7 Notwithstanding anything to the contrary herein contained, the directors may in their discretion in the name of the association enforce the provisions of any rules by way of arbitration in terms of clause 24 or by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 6.8 The Association shall see to it that the conduct rules of ALEMA are complied with, which rules may not be revoked by the Association unilaterally, however, the association may in general meeting itself make any other rules which the directors may make and may in general meeting vary or modify any rules made by it or by the directors from time to time.

7. Directors

- 7.1 There shall be a board of directors of the association which shall consist of not less than 3 nor more than 5 members.



7.2 A director shall be an individual but need not himself or herself be a member of the association. A director, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.

7.3 One director shall be appointed by the care centre.

During the initial period, the majority of directors shall be appointed by the developer. All directors to be appointed to office shall be elected by the members in general meeting, the developer exercising the voting rights in 19. The first directors shall on formation of the association be appointed by the developer.

7.4 Notwithstanding anything in 7.3, the members shall be entitled to elect one third of the directors each year in accordance with the provisions of s5 (1)(b) of Schedule 1 of the Act.

8. Removal and rotation of directors

8.1 Save as set out in clause 8.3, and save for the directors appointed by the developer in terms of 7.3, each director shall continue to hold office from the date of his appointment until the Annual General Meeting next following his appointment, at which meeting each director shall be deemed to have retired from office but will be eligible for re-election to the Board of Directors at such meeting.

8.2 A director shall be deemed to have vacated his office upon:

8.2.1 his having become disqualified to act as a director in terms of the provisions of the Act;

8.2.2 his being removed from office as provided in section 69 of the Act;

8.2.3 in the event of he or she being a member of the association, he or she not being entitled to exercise a vote in terms of clause 19.2 below.

8.3 Upon any vacancy occurring in the board of directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the board of directors, provided,

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however, that, if the director who vacates his office as aforesaid was a nominee of the developer, the developer shall be entitled to nominate a director in his stead.

9. **Chairman and vice-chairman**

9.1 The directors shall within 14 days after each annual general meeting appoint from their number a chairman and vice-chairman, who shall hold their respective offices until the next annual general meeting, provided that the office of chairman or vice-chairman shall ipso facto be vacated by a director holding such office upon his ceasing to be a director for any reason. No one director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time, the board of directors shall immediately appoint one of their number as a replacement in such office. During the initial period the chairman shall be elected from one of the nominees of the developer.

9.2 Except as otherwise provided, the chairman shall preside at all meetings of the directors and at all general meetings of members and, in the event of his not being present within 15 minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the vice-chairman shall act in his stead, or failing the vice-chairman, a chairman appointed by the meeting.

10. **Directors' expenses**

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

11. **Powers of directors**

11.1 Subject to the express provisions of these presents, the directors shall manage and control the business and affairs of the association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent, may exercise all such powers of the association and do all such acts on behalf of the association as may be exercised and done by the association and as are not by the Act or by

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these presents required to be exercised or done by the association in general meeting, subject however, to such rules as may have been made by the association in general meeting or as may be made by the directors from time to time.

11.2 Save as specifically provided in these presents, the directors shall at all times have the right to engage on behalf of the association the services of accountants, auditors, attorneys, advocates, architects, engineers, a managing agent and any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the directors and on such terms as the directors shall decide.

11.3 The directors shall further have power:

11.3.1 to require the submission for approval of such plans, drawings, specifications and other information as they may deem necessary to ensure compliance by members with any architectural guidelines prescribed by these articles and the rules made in terms hereof;

11.3.2 to require that any works being constructed within the association area shall be supervised to ensure that the provisions of these presents and the rules are complied with and that all work is performed in a proper and workmanlike manner;

11.3.3 to determine the parking areas to be used by members and their employees, agents and invitees;

11.3.4 to determine the access to the association area and to the units in the association area;

11.3.5 to determine the security facilities to be installed and the operation thereof for the protection of the association area;

11.3.6 to make rules as provided for in clause 6.


11.4 The board of directors shall have the right to co-opt onto the board any person or persons chosen by it. A co-opted director need not necessarily be a member of the association. A co-opted director shall hold office until the next annual general meeting after his co-option when he shall retire but shall be eligible for

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election as a director, or in the event of his not being elected shall again be eligible for co-option by the board of directors.


- 11.5 The directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including the managing agent, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the directors may from time to time deem necessary.
- 11.6 The directors shall appoint an architectural review committee which shall consist of not less than 1 director and such other members as the directors may determine.
- 11.7 All plans for all buildings, outbuildings, structures, walls, fences, additions, alterations and signage to be submitted in terms of clause 23.7 below shall be submitted by the directors to the architectural review committee in 11.6 and the directors shall not approve any plan in terms of clause 23.7 unless such plan shall first have been approved by the architectural review committee. The directors may if they deem fit delegate to the architectural review committee their functions and powers set out in clause 23.7.

12. **Proceedings of directors**

- 12.1 The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 12.2 The quorum necessary for the holding of any meetings of the directors shall be a majority present personally; provided however that, during the initial period, the presence of at least 1 nominee of the developer shall be necessary at all meetings of directors in order to form a quorum. Any resolution of the Board of Directors shall be carried on a simple majority of all votes cast; provided that during the initial period if the nominees of the developer vote against a resolution it shall be defeated and if they vote in favour of the resolution it shall be carried irrespective of the other votes for and against the resolution. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
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- 12.3 The directors shall cause minutes to be kept of every directors' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of directors' meeting shall, after certification, be placed in a directors' minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The directors' minute book shall be open for inspection at all reasonable times by any director and the auditors. After each meeting the directors shall send out a communiqué containing relevant details of the meeting to all members and to the managing agent.
- 12.4 Save as provided in these presents, the proceedings of any directors' meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.
- 12.5 A resolution signed by all the directors shall be valid in all respects as if it had been duly passed at a meeting of the board of Directors.

13. **General meetings of the association**

- 13.1 The association shall within 6 months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other general meetings during that year, and shall specify the meeting as such in the notices in terms of clause 14 calling it.
- 13.2 Such annual general meeting shall be held at such time and place as the directors shall decide from time to time.
- 13.3 All general meetings other than annual general meetings shall be called extraordinary general meetings.
- 13.4 The directors may, whenever they think fit, convene an extraordinary general meeting, and an extraordinary general meeting shall also be convened on a demand made in terms of section 61(3) of the Act, provided that each such demand specifies the purpose for which the meeting is proposed and that the percentage of voting rights required to demand such a meeting shall be 20%, subject to the further provisions of that section.
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14. Notices of meetings

- 14.1 A meeting of the association shall be called on at least 15 business days' notice in writing. In each case the notice shall specify the place, the day and the hour of the meeting and the general purpose of the meeting or the specific purpose if called as provided for in 13.4.
- 14.2 A proposed resolution shall be expressed with sufficient clarity and specificity and shall be accompanied by sufficient information or explanatory material to enable a member who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution and shall be given in the manner prescribed by s62 of the Act or hereinafter mentioned or in such other manner, if any, as may be prescribed by the directors to such persons as are under these presents entitled to receive such notices from the association.
- 14.3 A general meeting of the association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if every person entitled to exercise voting rights in respect of any item on the agenda of the meeting is present at the meeting and votes to waive the required minimum notice of the meeting. In the case of a material defect in the manner and form of giving notice, the defect may be ratified if every person entitled to exercise voting rights in respect of any item on the agenda of the meeting is present at the meeting and votes to approve the ratification of the defective notice.
- 14.4 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of these presents, or in terms of the Act, or the non-receipt of any such notice, notification or document by any member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

15. Quorum

- 15.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.
- 15.2 During the initial period, the quorum necessary for the holding of any general meeting shall be one or more nominees present to represent the votes of the

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developer, and 25% of votes in number from all other members of the association entitled to vote for the time being, provided that at least three members are present in person at the commencement of and for the duration of such general meeting.

15.3 After the initial period, the quorum for any general meeting shall be 25% of votes in number from all members of the association entitled to vote for the time being, provided that at least three members are present in person at the commencement of and for the duration of such general meeting. Proxies shall be included in the determination of the quorum.

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

16. **Agenda at meetings**

16.1 In addition to any other matters required by the Act or these presents to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

16.1.1 the consideration of the chairman's report;

16.1.2 the election of directors;

16.1.3 the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

16.1.4 the consideration of the accounts of the association for the preceding financial year;

16.1.5 the consideration of the report of the auditors and the fixing of remuneration for the auditors.

16.2 No business shall be dealt with at any general meeting unless written notice has been given to the directors not less than 2 days before such meeting by the person proposing to raise such business of his intention so to do; provided

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however, that the chairman may on ordinary resolution of the meeting relax this condition.

17. Procedure at general meetings

17.1 Before any person may attend or participate in a meeting of the association that person must present reasonably satisfactory identification and the chairman of the meeting must be reasonably satisfied that the person has the right to attend and participate in the meeting.

17.2 At the discretion of the board of directors, a meeting may be conducted entirely by electronic communication; or one or more members, or proxies for members, may participate in a general meeting or part thereof by electronic communication as long as the electronic communication employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting. Provided further that the notice of the meeting informs the members of the availability of that form of participation and provides any necessary information to enable the member or his proxy to access the available medium or means of electronic communication. Access to the electronic communication is at the expense of the member or his proxy, except to the extent determined by the board of directors.

17.3 The chairman may, with the consent of any general meeting at which a quorum is present and shall if so directed by the meeting, adjourn a meeting from time to time and place to place. No business shall be transacted at any adjourned meeting other than business which could have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting

18. Proxies

18.1 A member may be represented at a general meeting by a proxy, who need not be a member of the association. The instrument appointing a proxy shall be in writing signed by the member concerned or his agent, duly authorised in writing, but need not be in any particular form provided that, where a member is more

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than 1 person, a majority of those persons shall sign the instrument appointing a proxy on such member's behalf.

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

18.3 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation had been received by the directors at any time before a vote is taken in respect of which the proxy exercises such vote.

19. **Voting**

19.1 At every general meeting of the association(MACADAMIA):

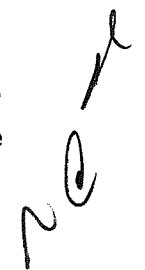
19.1.1 the developer shall during the initial period have 135 votes, in addition to the votes conferred upon it below, provided however that this provision shall apply during the initial period only;

19.1.2 every member, being an owner of a portion, including the developer, in person or by proxy and entitled to vote shall have 1 vote for each unit registered in his name;

19.1.3 any body corporate member and entitled to vote, shall have 1 vote in respect of every 3 units in that scheme;

19.1.4 if a unit is registered in the name of more than one registered owner, then all such co-owners shall jointly have 1 vote;

Save as expressly provided for in these presents, no person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting of the association.

- 19.2 At any general meeting of the association a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman or members referred to in section 63(7) of the Act, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived, and an entry to that effect in the book containing the minutes of the proceedings of the association, 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. The demand for a poll may be withdrawn.
- 19.3 If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 19.4 A poll demanded on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 19.5 Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 19.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 19.7 A special resolution shall be carried on a majority of 75% of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 19.8 Unless any member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the
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chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the chairman 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. An entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

19.9 Provided that a resolution that could be voted on at an extraordinary meeting may instead be:

19.9.1 submitted for consideration to the members entitled to exercise voting rights in relation to the resolution; and

19.9.2 voted on in writing by members entitled to exercise voting rights in relation to the resolution within 20 business days after the resolution was submitted to them.

19.9.3 a resolution contemplated in subsection 19(10):

19.9.3.1 will have been adopted if it is supported by members entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted members meeting; and

19.9.3.2 if adopted, has the same effect as if it had been approved by voting at a meeting.

19.9.3.3 an election of a director that could be conducted at a general meeting may instead be conducted by written polling of all of the members entitled to exercise voting rights in relation to the election of that director.

19.9.3.4 Within 10 business days after adopting a resolution, or conducting an election of directors, in terms of this section, the association shall deliver a statement describing the results of the vote, consent process, or election to every member who was entitled to vote on or consent to the resolution, or vote in the

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election of the director, as the case may be.

- 19.9.3.5 for greater certainty, any business of the association that is required by the Act or these presents to be conducted at an annual general meeting of the association, may not be conducted in the manner contemplated in 19.11.

19.10 It is recorded that in terms of the ALEMA MOI voting rights at ALEMA meetings are set out as follows;

19.10.1 The Developer and Home Owners Associations shall have voting rights at the ALEMA Association meetings;

19.10.2 Full title stand owners, body corporates (STBC) and sectional title owners of the association(Macadamia) who are all members of ALEMA shall have no voting rights at the ALEMA Association meetings, as they are to be represented by their elected representative of the respective Home Owners Associations, who does have voting rights at the ALEMA Association meetings.

19.10.3 This elected or designated representative will exercise the mandate to vote given to him at the ALEMA general meetings by the members of the association (Macadamia).

19.10.4 The members as set out in clause 19.10.2 shall however have the right to attend the ALEMA general meetings as a non-voting member and observe the proceedings should they so wish.

20. **Accounts**

20.1 The accounts and books of the association shall be open to inspection by members at all reasonable times during business hours.

20.2 Once in each financial year the accounts of the association shall be examined and the correctness thereof ascertained by auditors. The duties of the auditors shall be regulated in accordance with the Act.

Handwritten signature or initials.

21. **Service of notices**

A notice may be served by the association upon any member at the address of any unit owned by him unless the member shall have notified the association of another address for service of notices and in the case of a body corporate, at the body corporate's domicilium address in terms of the Sectional Titles Act. Any notice served by post shall be deemed to have been served on the 7th day but one following that on which the notice was posted and served by hand or by fax or email on the day of service.



22. **Indemnity**

Every director, servant, agent and employee of the association and any managing agent, his employees, nominees or invitees, shall be indemnified by the association against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into or any act or deed done by such person or persons in the discharge of their respective duties, including in the case of a director, his duties as chairman or vice-chairman. Without prejudice to the generality of the foregoing, the association shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.

23. **General**

23.1 Whenever they consider that the appearance or use of any land or building vested in a member or members is such as to be unsightly or injurious to the amenities of the surrounding area or the association area generally, the directors may serve notice on such member or members to take such steps as may be specified in the notice to eliminate such use or unsightly or injurious condition. In the event of the member or members failing within a reasonable time, to be specified in such notice, to comply therewith, the directors may enter upon the erf concerned and take such steps as may be necessary, and recover the cost thereof from the member or members concerned, which costs shall be deemed to be a debt owing to the association.

23.2 The directors shall be obliged in giving such notice to act reasonably.



- 23.3 In the event of any member or any servant, agent or independent contractor of any member causing any damage to any landscape or other work done in the road reserve or to the association area fence (wall) or security equipment facilities, such damage shall be repaired by the association and the member concerned shall be liable for the costs thereof.
- 23.4 The member shall at all times observe all laws and by-laws, regulations, the provisions of the town planning scheme and any other provisions in force relating to the unit or the use thereof. In the event of any member failing so to do, such failure shall be deemed to be a breach of these presents and the directors shall be entitled to take such action as they may be empowered and as they may deem fit in terms hereof to remedy such breach or to prevent the continuation thereof. In the event of any town planning scheme laying down any conditions in relation to the matters dealt with herein which are more onerous than the conditions herein laid down, the provisions of such town planning scheme shall prevail.
- 23.5 Each member shall comply fully with all security measures introduced by the directors and ALEMA in so far as these measures relates to the association. A body corporate shall ensure that its' members comply fully therewith and with all the rules as may be prescribed by the association and ALEMA from time to time.
- 23.6 The association may require any member to maintain the sidewalk adjacent to his, her or its unit, and in the event of such member failing so to maintain such sidewalk to the satisfaction of the association, the association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge the member concerned.
- 23.7 No person shall commence with the construction of any building or structure within the association area, or any additions or alterations thereto unless he has submitted to the directors for examination and approval or refusal such plans for such building, structure, alteration or addition as are required in terms of the bylaws of the local authority having jurisdiction over the association area, and any such additional plan or information relating to the proposed building, structure, alterations or additions as the directors may require. The directors shall have the power:
- 23.7.1 to charge a fee for the examination and approval or refusal of building plans;

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- 23.7.2 in approving any plan, to lay down such reasonable condition as they may deem fit;
 - 23.7.3 to refuse approval of the plans in the event of the directors in their sole discretion determining that such plans or the development proposals therein contained are not in accordance with these presents.
- 23.8 No owner of a portion being a member, shall transfer his unit until the board of directors under the hand of one of its members has certified that the member has at date of transfer fulfilled all his financial obligations to the association, and to the care centre and to ALEMA.
- 23.9 No transfer of a sectional title unit shall take place until the board of directors, under the hand of one of its' members, has certified that the body corporate of the scheme in which that sectional title unit is situated, has, at the date of transfer, fulfilled all of its' financial obligations to the association, and to the care centre and to ALEMA.
- 23.10 No transfer of the care centre portion shall take place until the board of directors, under the hand of one of its' members, has certified that, at the date of transfer:
 - 23.10.1 the care centre has fulfilled all of its' financial obligations to the association;
 - 23.10.2 the proposed transferee has entered into appropriate service level agreements with all portion owners; and
 - 23.10.3 the proposed transferee has bound itself to the satisfaction of the association to utilise the care centre portion solely for the purposes of providing care centre facilities to the residents of the association.
- 23.11 No unit or any interest therein shall be leased or transferred without the prior written consent of the association. Such consent shall not be withheld unless:
 - 23.11.1 such member is indebted to the association in any way in respect of levies or other amounts which the association may in terms of these presents be entitled to claim from him,

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- 23.11.2 such member is indebted to the care centre in any way in respect of levies or other amounts which the care centre may in terms of the service level agreement be entitled to claim from him;
 - 23.11.3 in the case of a sectional title unit, where the body corporate is indebted in any way in respect of levies or other amounts which the association may in terms of these presents be entitled to claim from it;
 - 23.11.4 the proposed transferee, in the case of the transfer of a portion, has not agreed to become a member of the association;
 - 23.11.5 the proposed transferee, has entered into an appropriate service level agreement with the care centre;
 - 23.11.6 such member remains in breach of any of the provisions of these presents or any rules after notice from the directors requiring him to remedy such breach.
- 23.12 Where a member is a company, close corporation or trust then no transfer of the shares, members interest or beneficiary's interest, as the case may be, may take place without the prior written consent of the directors. This consent will not be given unless and until the company, close corporation or trust, as the case may be, has furnished to the directors in writing the full details of the proposed new shareholders, members, beneficiaries respectively as well as the date on which the shareholding, membership, beneficiary will change. Further, the written consent of the directors will not be given unless and until all monies owing by the particular member company, close corporation or trust up to and including the effective date have been paid. Until the consent of the directors has been given, the selling shareholder, member or beneficiary, as the case may be, shall be liable personally as a co-principal debtor to the association for all the outstanding obligations of the company, close corporation or trust, as the case may be
- 23.13 The directors in issuing the certificate and or consent referred to in clause 23.8; 23.9; 23.10; 23.11 and 23.12 above shall be entitled to charge a reasonable fee

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therefor to be determined by the directors from time to time subject to review by the association in general meeting.

23.14 The association may enter into agreements with members for the provision of amenities and services to the members and to levy a reasonable charge in respect of the provision thereof.

23.15 In the event of the association electing to provide a security service and/or other services for members in the association area, all members shall be obliged:

23.15.1 to permit the installation of any equipment on the units or in the buildings comprising the units for the purpose of such services as may be determined by the association from time to time;

23.15.2 subject to the directors discretion as set out herein, to make payment of the charges raised by the association in respect of such services;

23.15.3 to abide by such terms and conditions as may be laid down by the association from time to time in respect of such equipment and services.


23.16 Where the boundary or any member's unit also constitutes the boundary of the association area, such member shall be obliged to permit the association to erect upon such member's unit immediately adjacent to the boundary, such walling or other fencing as the developer and/or the association may determine. Such member shall not be entitled to interfere in any manner whatsoever with any such walling for fencing and shall permit the association from time to time access to such member's unit in order to inspect such walling or fencing and to effect such repairs as may be necessary from time to time.

23.17 The provisions of these clauses shall be binding upon all members, and, insofar as they may be applicable, to all persons occupying any unit by, through or under any member, whatever the nature of such occupation. No member, as owner of a portion, shall let or otherwise part with occupation of his unit without the prior written consent of the association and of the care centre, which consent shall only be withheld if the association is not satisfied that the proposed occupier of the unit has complied with the provisions of clause 4.4 and 4.5.

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- 23.18 The directors may delegate such of their powers to a managing agent as they may determine subject to any restriction imposed or direction given at any general meeting of the association.

24. **Arbitration**

- 24.1 Any breach by a member of any provision of these articles or of any other rules and regulations made in terms hereof or a breach by any member of the provisions of the memorandum of incorporation and any dispute arising out of or in connection with these articles, or any other rules or regulations made in terms hereof or the interpretation thereof may, in the discretion of the directors, be referred to Arbitration and award.
- 24.2 Arbitration in terms hereof shall be governed by the rules of AFSA (Arbitration Foundation of Southern Africa) except to the extent set out herein.
- 24.3 If either the directors or a member requires any matter in terms hereof to be referred to Arbitration that party shall notify the other party in writing identifying the claim or issue, and if the other party wishes to counterclaim that party shall in turn, within 7 days, notify the first party in writing identifying the counterclaim, failing which the counterclaim may not be made in the same proceedings except with the consent of the other party. The notices shall furnish sufficient details to enable the recipient to produce at the preliminary conference all documents relating to the issue or claim or counterclaim, as the case may be.
- 24.4 The Arbitration proceedings shall be deemed to have commenced as soon as the notice requiring the claim to be referred to Arbitration has been given.
- 24.5 If either party intends to be legally represented in the Arbitration that party shall immediately notify the other party in writing of that intention.
- 24.6 The Arbitration shall be held in a summary manner.
- 24.7 The Arbitrator will be a practising advocate of not less than 10 years standing or an attorney of not less than 10 years standing, to be appointed by agreement between the parties, failing which, by the Chairman for the time being of the Law Society of the Northern Provinces or any replacement body thereto.
- 24.8 The Arbitrator's decision shall be final and binding on the parties
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25. **Amendment of the Memorandum of Incorporation**

25.1 This memorandum of incorporation may be amended by resolution of a members' meeting passed by a majority of not less than 75% of the votes cast.

25.2 Save for the provisions as set out in this MOI, the association may not resign its membership of ALEMA.

26. **Merger**

26.1 The association may merge with any other body with similar objects, by resolution of a members' meeting.

In this event, the association's net assets after discharge of its liabilities, together with its rights and obligations under these articles and under the conditions of title of units in the association area will vest in the merged entity.

27. **Dissolution**

In terms of the conditions of establishment as registered in the title deed at deeds office, the association may not be dissolved. Dissolution will only be possible if so ordered by a Court of Law having competent jurisdiction

27.1 In this event:

27.1.1 the directors will act as liquidators;

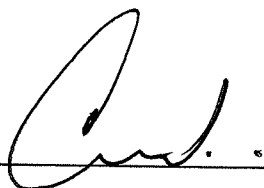
27.1.2 the association's net assets after discharge of its liabilities will be applied to repay the most recent levies paid by members and any balance after all levies have been repaid will be distributed in the liquidator's discretion to one or more public charities.

28. **Association Clause**

We, the several persons, whose full names and identity numbers are subscribed, are desirous of being formed into a company in pursuance of this memorandum of incorporation and we respectively agree to become members of the association.



Signed at Ploeghe on this the 8 day of October 2014.



PAUL HEINRICH ALTENROXEL

Identity number: 6804175143089

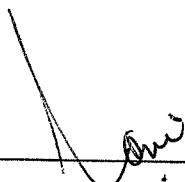
Dated 8/10/14.



DONALD GRAHAM LAGERWEY

Identity number: 5006106090080

Dated 8/10/14



LOUIS JACOBUS VAN ROOYEN

Identity number: 5212275022081

Dated 8/10/14.