



FRANSCHÉ HOEK
AGRICULTURAL ESTATE

Amended Articles of Association of the Fransche Hoek Agricultural Estate Home Owners NPC

**First Approved and adopted at a special general
meeting held on the 29th of October 2010 and
subsequently amended at general meetings held on
the:**

29th of July 2011

18th of November 2011

26th of May 2017

8th of June 2018

FORM CM44B

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973ARTICLES OF ASSOCIATION
OF FRANSCHÉ HOEK AGRICULTURAL ESTATE HOME OWNERS NPC A COMPANY WITHOUT
A SHARE CAPITAL
NOT ADOPTING SCHEDULE 1
(Article 60(1); regulation 18)

Registration number of company: 2010/003627/08
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NAME OF THE COMPANY**FRANSCHÉ HOEK AGRICULTURAL ESTATE HOME OWNERS NPC (Company incorporated under Section 21)**

- A. The Articles of Table A or Table B contained in Schedule 1 to the Companies Act 1973 shall not apply to the Company.
- B. The Articles of the Company are as follows*:
(*note :a convenient index is provided at page 55 hereunder):

1. INTRODUCTION:**it is recorded that:**

1.1 in terms of section 29(1) of the *land use planning ordinance* of 1985 various conditions were imposed under the relevant approvals in respect of the development of *FRANSCHÉ HOEK ESTATE* (as defined hereunder, hereinafter also called "*FHE*") inter alia requiring that the owners of residential properties in *FHE*, and their successors in title, should be members of a home owners association.

1.2 the general layout of *FHE* and the surrounding land, and of the relevant sub-divided portions referred to herein, as appears from *Appendix A* attached hereto.

1.3 historically:

- 1.3.1 three separate home owners associations ("*the historic associations*", as defined hereunder) were established primarily in relation to the *fynbos village erven, the riverside lane erven, the farm werwe* (all as defined hereunder).
- 1.3.2 a body corporate may also have come about (by agreement between interested parties in relation to "*the hotel land*" (as defined hereunder) and/or pursuant to the deeming provisions of the sectional titles act, primarily in relation to the hotel land (and further body corporate/s and/or property association/s may have been established and/or may in future be established in relation to the other portions of" *FRANSCHÉ HOEK ESTATE BUSINESS NODE*" or *FHEBN* (as defined hereunder).
- 1.3.3 it was found that separate administration of the historic associations added to administrative burdens and limited communication.
- 1.3.4 an informal over-arching "*master home owners association*" (as defined hereunder, hereinafter also called "*mhoa*") eventually informally came about

so as to take more efficient care of the functions of the *historic associations*, and so as to promote communication on *FHE*.

- 1.3.5 *the company* (as defined hereunder), which is formally structured and registered as a *section 21 company* (as defined hereunder) has been acquired to fulfil the role of a single consolidated incorporated home owner's association, in the place of *the historic associations* and of *mhoa*, and the chairman and the trustees of the *historic home owners associations* was, as interim measure, registered as directors and members of *the company*.
- 1.3.6 *the company* has de facto replaced *mhoa*, which has accordingly lapsed, and *the company* has de facto by and large assumed the common functions of *the historic associations*, reporting to their trustees.

1.4 For purposes of these articles *FHE* has been divided into two components namely:

- 1.4.1 *Fransche Hoek Agricultural Estate or FHAE*, including *the fynbos village erven, the riverside lane erven, the farm werwe, the agricultural land, the administrative complex and the common property* (all as defined hereunder); and
- 1.4.2 *Fransche Hoek Estate Business Node or FHEBN*, including *the hotel land, the old reservoir land and the possible office land* (all as defined hereunder).

1.5 while *FHAE* and *FHEBN* share access and egress, services and some infrastructure, it has been found in practice that they have different and varying interests and approaches.

1.6 the trustees of *the historic associations* were in agreement that the interests of landowners on *FHAE* would be best served:

- 1.6.1 if the affairs of *FHAE on the one hand* and of *FHEBN* on the other hand were to be structured in separate structures as is currently the case; and
- 1.6.2 if the affairs of *the historic associations* were to be consolidated into a unified structure; and
- 1.6.3 if any required sharing of access, egress, services and infrastructure between *FHAE* and *FHEBN*, were to be addressed in future by way of reasonable and practical bi-lateral or multi-lateral contractual arrangements between:
- 1.6.3.1 *the company* on the one hand; and
- 1.6.3.2 the existing and/or the future body corporate/s and/or property owners association/s and/or landowners of *FHEBN*, on the other hand.

It is specially recorded that:

- 1.7 the development of *FHE* came about pursuant to an initiative between inter alia a group of professionals and businessmen, community leaders and the local authority, the Franschoek community, and *the developer* (as defined hereunder), which generally became known as the "*Franschoek empowerment development initiative*" or "*fed*" and resulted in a unique social accord ("*the social accord*").
- 1.8 consequent upon *Fedi* and the *social accord* significant and lasting positive social changes were effected to the lives of a multitude of previously disadvantaged persons who live in the *Franschoek Valley*, inter alia through providing at least seven hundred and fifty (750) well constructed homes to persons who were previously living in desperate circumstances, and further benefits are likely to follow in future.

- 1.9 **the Honourable Nelson Mandela** has graciously confirmed his support for *Fedi* in writing, and, inter alia consequent upon such gracious intervention, *Fedi* has achieved international acclaim as a unique model of social accord, empowerment, and social care.
- 1.10 special conditions and controls were imposed by the local authority in relation to *FHE*, thus to ensure adherence to the spirit of *Fedi*.
- 1.11 pursuant to *Fedi* and *the social accord*:
- 1.11.1.1 *FremcoTrust* (as defined hereunder) has been established to serve as an empowerment vehicle, aimed at encouraging participation by the previously disadvantaged of *franschhoek valley* in the mainstream of the local economy, and as a vehicle to responsibly disburse levy funds to them on behalf of the local authority.
- 1.11.1.2 *the workers trust* (as defined hereunder) has been established to serve as an empowerment vehicle for previously disadvantaged individuals who serve as workers on *the agricultural land*.
- 1.11.1.3 *FHE* was developed out of the former *Franschhoek commonage land*.
- 1.11.1.4 the former *Franschhoek commonage land* was made available by the local authority for development by way of a public-private enterprise in order to fulfil the visions of *Fedi* and *the social accord*.
- 1.11.1.5 it was accordingly inter alia agreed, in terms of *the social accord*, and stipulated in terms of the relevant statutory approvals (being *the approvals* as defined hereunder) that the following (hereinafter defined and referred to as "*the Fremco levies*") would be paid to *Fremco trust*:
- 1.11.1.5.1 one percent (1%) on the prices of all land or portions of land within *FHE* sold and transferred by any developer who may develop any land within *FHE*; and
- 1.11.1.5.2 zero comma two five percent (0.25%) on all further on-sales from time to time, in perpetuity, of any land or portion of land, by any owner thereof from time to time, in perpetuity.
- 1.12 *Fremco trust* is contractually charged with the administration of these *fremco levies*.
- 1.13 of *the Fremco levies* ninety percent (90%) is destined for the empowerment of the previously disadvantaged, and ten percent (10%) for the *Mont Rochelle* nature reserve adjoining *FHE*.
- 1.14 in the spirit of *the social accord*:
- 1.14.1 the opportunity of farming operations on *the agricultural land* (as defined hereunder) was intended for allocation to an empowerment vehicle, in the form of an intended agricultural operating company that would become the tenant of *the agricultural land* (as defined hereunder), and would hire it from the property owners' association for the nineteen (19) *farm werwe* (as defined hereunder) with the intention that:
- 1.14.1.1 previously disadvantaged individuals would be supported through the creation of stable employment, training and the acquisition of skills, and also through a substantial shareholding in such agricultural operating company; and

- 1.14.1.2 *the agricultural land* would be made available at mere token rent in the form of making available limited produce to the property owners association for the nineteen (19) *farm werwe*, and thus effectively to the owners of the nineteen (19) *farm werwe*; and.
- 1.14.1.3 *the agricultural land* would add to the ambience and sense of place on *FHE*.
- 1.15 extensive processes of mediation and communication have been undertaken, and these processes have resulted in:
- 1.15.1 the recommendation by the trustees of *the historic associations*, with positive support *in principle*, on Friday 27th August 2010, and again on 8th October 2010 by those members who attended and/or were represented in discussions in principle pursuant to notices for special general meetings of members on the said dates of all three of *the historic associations*, and again in general meetings of members of all three the historic associations which were convened pursuant to notices whereby such meetings were convened to take place on 29th October 2010, that:
- 1.15.1.1 the home owners' affairs in respect of *FHAE* should be consolidated into a unified incorporated structure; and
- 1.15.1.2 the affairs of *the historic associations* should be formally transferred to *the company*; and
- 1.15.1.3 the members of *the historic associations* should be transferred to *the company*; and
- 1.15.1.4 the assets, rights and liabilities of *the historic associations* should be transferred to *the company*.
- 1.15.2 the preparation of *these articles*.
- 1.15.3 the unanimous acceptance and recommendation by the trustees of *the historic associations* that the wording of *these articles* be accepted and be implemented.
- 1.16 in order to implement the effective consolidation of *the historic associations* into *the company* it is necessary to adopt and to register *these articles* as amended from time to time the (amended) Articles of Association of *the Company*.

It is accordingly hereby agreed that the existing Articles of Association of *the Company* be hereby replaced with these (amended) Articles of Association, as appear above and below:

2. DEFINITIONS:

In *these articles*, above and below, also inclusive of within these definitions set out hereunder, unless inconsistent with the subject or context, the following expressions shall have the meanings, cognate expressions shall be likewise interpreted, and the use of upper case or lower case in the lettering, and the use of italics in the lettering, shall not be of significance:

"the Act" means the Companies Act, No 61 of 1973 (as amended) of *the Republic*, or to the extent of the operation said act having been or hereafter being repealed also in relation to *the company*, then the relevant legislative provisions for *the Republic* promulgated in replacement thereof, as amended from time to time.

“the administrative complex”

means a proposed subdivision of erf 2835, as indicated on *Appendix A* (being that portion of land whereon the offices that were hitherto used as sales offices by the historic associations, the estate managers house and garage, a parking area for the aforementioned offices, the building housing the electronic security monitoring and other security facilities, the sales office, the *Middagkranz* electrical sub-station, and the so-called “*coachman’s entrance and exit structures*” are situated. For the sake of avoidance of any doubt it is recorded that the agricultural buildings situated adjacent to the aforementioned do not form part of *the administrative complex*, and that these are situated upon *the agricultural land*, and therefore form part of *the agricultural land* as facilities thereon.

**“alienate a werf”
or “alienate an erf”**

means to alienate any of the *farm werwe* or any of the *erven*, and also includes alienation by way of sale, exchange, donation, deed, amendment of trust beneficiaries, intestate succession, will, cession, assignment, court order, insolvency or liquidation, and also means alienation by way of changing or substituting or adding to the beneficial owner/s of any of the *farm werwe* or any of the *erven*, irrespective of whether or not it is subject to a suspensive or resolute condition.

“the allocated three farm werwe”

means the following three *farm werwe*, namely *farm werwe* 2820 and 2823 and 2831 (being of the *farm werwe* historically allocated and sold by *the developer* to three historic shareholders of *the developer*, but still in the process of being transferred and therefore still registered in the name of *the developer* at the time of preparation of *these articles*).

“the agricultural complex”

means the agricultural farm buildings complex, including the workshops and farm manager’s house.

“the agricultural land”

means *erf* 2835, provided and subject thereto that any natural conservation land included therein shall be conserved and shall not be cultivated, and that *the remaining common property, the administrative complex and the fremco land* are excluded, it being recorded that subject to exclusion of *the common property, the administrative complex and the fremco land* it also includes the land indicated as conservation land on appendix A hereto and the agricultural complex;

“Appendix A”

means the photograph attached hereto as *Appendix A*, read with the identification of the *erven/farm werwe/sub-divisions* drawn in thereon as identified by the relevant numbers, and also read with the location of the *administrative complex* and the location of *the fremco land* as drawn in and identified by the legend thereon.

“the approvals”

means the zoning and sub-divisional approvals, inclusive of such architectural guidelines as may have been imposed by *the local authority* and/or any other competent statutory authority, all as required by the local authority and/or any other competent statutory authority in respect of *FHE*, and as these may stand and/or be amended from time to time.

“arrears”

means such levies and/or any other amount/s that may be overdue for payment to the company from time to time bearing in mind the provisions of *these articles*; provided that save in the case of pre-quantified recurring payment obligations (such as levies which shall be deemed to be due and payable on the relevant dates of regular required payment as provided for in *these articles*), an amount shall only be deemed to be in arrears thirty (30) days after notice of such amount to such member to make payment thereof, whether by way of invoice or other notification; provided furthermore that where the obligation to make payment of an

amount has been re-scheduled in terms of a *debt-rescheduling agreement*, the terms of the relevant *debt-rescheduling agreement* shall be applied to determine whether the *member* has remained in arrears.

"the architectural guidelines "

means the *farm werwe architectural guidelines*, the *fynbos architectural guidelines* and the *riverside lane architectural guidelines* (whichever may be applicable in a particular case), to be read with *the approvals* and any landscaping and/or planting guidelines in force from time to time.

"articles"

means these (amended) articles of association of *the company* as set out herein and as may be further amended from time to time in accordance with the provisions hereof and of *the Act*, inclusive of *the architectural guidelines*, and "*these articles*" shall be similarly interpreted.

"auditors"

means the auditors of *the company* as appointed from time to time.

"beneficial owner/s"

means any person or entity owning or who is a partner in any shares, members' interest, share of a partnership or other beneficial interest, in a company, close corporation, partnership, trust or other entity as the case may be, which owns or co-owns any of *the farm werwe* or any of *the erven* (for the sake of clarity beneficial owners also include any beneficiary of a trust which owns or co-owns any of *the farm werwe* or any of the *erven*, and also includes any person involved in the management of any such company, close corporation, partnership, trust or other entity owning or co-owning any of *the farm werwe* or any of the *erven*, if such person involved in such management is owed moneys on loan account by any such owner).

"the board"

means the board of directors of *the company*.

"constitutions of historic associations"

means *the farm werwe constitution*, the *fynbos constitution* and the *riverside lane constitution*.

"the chairperson"

means the chairperson from time to time of *the board*;

"a contractor"

means a contractor who performs work on any of *the farm werwe* or any of *the erven*.

"the common property"

means the remainder of *erf 2813* (which is (*twice*) indicated with the number *2813* on *Appendix A*), *erf 2850*, *erf 3354* and *erf 3376* and *erf 3383*, and *erf 2835* and *erf 2679*, as well as:

- *the administrative complex*; and *the farm buildings complex* and
- any common entrances, common exits and common roads serving *FHAE* or also serving *FHAE*; and
- those common systems and common infra-structures serving *FHAE* or also serving *FHAE* (being also inclusive of any common drainage and sewage systems, common electrical systems, common security systems, security walls and/or fences around the perimeter of *FHAE*, common electrical systems, common electronic and computer systems); and
- those common irrigation systems (also inclusive of pumps and/or other water extraction systems, water reticulation systems and pipe networks that are situated within *FHAE* (though naturally with reservation of such (if any) vested rights and/or obligations

as *the current agricultural land operator* and/or *the future agricultural land operator/s* may, now and/or in the future, have in relation thereto).

For the sake of further clarity, it is recorded and agreed that:

common property shall exclude any property forming part of the *hotel land* and/or *the old reservoir land* and/or *the possible office land*, and that insofar as any infrastructure and/or services and/or facilities forming part of *common property* may be dedicated, now and/or in the future:

- solely and exclusively serve the owner/s of *the hotel land* and/or of *the old reservoir land* and/or *the possible office land* and/or their body corporate/s and/or other property association/s; or
- mutually serve the owner/s of the *hotel land* and/or of *the old reservoir land* and/or of *the possible office land* and/or their body corporate/s and/or other property association/s on the one hand, and *the company* and/or *the members* on the other hand;

it is the intention as soon as reasonably possible and with a targeted completion period of within six months after these articles have been finally adopted, to enter into reasonable and appropriate bi-lateral and/or multi-lateral agreements between *FHAE* on the one hand, and the owner/s of the *hotel land* and/or of *the old reservoir land* and/or *the possible office land* and/or *the Fremco Land* and/or their body corporate/s and/or other property association/s on the other hand, and that the relevant agreement/s shall determine the relationship/s, rights and obligations in respect of such infrastructure and/or services and/or facilities so dedicated.

"the company"

means Fransche Hoek Agricultural Estate Home Owners NPC (a company incorporated under section 21 of *the Act*), with company registration number 2010/003627/08, previously named *Tuscaloosa 142*.

"debt rescheduling agreement"

means a written agreement duly signed on behalf of *the company*, whereby the debts of *a member* to *the company* have been re-scheduled by agreement and shall be subject to the interest proviso in *article 12.21* hereunder.

"the designated signatory/ies of a proxy"

means the person/s entitled to sign a proxy on behalf of *a member* as provided in *article 21.2* hereunder, to attend any general meeting of members and to vote at such meeting on behalf of the relevant *member*.

"the developer"

means *the Franschoek Country Club Estate Development Company (Pty) Ltd*, with company registration number 1998/011562/07, also generally known as "*frandevco*".

"the developer erven"

means such of *the erven* as from time to time remains registered in the name of *the developer*.

"the developer farm werwe"

means such of *the farm werwe* as from time to time remains registered in the name of *the developer*, and "*the developer werwe*" shall be likewise interpreted.

- “developer director”** means a *director* nominated on behalf of *the developer* to represent *the developer* on *the board*.
- “the developer exit date”** means the date when *the developer* no longer owns more than an aggregate of altogether 5 (five) erven and/or farm werwe within *FHAE*, or has advised *the Board* by written notice duly signed on behalf of *the developer*, that *the developer* no longer requires a representative of *the developer* to serve as a *developer director* on *the Board*, or 30 th June 2012, or when *the The Development Bank of Southern Africa Ltd* (“*DBSA*”) no longer substantially controls *the developer*, whichever may be the soonest. For these purposes it shall be deemed that *DBSA* substantially controls *the developer* for as long as *DBSA* controls the majority of votes of the shareholder/s of *the developer*, A certificate on the letterhead of the auditors of *DBSA* purported to be signed by a director or partner of such auditors shall be prima-facie proof whether or not *DBSA* so substantially controls *the developer*.
- “development period”** means, in relation to each of *the developer farm werwe* and/or *the developer erven* other than *the three allocated developer werwe*, the period expiring three years after *the developer* has transferred the relevant *farm werf* or the relevant *erf* to another party, or earlier upon written notice being given to *the company* by *the developer* (being the period that will be allowed for such transferee to develop such *farm werf* or such *erf* before becoming liable for additional levies).
- “director ”** means a director of *the company*.
- “erven”** means *the fynbos village erven* and *the riverside lane erven*; and “*erf*” means one of the *erven*.
- “executive committee”** means such executive committee/s as may be appointed from time to time by *the board* and to whom powers and/or functions of *the board* may be delegated from time to time in accordance with the provisions of *these articles* hereunder.
- “farm werwe”**
or **“werwe”** means the following nineteen (19) *farm werwe*, namely *farm werwe* 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833 and 2834 as appear from *Appendix A*, and any residential sectional title property unit/s that may have been or may hereafter be established on any of the aforesaid *farm werwe*, and “*farm werf*” or “*werf*” means one of the *farm werwe*.
- “farm werwe architectural guidelines”** means those architectural guidelines that have been adopted for the *farm werwe*, read with the approvals and any landscaping and/or planting guidelines in force from time to time., and “*werwe architectural guidelines*” shall be likewise interpreted.
- “farm werwe constitution”** means the last constitution of *the farm werwe hoa*, and “*werwe constitution*” shall be likewise interpreted.
- “the farm werwe hoa”** means the home owners association that was historically established for *the farm werwe*, and “*werwe hoa*” shall be likewise interpreted.
- “fransche hoek agricultural estate”**
or **“FHAE”** means *the farm werwe*, *the fynbos village erven*, *the riverside lane erven*, *the agricultural land*, and *the common property*. For the sake of clarity, it is specially recorded that for the purposes of these articles *the hotel land*,

the old reservoir land, the possible office land, and the fremco land are not included within any reference to “*fransche hoek agricultural estate*” or “*FHAE*” and are not governed by these articles.

(provided and subject thereto that notwithstanding anything to the contrary set out herein, in the event of approval being granted by the local authority for the *fremco land* to be developed and to be re-zoned for residential purposes, and *the developer* and *the board* approving the incorporation of the *fremco land* into *FHAE* by way of a written and signed addendum duly registered as an addendum to these articles, such land so agreed upon shall then be deemed to form part of *FHAE* and shall then also be governed by these articles, read together with the provisions of such addendum, and the owner/s from time to time of such land so incorporated into *FHAE* shall then also become and be registered as member/s of *the company* in accordance with the provisions of these articles read with such addendum).

“fransche hoek estate” or “FHE”

means the *FHAE, FHEBN, the fremco land*.

“fransche hoek estate business node” or “FHEBN”

means *the hotel land, the old reservoir land and the possible office land*.

“the fremco land”

means the land historically generally referred to as such, being that portion of *erf 2835* that is situated within the circular roads (as appears from *Appendix A*);

“the fremco levies”

means the amounts payable to *fremco trust* as referred to in *article 1.11.1.5* above

“fremco trust”

means *fremco trust*, registered with the Master of the High Court under registration number *IT 3341/2001*), and any reference to *fremco trust* shall also be deemed to be a reference to the trustees for the time being of *fremco trust* from time to time, in their capacities as such and not in their personal capacities.

“the future agricultural land operator”

means such company or other entity or person as may from time to time in the future be entitled to farm *the agricultural land* or any portion thereof by agreement of lease or otherwise.

“future farm lease”

means such (if any) agreement of lease that may in future be concluded in respect of *the agricultural land* or any portion thereof.

“fynbos architectural guidelines”

means the architectural guidelines that have been adopted for the *fynbos village erven* read with *the approvals* and any landscaping and/or planting guidelines in force from time to time.

“fynbos constitution”

means the last constitution of the *fynbos hoa*.

“fynbos hoa”

means the home owners association that was historically established inter alia in respect of *the fynbos village erven*.

- "fynbos village"** means the development on the original erf 2813 franschhoek as it stood prior to sub-division, consisting of:
- a residential component, consisting of:
 - *the fynbos village erven; and*
 - *the remainder of erf 2813 (which is part of the common property);*
 - a business component, namely the hotel land, the old reservoir land and the possible office land;
- for the sake of clarity, it is recorded, as also appear elsewhere here from, that such business components of *fynbos village* are not included in FHAE and are therefore not subject to these articles.
- "fynbos village erven"** means the following fifty eight erven being, portion of *fynbos village* consisting of individually titled primarily residential units, namely *erven* 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317, 3318, 3319, 3320, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332, 3333, 3334, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3342, 3343, 3344, 3345, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372, 3373, 3374, **3378**;
- "historic associations"** means *the fynbos hoa, the riverside lane hoa and the farm werwe hoa* , and "*the three historic associations*" shall be likewise interpreted.
- "hoa"** means a home owners association.
- "hotel land"** means erf 3377, being the land whereon a hotel and related developments currently known as L'ermitage Hotel & Private Residence Club has been constructed, and portion of which land is still undeveloped at the time of the adoption of *these articles*.
- "improvements"** means any structure of whatever nature constructed or erected or to be constructed or erected on any of the *farm werwe* or any of *the erven*, including the alterations or variation of any improvements; provided that the foregoing shall not give rise to any right or expectation to erect any structure that is not in accordance with the requirements of the approvals and/or the architectural guidelines and/or that is not in accordance with plans that have been duly approved in accordance with the requirements of these articles.
- "last registered contact facility of a member"** means from time to time any such fax number or e-mail address or other electronic contact facility such as a cellular number (whatever the case may be) then last placed on record with any of *the three historic associations* or with *the company*, by or on behalf of a *member*; provided that insofar as any *member* may at any time hereafter replace any such contact facility with a different or updated contact facility, it shall mean the relevant different or updated contact facility.
- "levy"** means the levies from time to time payable by *the members of the company*, as referred to in article 12 hereof; provided and subject thereto that where the expression is used in relation to a levy or levies payable to

fremco trust or to be paid for the benefit of fremco trust or to be secured for the benefit of fremco trust, it shall mean the fremco levies;

- “levy fund”** means the levy fund as referred to in *article 12* hereof.
- “local authority”** means the local authority having jurisdiction over *FHE*, which at present is the Stellenbosch municipality.
- “lupo”** means *the land use and planning ordinance, no. 15 of 1985*.
- “manager”** means such manager/s as may be appointed from time to time and to whom powers and/or functions of *the board* are delegated from time to time.
- “master hoa”** means the informal de facto overarching home owner’s association that was historically de facto established by the trustees of *the historic associations*.
- “member/s”** means, without detracting from the provisions of *article 7* hereunder, those parties who are members of *the company* from time to time in accordance with the provisions of *these articles*;
- “member director”** means a *director* of *the company* who is not a *developer director*.
- “notice to a member”** means notification in writing or by facsimile or by electronic means; provided that unless the member responsible proves otherwise, it shall be deemed that an invoice or notice has been received by such member, in the case of posting, within 10 (ten) days after it was issued and posted by and/or on behalf of the company to the last physical or postal address of the party place on record recorded with the company by or on behalf of such party, and in the case of transmission by fax, e-mail or other electronic transmission, within 24 (twenty four) hours after it was issued and successfully transmitted by and/or behalf of the company, to the last contact facility of a member.
- “owner/s representative/s”** means all the directors of the relevant company/ies or all the members of the relevant closed corporation/s or all the trustees for the time being of the relevant trust/s or all the partners of the relevant partnership/s or all persons serving on the highest managing structure of the relevant entity (whatever the case may be) that is/are the owner or co-owners of the relevant *farm werf* or the relevant *erf* or of the relevant *residential sectional title property unit* on a *farm werf* or of *the agricultural land* (whatever the case may be) or such person duly authorised by a owner or co-owners to represent him/her.
- “planting guidelines”** *such planting* guidelines as are in force from time to time in relation to *FHAE*, whether under *the approvals* or under *the architectural guidelines* or under *any rules and/or regulations* in force under and/or pursuant to *the approvals* and/or *the architectural guidelines* and/or *these articles*.
- “the possible office land”** means erf 3357, *Fransche Hoek Estate*, as appears from *Appendix A*.
- “the old reservoir land”** means erf 3360, *Fransche Hoek Estate*, as appears from *Appendix A*.
- “primary beneficiary”** in the case of a deceased person means spouse, life partner, common law wife, child, step child and parent;

In all other cases such person who receives the bulk of the interest, dividends or other income derived from an investment or trust;

- “prime rate”** means the fluctuating publicly quoted best lending interest rate at which *The Standard Bank of South Africa Ltd* (or its substantial successor) from time to time lends and advances money by way of unsecured overdraft facilities to its best corporate customers, and such interest shall be compounded monthly in arrears on the last day of each relevant calendar month. A certificate on the letterhead of the said bank purporting to be signed by a manager of the said bank (whose signature shall not be required to be proved) shall be prima facie proof of the relevant rate of interest as it stood from time to time and/or at any relevant time;
- “register”** means the register of *members* of *the company* kept in terms of these articles and *the Act*.
- “remaining developer erven/werwe”** means such of *the farm werwe* as are from time to time not yet transferred out of the name of *the developer* and into the name of another party, but exclusive of *the three allocated farm werwe*;
- “the Republic”** means the Republic of South Africa;
- “residential sectional title property unit”** means a residential dwelling unit established by way of a sectional title scheme on any of *the farm werwe*, as well as any associated share/s in the common property of the relevant sectional title scheme so established, as well as any rights in respect of any exclusive use area/s and/or any unit destined as garage/s and/or other facility/ies and/or other rights, substantially intended to be supplementary or supportive to the relevant residential dwelling unit;
- “review architect”** shall mean the most senior partner or director of *Dennis Moss and Partners Inc* of *Stellenbosch* or his/her nominee, or failing such architect, or if all *the directors* unanimously for good reason resolving to appoint another review architect, then such registered and practising architect of not less than ten (10) years practise as may be appointed by unanimous consensus between all *the directors*, and failing such consensus, as may be appointed by the then president of *the South African Institute of Architects* or his/her nominee *at the request* of any *director*.
- “riverside lane architectural guidelines”** means the architectural guidelines that have been adopted for the *riverside lane erven*, read with *the approvals* and any landscaping and/or planting guidelines in force from time to time.
- “riverside lane constitution”** means the last constitution of *the riverside lane hoa*.
- “riverside lane erven”** means the following fourteen erven, namely erven 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848 and 2849, as appear from *Appendix A*.
- “riverside lane hoa”** means the existing home owners association that was historically established for the riverside lane erven
- “sale of land agreement”** means any agreement in respect of the alienation by way of sale or otherwise of any of the *farm werwe* or any of *the erven*, entered into or

"schedule of information"

that may hereafter be entered into in respect of any of *the farm werwe* or any of *the erven*.

"section 21 of the Act"

means any schedule of or appendix with information annexed to a *sale of land agreement*.

"section 21 company"

means section 21 of the Companies Act for *the Republic*, No 61 of 1973 (as amended); provided that in the event of the said act being or having been repealed inclusive of the said section 21, it shall mean, unless the replacing act otherwise provides or requires (e.g. by way of transitional or deeming arrangements) a reference, mutatis mutandis, to those provisions of *the Act* whereby it is replaced that are substantially intended to replace the said provisions.

"Sinking Fund Levies"

means an association not for gain or a non-profit company incorporated under *section 21 of the Act* (as defined above).

means 0,5% (comma five percent) of the relevant selling price of any land or portion of land within *FHAE* which is on-sold by any owner of land within *FHAE*, which amount shall in perpetuity against transfer of any such land or portion of land pursuant to such sale be payable to the Company by both such existing owner and the future owner separately, it being recorded that this amount shall be payable in addition to the *Fremco Levies*, shall constitute a debt due by the relevant member to the Company, and shall be deposited by the Board into a sinking fund which shall vest in the Company, and which sinking fund shall as and when required, as may be determined by the Board from time to time in its discretion, be applied towards unforeseen and/or extra-ordinary and/or unusual expenses not budgeted for and/or covered and/provided for by way of monthly recurring and/or special levies and/or other levies recovered from members from time to time; provided that the sinking fund levies shall only apply with effect from the date when the amendment to these articles of association whereby the same was introduced was duly adopted by the members in general meeting; provided furthermore that the foregoing shall not detract from the rights of *the board* to determine and/or to impose any levies as provided for in article 12 hereunder, nor from the obligations of members to pay any such levies. This provision will not apply;

- where the land is owned by a trust and the trust is dissolved and ownership is transferred to the primary beneficiary of such a trust. The board shall be entitled in its sole and absolute discretion to decide whether a transaction conforms to this provision;
- In the case of death if the land is bequeathed to a primary beneficiary by way of a testament or will. The board shall be entitled in its sole and absolute discretion to decide whether a transaction conforms to this provision;
- where the land is owned by a company and ownership is transferred to the controlling shareholder of such a company or a primary beneficiary of the controlling shareholder. The board shall be entitled in its sole and absolute discretion to decide whether a transaction conforms to this provision;

"statutes"

means *the Act* and any and every other statutory provision of *the Republic*, affecting *the company*.

- “working day”** means any day which is not a Saturday or Sunday or a public holiday in *the Republic*, and “*business day*” shall be likewise interpreted.
- “workers trust”** means *the workers trust*, registered with the Master of the High Court under registration number IT 2289/2008), and any reference to *the workers trust* shall also be deemed to be a reference to the trustees for time being of *the workers trust* from time to time, in their capacities as such and not in their personal capacities.

3. INTERPRETATION

- 3.1 the headings of *these articles* are for convenience and shall be disregarded when interpreting *these articles*.
- 3.2 unless the context clearly indicates a contrary intention:
- 3.2.1 the singular shall mean the plural and vice versa;
- 3.2.2 a reference to any a gender shall include all other genders; and
- 3.2.3 a reference to a natural person shall include also include any legal person, (also inclusive of a company and a closed corporation), a partnership and a trust, and vice versa.
- 3.3 words and expressions defined in any *sub-article* shall, for the purpose of the *article* to which that *sub-article* forms part and in subsequent *articles*, unless consistent with the context, bear meaning assigned to such words and expressions in such *sub-article*.
- 3.4 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 *Public Holiday* within *the Republic*, in which event the last day shall be the next succeeding day which is not such a *Saturday, Sunday* or *Public Holiday*.
- 3.5 if any provision of *these articles* is in conflict or inconsistent with any law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of these articles and shall be deemed amended strictly to the extent required to render it valid and in conformity with such law.
- 3.6 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 interpretation and/or definition provisions of *these articles*, effect shall be given to it as if it were a substantive provision in the body of *these articles*.
- 3.7 the *architectural guidelines* and *the approvals*, as these may stand from time to time, are deemed to be incorporated into *these articles*, and to form part thereof.
- 3.8 insofar as a portion of land is identified in *these articles* by reference to a number, such reference shall be deemed to be reference to the relevant portion of land so identified by the relevant number on *Appendix A*, regardless of whether such portions may be the original land or sub-divided portions or remaining portions of land.
- 3.9 any rights and/or obligations (if any) of *the developer* and/or any land owner within FHAЕ are reserved, subject to and without detracting from the provisions of these articles."

4. COMMENCEMENT DATE

- 4.1 *the company* shall be deemed to have commenced to function as a home owners association for *FHAE* upon *these articles* being approved by *the members* in general meeting of each of *the historic associations*, and being lodged with and accepted by *the local authority*.
- 4.2 insofar as *the company* may prior to such commencement have taken bona fide de facto care of the affairs of *the historic associations*, such actions on the part of *the company* are hereby ratified retrospectively, and with retrospective effect.

5. STATUS

- 5.1 *the company*:
- 5.1.1 shall not operate for profit or for gain but for the benefit of *the members*, in the spirit of *fed*.
- 5.1.2 shall function as a home owners association for *FHAE* in accordance with the requirements of *the approvals*, pursuant to Section 29 (1) of LUPO, and in the spirit of *fed*.
- 5.2 no member in his/her personal capacity shall have any right, title or interest to or in the funds or assets of *the company* which shall vest in and be controlled by *the board* for the benefit of the *members*, in the spirit of *fed*.
- 5.3 *the company* has legal personality and shall be capable of suing and of being sued in its own name.

6. OBJECTS

- 6.1 it shall be a principal object of the company to ensure the smooth and efficient running of *FHAE* on behalf of its members so that they may benefit from the quiet enjoyment of a well run, high class, low density, private residential estate in attractive and secure, well-maintained agricultural surroundings.
- 6.2 without detracting from the aforestated principal object, the company shall have as it objects:
- 6.2.1 the matters referred to in section 29(2)(b) and (c) of *lupo* and without detracting from the generality thereof, to ensure compliance with the *approvals*; and
- 6.2.2 to oversee, maintain and control the *common property*.
- 6.2.3 generally to promote, advance and protect *FHAE* and the interests of *the company* and *the members*.
- 6.2.4 to regulate and control the aesthetic appearance of land and improvements in *FHAE*
- 6.2.5 to ensure a high standard of improvements within *FHAE*.
- 6.2.6 to administer and enforce *the architectural guidelines*, and the requirements of *the approvals*.

- 6.2.7 to ensure or to procure the maintenance, upkeep, upgrading and installation, where required, and regulation, of roads and services in *FHAE*, such as, but not limited to, sewerage system, refuse collection to a central point, security, the security fence, access to *FHAE*, access to private roads within *FHAE*, and regulating the provision and reticulation of water and electricity.
- 6.2.8 to regulate any conditions imposed by the local authority in respect of *farm werwe* and *erven* in terms of *the approvals*, and to procure compliance therewith.
- 6.2.9 to maintain or to procure maintenance of the access roads and improvements thereupon in *FHAE*, and to control the usage thereof and of the facilities and/or land belonging to *the company* or falling under its control.
- 6.2.10 to pay expenses relating to access and egress roads and other common roads, improvements thereon and all amenities and facilities provided in terms hereof.
- 6.2.11 to set out and enforce conduct rules for the members and for member's family, visitors *and workers*, employees and contractors active on *FHAE*.
- 6.2.12 to set out and enforce rules relating to the building of perimeter and any other walls or boundary security arrangements and usage of amenities and facilities of *the company*.
- 6.2.13 to enter into *agreement/s*.
- 6.2.14 to consider and to agree and/or to oppose on behalf of members, any application/s for development and/or re-zoning and/or sub-division of land within or adjacent to *FHAE*; provided that the rights of *members* themselves to oppose any such applications remain reserved.
- 6.2.15 to evaluate and decide upon applications from members wishing to conduct a specifically-defined business of an artistic or crafting nature on their property within *FHAE* in accordance with the zoning status of the land, to approve or deny such application, with or without imposing conditions, and to withdraw such approval if upon motivated application by an interested party it be proven to the satisfaction of *the board* that any rights awarded are not, or no longer are, in the best interests of *the company*, *the members* or the standing, tranquility and character of *FHAE*; provided that the foregoing shall not detract from *the approvals*.
- 6.3 *the company* may enter into an agreement with the owners of the *hotel land*, *the old reservoir land*, *the possible office land*, and with the operator from time to time of the *agricultural land* for the rendering of shared central security monitoring, control and response services and/or other services, and/or the supply of irrigation water, in the case of security services *inter alia* on the basis of an integrated security plan being implemented for the entire *FHE*, utilizing on a cost-sharing basis the operations room and response capacity established on *FHAE*; provided that the foregoing shall not detract from any existing or future rights (if any) of the historic associations or of owners of land in *FHAE* in respect of water, nor from any transfer of such rights to the company, all of which rights are fully reserved.
- 6.4 *the company* shall have the power to do all such acts as are necessary to accomplish the fulfillment of the foregoing objects including, but not restricted to, powers specifically contained in *these articles*.

7. MEMBERSHIP

7.1 Membership of current owners

7.1.1 Subject to article 7.1.2 hereunder, each of the current owners or co-owners of *farm werwe*, and of *the erven*, on adoption of *these articles* shall be deemed, immediately with effect from approval of these articles in general meeting by all three of the three historic associations, to be members of the company in respect of each *werf* and *erf* owned or co-owned by them, and to have bound themselves in terms of *these articles*, and will, save as otherwise provided, remain members for as long as they retain any such ownership or co-ownership;

7.1.2 *article 7.1.1* above is subject to the following:

7.1.2.1 where any of the *farm werwe* or *erven* are co-owned by more than one person, all such co-owners shall collectively constitute only one single member, but each of the relevant owners shall then be bound jointly and severally and in solidum, as co-principal debtors, in respect of the relevant membership obligations;

7.1.2.2 where a single *residential sectional title property unit* has been or is hereafter registered in respect of any *farm werf*, the owner thereof shall be the member (and there shall not be another member in respect of the relevant *farm werf*) provided that if such single *residential sectional title unit* is co-owned by more than one person, all such co-owners shall collectively constitute only one single member, but each of the relevant owners shall then be bound jointly and severally and in solidum, as co-principal debtors, in respect of the relevant membership obligations;

7.1.2.3 where two (2) *residential sectional title property units* have been or are hereafter registered in respect of any *farm werf*, the owner of each of the two (2) *residential sectional title property units* shall each be deemed to be a separate member; provided that if any such *residential sectional title property unit* is co-owned by more than one person, all such co-owners shall collectively constitute only one single member, but each of the relevant owners shall then be bound jointly and severally and in solidum, as co-principal debtors, in respect of the relevant membership obligations;

7.1.3 where an owner or co-owners qualify for membership in respect of more than one of the *farm werwe* and/or of the *erven* and/or residential sectional title property units on a *farm werf*, he/she/they shall be deemed to be a member to the extent set out above in respect of each of the separate *farm werwe* or *erven* or *residential sectional title property units* owned by him

7.2 Membership of future owners:

7.2.1 The future owners or co-owners from time to time of each of the *farm werwe* and of each of the *erven* and of each of the *residential sectional title property units* on a *farm werf*, will in respect of each *farm werf* or *erf* or *residential sectional title property unit* owned or co-owned by them;

ipso facto become members and shall remain members for as long as they retain any such ownership or co-ownership; and will be deemed ipso facto to have bound themselves in terms of *these articles*.

7.2.2 the provisions of *articles 7.1.1, 7.1.2 and 7.1.3* above shall apply mutatis mutandis to membership under *article 7.2.1* above.

7.3 Cessation of membership

The above is subject thereto that membership shall cease as follows, subject to Article 7.3.2 hereunder:

- 7.3.1 in the case of an owner or co-owners of any of the *farm werwe* or *erven* or of any *residential sectional title property units*, the relevant rights in respect of membership derived from the relevant ownership or co-ownership shall cease when the relevant person is no longer a registered owner or co-owner of relevant *farm werf* or *the relevant erf* or the relevant *residential sectional title property unit*, whatever the case may be.
- 7.3.2 in the case of *the developer*, the rights of membership of *the developer* shall only cease upon *the developer* no longer being the registered owner of any portion of land in *FHAE*; provided that *the developer's* voting power as a member, derived from ownership of the relevant *farm werwe* or *erven*, and obligation to make payment of levies in respect thereof, shall be reduced consequentially as and when *the developer* ceases to be the owner of any thereof.
- 7.3.3 In the event of any member qualifying for more than one membership under these articles, such member shall in formal terms be registered as a member only once, but shall be entitled to the rights and privileges, including voting power, and be responsible for the obligation, including levies, mutatis mutandis as though such member is a registered member for each farm werf or erf in respect whereof he/she/it qualifies for membership under these articles.

7.4 Deemed membership and deemed membership liabilities

The above is also subject to the following:

- 7.4.1 subject to *article* 7.4.2 hereunder, in the event of the relevant owner/s or co-owner/s of the relevant land or the relevant residential sectional title unit not being a natural person and membership now or in the future being restricted to natural persons under *the Act* or *the statutes*, the relevant *owners representative/s* shall (jointly with any relevant co-owner/ of the relevant land that might be a natural person) be a (single) member, for and on behalf of the relevant owner/s or co-owner/s and not in a personal capacity;
- 7.4.2 in the event of such representative membership being irreconcilable with *the Act* and/or the statutes, such membership shall be deemed to be in a personal capacity; provided that in that event:
 - 7.4.2.1 the relevant *owners representative/s* shall in that event be deemed to have declared and warranted that he/she/they are duly authorised to bind the relevant owner or co-owner/s in respect whereof he/she/they is/are the *owners representative/s* and also *the relevant beneficial owner/s* to be liable, jointly and severally with such member for the liabilities and duties of such member under *these articles*, mutatis mutandis, as though the relevant owner/s and/or co-owner/s, and the relevant beneficial owner/s, is/are indeed the member;
 - 7.4.2.2 it shall then also be deemed that the relevant owners representative/s has/have so bound all relevant owner/s and/or co-owners and/or

beneficial owner/s in respect whereof he/she/they became the member to *the company* and under *these articles*.

7.4.2.3 any reference to a *member* in relation to such a member shall therefore be deemed, save only insofar irreconcilable with *the Act* and/or *the statutes*, also to be a reference to the relevant owner or co-owners and beneficial owner/s, and any reference to a *farm werf* or *erf* or a *residential sectional title property unit* of such a (representative) *member*, shall be deemed to be a reference to the relevant immovable property underlying the relevant membership as owned by the relevant owner or co-owner.

7.5 Membership subscription

Each member shall be liable to make payment of a nominal once-off amount of R1.00 (one rand) to the Company as initial subscription fee for membership.

8. PHASED MARKETING AND DEVELOPMENT

8.1 *the developer* intends to market *the remaining developer werwe* and the *remaining developer erven* in phases as *the developer* deems fit.

8.2 for as long as *the developer* is a member of *the company*, *the developer* shall enjoy unrestricted rights to procure the marketing of *the remaining developer werwe* and *the remaining developer erven*, in particular, to erect reasonable signage within *FHE* to market these.

9. MEMBERS' OBLIGATIONS

9.1 every *member* shall:

9.1.1 comply with the provisions of *these articles* and all rules or regulations, codes of conduct and policies passed by *the company* or *the board*.

9.1.2 comply with and adhere to the *architectural guidelines*.

9.1.3 comply with any agreement bona fide and reasonably concluded by *the company* insofar as such agreement may directly or indirectly impose any obligation on a member. Any dispute in this regard shall be determined by application of *the dispute resolution procedure as detailed in clause 35 below*.

9.1.4 comply with any bona fide directive given by *the company* and/or *the board* in enforcing any provision of *these articles*.

9.1.5 procure that every *beneficial owner* of that *member*, if applicable, shall comply with all the provisions of *these articles*.

9.2 the rights and obligations of a *member* are not transferable and every *member* shall:

9.2.1 to the best of his/her ability, further the objects and interests of *the company* and of *FHAE*.

9.2.2 observe all directives from time to time made or given by *the company* and/or *the board*.

9.3 without detracting from the liabilities from time to time of members to the Company as provided for in these Articles (e.g. in respect of levies, and to make payment in

respect of water and electricity, and of refuse removal if not included in levies), the liabilities of members to parties other than the Company or members, shall, unless expressly otherwise provided in terms of these articles, in the case of each member be restricted to the guarantee and pledge by such member to make payment to the Company of the initial once-off subscription fee of R1.00 (one rand); provided and subject thereto that the members shall be jointly liable for expenditure incurred in connection with the Company as required by Section 29 (2) (c) LUPO;

- 9.4 a member shall not be entitled to alienate a *farm werf* or an *erf*, or any residential sectional title property unit, other than in accordance with the provisions of *these articles*.
- 9.5 no *farm werf*, no *erf* and no rights of ownership in respect of any *residential sectional title property unit* on a *farm werf*, shall be *alienated* unless:
- 9.5.1 the proposed transferee, in the case of a prospective member, has irrevocably bound himself/herself in writing, duly signed by and/or on behalf of the proposed transferee, to become a member of the company and to observe *these articles* (as amended from time to time) for the duration of his/her ownership of the relevant *farm werf* or the relevant *erf* or the relevant *residential sectional title property unit*, and in the case of a prospective *beneficial owner/s*, unless such prospective *beneficial owner/s* has also irrevocably bound himself/herself in writing, duly signed by and/or on his behalf, to observe *these articles* (as amended from time to time) for the duration of his/her beneficial ownership, and such proposed transferee and/or such prospective *beneficial owner/s* has/have delivered a document, signed by the proposed transferee, addressed to the company, so binding himself/themselves.
- 9.5.2 *the company* has issued a clearance certificate that all amounts owing to *the company* (and to *the historic associations*, if any) by such member have been paid and that *the member* is not in breach of any of the provisions of *these articles*.
- 9.5.3 the proposed transferee binds himself in writing, duly signed by and/or on behalf of the proposed transferee, that upon the registration of the relevant property into his/her name, he/she shall ipso facto become a member of *the company*.
- 9.5.4 the interview committee referred to hereunder has approved the prospective purchaser of the relevant *farm werf* or *erf*, and also the prospective beneficial owner, as the case may be; provided that the foregoing shall not apply to the remaining developer *farm werwe* and/or to the remaining developer *erven*.
- 9.6 no *farm werf*, no *erf*, and no *residential sectional title property unit* on a *farm werf*, shall be transferred unless all relevant unpaid *fremco* levies still outstanding in relation to such property or that will become payable pursuant to the relevant transaction, have been paid or secured to the satisfaction of the board or the managing agent.
- 9.7 a member undertakes to procure compliance with these articles, and also with any rules and/or regulations and/or policies and codes of conduct in force from time to time pursuant to these articles, by all and any persons that may visit, occupy or is employed on the relevant *farm werf* or *erf* from which his membership is derived including but not limited to family, visitors, domestic employees and contractors.
- 9.8 *a member* may not and shall not resign as *member* of *the company*.
- 9.9 each *member* shall:

- 9.9.1 ensure that no improvements on and to his/her property will be constructed otherwise than in accordance with the architectural guidelines and plans and which *improvements* have been duly approved by *the review architect* and the municipality before commencement of the relevant constructional activities.
- 9.9.2 maintain the improvements to his farm werf/farm werwe and/or to his erf/erven in a state of good repair and in a good and tidy condition, and the garden/s and land thereof in a good and tidy condition to a standard acceptable to the *board*.
- 9.9.3 establish and maintain a garden according to a standard acceptable to *the board* and in accordance with the planting guidelines and shall likewise maintain the road verge bordering his/her property and any road between an access road and his/her property.
- 9.9.4 be responsible for the maintenance of external and boundary walls inclusive of regular painting thereof to a standard acceptable to the *board*.
- 9.9.5 not do or suffer to be done on the common property, the agricultural land, any farm *werf* or erf anything which, in the opinion of *the board*, is noise some, unsightly, injurious, unsafe, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any member, tenant or occupier of any *farm werf* or *erf* in FHAE or *the company*.
- 9.9.6 not erect or permit the erection of any advertising board on his *farm werf* or *erf* or *residential sectional title property unit* without the written approval of *the board*.
- 9.9.7 adequately insure the building/s/dwelling/s on his property, and, if requested by *the board*, furnish proof of such insurance to them and, in the event of total/partial destruction of any such building/s/dwelling/s, he/she shall, within a reasonable time period as determined by the *board*, make good such damage or reconstruct such improvement in accordance with the original plans, or in the event of total destruction, in accordance with *the architectural guidelines*.
- 9.9.8 comply with all security procedures and rules and policies and codes of conduct implemented from time to time.
- 9.9.9 generally, ensure that gardening and landscaping of his/her property is undertaken so as to be compatible with the gardening and landscaping of adjoining portions of *FHAE*, and with *the planting guidelines*.
- 9.9.10 adhere strictly to the terms and conditions of any servitudes granting access to and/or over FHAE and/or egress over and/or from FHAE, and in relation to any services, and the company and each member *shall accept the registration of any:*
- 9.9.10.1 *such servitudes bona fide and reasonably required; and*
- 9.9.10.2 *the subdivision of the fremco land and*
- 9.9.10.3 *such limited and non-substantial refinement of the relevant boundaries in respect of the fremco land so as to comply with the requirements of the local authority and/or the Department of Agriculture and/or any other competent authority, thus to procure any such subdivision and/or registration;*

- 9.9.11 ensure that he/she and his/her family members, invitees, employees and contractors do not damage or destroy trees, vegetation and landscaping in or on the *common property*, or fellow members erven, interfere with or damage the farming of *the agricultural land*, and that plants or trees on his/her property do not interfere with pedestrian traffic or obscure the vision of motorists, or interfere with the farming of *the agricultural land*.
- 9.9.12 not park any, but not limited to, commercial type vehicle, or a boat, caravan, trailer, motor home, horse box or any vehicle not in good working order, on any common roadway in *FHAE*, and such commercial type vehicle, boat, caravan, trailer, motor home, horse box, or any vehicle not in good order shall be so parked on the member's portion or erf so as to limit insofar as reasonably possible its visibility from the outside of his werf or erf; provided and subject thereto that *the board* shall be entitled in its sole and absolute discretion to require that any, but not limited to, commercial type vehicle, or a boat, caravan, trailer, motor home, horse box or any vehicle not in good working order, either be screened completely in a manner to the satisfaction of *the board* or be housed within a garage on such werf or erf or be removed from *FHAE* if it is considered to impact negatively on the sense of place of *FHAE*, in the sole and absolute discretion of *the board*;
- 9.9.13 if the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structure shall be reasonably screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to members or their tenants or occupiers and the *board* shall, in its absolute discretion, be entitled to require the permanent removal from any *werf* or *erf* and/or *FHAE* of any animal or bird which, in the opinion of the board, constitutes a disturbance or nuisance;

10. **THE ARCHITECTURAL GUIDELINES AND THE APPROVALS**

- 10.1 *the architectural guidelines* and *the approvals* constitute an integral part of *these articles*, and for as long as *the developer* is a member of the company, the architectural guidelines may only be amended, substituted, added to or repealed if *the developer* has also consented thereto in writing.
- 10.2 all landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with *the architectural guidelines* and any relevant environmental and conservation management plans in force in terms of *the approvals* from time to time.
- 10.3 no *construction* or erection of *improvements* on any *farm werf* or on any *erf* may commence prior to the approval of building plans for such improvements and, in this regard:
- 10.3.1 any building plan shall be drafted by an architect registered as such by the Institute of Architects of South Africa;
- 10.3.2 a full set of proposed building plans which indicate both construction and design details shall be submitted to the review *architect*;
- 10.3.3 no building plan shall be implemented unless first submitted to and considered and approved by the *review architect* and where applicable by the municipality;
- 10.3.4 in assessing of any plan as contemplated in article 10.3.2, the *review architect* shall be guided by *the architectural guidelines* and while he/she may take into account requests from *the board* for facilities and installations required to ensure the achievement of the *objects* in article 6 and solicit the

- opinions of *the board* and *members* whose *farm werf* or *erven* adjoin the property in respect of which the plan is submitted, the *review architect* shall not be bound by such opinions;
- 10.3.5 if the *review architect* rejects any plan, the architect submitting the plan for approval may submit a new plan for approval, where after, if such new plan is then also rejected by the *review architect*, the owner of the relevant *farm werf* or *erf* shall appoint another architect, and commence the application procedure de novo;
- 10.3.6 only once approved by the *review architect* (to be evidenced by an endorsement by the *review architect* and *the company*), may the approved plans be submitted to the *local authority* for approval;
- 10.3.7 upon approval of the plans by the *local authority*, the member shall comply with all conditions and standards imposed by the *local authority* regardless thereof that these may be additional to the requirements of the *architectural guidelines*;
- 10.4 *the company* shall be entitled to charge a reasonable fee to a *member* requiring construction work to be undertaken on the relevant *farm werf* or *erf* or *residential sectional title unit on a werf* underlying his membership, to be determined from time to time by *the board* in its sole and absolute discretion:
- 10.4.1 for the inspection of any plans and/or specifications submitted to it for approval and the assessment thereof by the *review architect*, whether or not approval is granted; and for the inspection and assessment by the *review architect* of any plans and/or specifications re-submitted to it for approval;
- 10.4.2 for inspecting trenches, foundations and building work in order to ensure that the relevant construction and improvements will be in accordance with the relevant approved plans, the *architectural guidelines* and sound building practice;
- 10.4.3 for the removal of building rubble where necessary, and for supervision of building operations being undertaken on the development;
- 10.4.4 for making good any potential damage or destruction to infrastructure, fynbos or other natural vegetation;
- 10.4.5 for the supply of company approved water and electric power meters, building site temporary electrical distribution boards and provision of building site security.
- 10.5 prior to commencing construction of any building or structure on land within *FHAE*, the owner shall be obliged to deposit such amounts and make payment of such amounts as may be determined by *the board* from time to time within the sole and absolute discretion of *the board*, and which deposit shall be dealt with in accordance with the rules and codes of conduct and policies as reasonably determined by the *board* from time to time.
- 10.6 such deposit, insofar only as it relates to 10.4 above, may be retained by the company; provided that, any deposit over and above the amounts referred to under 10.4 above may be retained by *the company* as "rouwkoop" or as a genuine pre-estimate of liquidated damages in the event that the member or owner of the relevant *farm werf* or *erf* or *residential sectional tile property unit* breaches any of the provisions of *these articles* or of the rules relating to building requirements and standards, and such deposit may be applied by *the company* to ensure compliance by the owner or the member or his contractors or sub-contractors for the obligations under *these articles*.

- 10.7 All improvements shall be built and constructed in a good and proper and workmanlike manner and strictly in accordance with the architectural designs approved in accordance with these articles. During construction special care shall be taken to prevent damage to fynbos and other natural vegetation and otherwise to common property, and other owner's properties, and any damage caused by the builder/s and/or contractor/s and sub-contractor of an owner of a werf or an erf, shall be made good by such owner to the satisfaction of *the board*, failing which *the company* may do so at the cost of the owner;
- 10.8 All *farm werwe* and *erven*, and all improvements thereon, shall be kept and maintained in a neat and tidy condition to the satisfaction of *the board*.
- 10.9 if any building or structure is erected in contravention of *these articles* or *the architectural guidelines*, *the company* shall be entitled to demolish such building or structure and to claim all costs associated therewith from the relevant member in respect of the land on which the building or structure was erected and/or from the relevant owner of such land.

11. RESTRICTIONS

- 11.1 no *member* shall apply for the rezoning of his/her *farm werf* or *erf* with a view of procuring a variation or amendment or substitution of use rights in respect of his/her *farm werf* or *erf* or of any *residential sectional title property unit* thereon, and no *member* shall be entitled to use his/her *farm werf* or *erf* or any *residential sectional title property unit* thereon for any purpose other than the permitted use applicable in terms of *the approvals* in relation to the relevant *farm werf* or *erf* or *residential sectional title property unit* on such *farm werf*, without the prior written approval of *the board*.
- 11.2 no *member* shall conduct any business on any *farm werf* or *erf* or on any *residential sectional title property unit* on a *farm werf* or on the *agricultural land* without a prior written approval, duly signed on behalf of *the board*. The only business activities capable of being applied for, shall be those of:
- 11.2.1 an artistic or craft production nature; or
- 11.2.2 quiet "home office" activities that do not at all involve clients or customers visiting the *farm werf* or *erf*, or *residential sectional title property unit* or *agricultural land*; or
- 11.2.3 in the case only of *the agricultural land*, farming with vineyards and olive trees and farming activities supportive thereof.
- 11.3 No direct sales, and no direct marketing (other than marketing by the owner himself without on-premise assistance in such marketing by others and only by way of telephone, mobile phone or internet) shall be permitted from any *farm werf* or *erf* or *the agricultural land* enjoying specific business rights, all such members being obliged to sell the products produced under the specific business rights awarded through any (if any) lawful outlets on *FHAE*, or outside *FHAE*.
- 11.4 Nevertheless, no business shall be conducted on a *farm werf* or on an *erf* or on a *residential sectional title property unit* or on *the agricultural land* (other than in the case only of *the agricultural land* farming with vineyards and olive trees and farming activities supportive thereof) unless *the board* has first approved the use to which the *farm werf* or *erf* or *residential sectional title property unit* or the *agricultural land* is to be put, and unless it is also allowed in terms of *the approvals* and relevant regulations of the *local authority*, or a departure there from has been approved by the *local authority* (provided that no departure shall be applied for without reasonable prior

notice of at least 90 (ninety) days to *the company*), and unless there has also been prior compliance with the following:

- 11.4.1 any member wishing to conduct a business as described in *article* 11.2 on his/her erf and/or farm werf, or who wishes to use his farm werf or erf for purposes other than residential, or *the agricultural land* for any purposes other than the farming and supportive activities detailed above, shall apply in writing to *the board* for permission to do so by means of detailed application defining the specific business activity being proposed, accompanied by a business plan. *The board* shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as *the board* may deem necessary.
- 11.4.2 the detailed application in terms of the aforementioned shall contain a full description of the proposed business usage, including but not limited to:
 - 11.4.2.1 the type of business.
 - 11.4.2.2 the number of full time and/or part time staff.
 - 11.4.2.3 the times and duration of the business operation, including the number of days per week.
 - 11.4.2.4 the projected growth of the business operation.
 - 11.4.2.5 whether any alteration to the existing improvements is proposed.
 - 11.4.2.6 the portion of the improvements where the business activity is to be located.
 - 11.4.2.7 the number and type of vehicles which will be regularly involved in or related to the business operation.
 - 11.4.2.8 the estimated number of visitors per week resulting from the business operation.
 - 11.4.2.9 the estimated number of deliveries necessitated by the business operation.
 - 11.4.2.10 provision made for parking.
 - 11.4.2.11 the likely impact of the business operation on the neighboring properties, on any existing business operations within *FHAE*, on *FHAE*, or on *FHEBN*, and on the neighborhood in general.
- 11.4.3 *The board* shall not approve any such application unless they are satisfied that the application complies with the following:
 - 11.4.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of the neighbours.
 - 11.4.3.2 no employees, other than a bona fide occupant of the *farm werf* or *erf* or residential sectional title property unit, will be involved in the running of the business operation.
 - 11.4.3.3 *the member* will reside permanently on the *farm werf* or *erf* in respect whereof the application is made.

- 11.4.3.4 *members* who are affected by the application are in agreement therewith.
 - 11.4.3.5 the granting of the application will not have any effect on the density of traffic in *FHAE*.
 - 11.4.3.6 no signage will be erected.
 - 11.4.3.7 the visiting hours during which the art or craft business operation is open to the public will be confined between 09:00 and 18:00, and no business will be conducted on Saturdays, Sundays and public holidays.
 - 11.4.3.8 Visitors will be allowed only to view the manufacture of art or craft items and will not be allowed to purchase directly on site.
- 11.5 should any *member* to whom permission has been granted for the conduct of such a business, wish to change any significant aspect of such a business likely to impact on other owners of *farm werwe* or *erven* or of *residential sectional title property unit* on *farm werwe* (including the sense of place), then such *member* shall submit a fresh application in accordance with the provisions thereof to continue or to commence with such a business.
- 11.6 no *member* to whom approval has been granted shall be entitled to erect any sign or advertisement on the relevant *farm werf* or *erf* or *residential sectional title property unit*, and/or on the access roads and/or egress roads and/or on the common property and/or anywhere within *FHE*, in connection with such business, save with the written and signed approval of *the board*.
- 11.7 It is recorded for the sake of clarity that sales and marketing of properties will not be subject to the provisions of articles 11.4, 11.5 and 11.6 above.
- 11.8 no *member* shall permit the number of occupants of his *farm werf* or an *erf* or a *residential sectional title property unit* to exceed two persons per bedroom. The word "occupants" shall include, but shall not be limited to, any person who resides or stays on such *farm werf* or *erf* or *residential sectional title property unit* on a regular or occasional basis, irrespective **of** whether such person is related to or is financially dependent upon *the member* or whether such person pays rental or gives any other form of consideration in respect of such *farm werf* or *erf* or *residential sectional title property unit* or any portion thereof.
- 11.9 In order to protect the ambience around each of the 19 (nineteen) *werwe*, the use and/or application of any of those portions of Erf 2835 that are within 50 (fifty) meters of the boundaries of any of the 19 (nineteen) *werwe* shall not be altered to a use and/or application which is substantially different from the current substantial use and application thereof unless the owner/s of each relevant *werf* or *werwe* (of which any boundary is within 50 (fifty) meters from the relevant affected area on erf 2835) has consented thereto in writing; provided that such consent shall not be unreasonably withheld by such *owner/s* of such *werf* or *werwe*, and that in the event of any dispute in this respect, the Dispute Resolution Procedure shall be applied

12. **LEVIES**

12.1 *the board* shall:

- 12.1.1 establish and maintain a *levy fund* for the purposes of meeting all expenses of the company for the control, management and administration of *FHAE*, and for charges for the supply of any services required by *the company*

and/or in the care, repair, maintenance, cleaning, upkeep, improvements, provision of security and proper control of the *common property* and/or the furtherance of the objectives of *the company* in general and/or for payment, subject to the proviso to *article* 31.1 hereunder, of all expenses necessary or reasonably incurred in connection with the management of *the company*;

- 12.1.2 estimate the annual amount which will be required by *the company* towards meeting its expenses during each year, together with such estimated deficiency, if any, resulting from any preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature;
- 12.1.3 be entitled to require *members*, whenever necessary, to make equal monthly contributions to the *levy fund* for the purpose of satisfying the expenses referred to in clause 12.1.1 and 12.1.2 as nearly as is reasonably practical to such estimated amount; provided and subject thereto that in the spirit of *fedti*, no *levies* shall be payable by *the current and/or future operator of the agricultural land* unless this should be specially so resolved by the members in a general meeting of *members*; provided that the foregoing does not have bearing on any water and/or electricity that may be supplied by or through *the company* to *the current and/or future operator of the agricultural land*.
- 12.2 *the board* shall also establish a fund to be used towards defraying the costs of maintenance and/or repairs of any entrances, exits, roads and/or other infrastructure/s on *FHAE*, and the *members* shall be obliged to contribute equally reasonable amounts to such fund as determined by *the board* from time to time in its sole and absolute discretion.
- 12.3 *the board* shall reasonably impose *levies* on the *members* for the purpose of meeting all the expenses which *the company* has incurred and/or will incur, as determined and/or estimated by *the directors*, or which *the directors* reasonably anticipate *the company* will incur; provided and subject thereto that in the spirit of *fedti*, no *levies* shall be payable in relation to *the agricultural land*. provided that the foregoing does not have bearing on any water and/or electricity that may be supplied by or through *the company* at the expense of *the company* to *the current and/or future operator of the agricultural land*.
- 12.4 *the board* may, from time to time, reasonably impose *special levies* upon *members* effective from the date of passing of the applicable resolution in respect of such expense referred to in clause 12.1 (which do not include any estimate made in terms of clause 12.2) and such *special levies* may be imposed and shall be payable in one sum or by such installment and at such time or times as *the board* shall deem fit; provided and subject thereto that in the spirit of *fedti*, no such *levies* shall be payable in relation to *the agricultural land*.
- 12.5 any amount imposed by *the board* to be due by a *member* by way of a *levy*, shall be a debt due by him/her to *the company* payable within such time as determined by *the board*.
- 12.6 the obligation of a *member* to pay a *levy* shall cease upon him/her ceasing to be a *member*, save that he/she shall remain liable for all *levies* and other amounts owing by him to *the company* calculated up to the date upon which he/she ceases to be a *member*.
- 12.7 no *levies* paid by a *member* shall be repayable by *the company* upon his/her ceasing to be a *member*.
- 12.8 a *member's* successor in title to a *farm werf* or an *erf* or a *residential sectional title property unit* on a *farm werf* shall be liable as from the date upon which he/she becomes a *member* pursuant to be the relevant transfer, to pay *the levies* attributable

to the relevant property. No member shall be entitled to transfer his/her farm *werf* or *erf* or any *residential sectional title property unit on a farm werf*, until it has been certified by or duly on behalf of *the company*, that *the member* has, at the date of transfer, paid all amounts owing by him to *the company*.

- 12.9 in calculating *levies*, *the board* shall take into account income, if any, earned by *the company* as well as any expected doubtful debts.
- 12.10 the decision of *the board* in calculating *the levies* shall be final and binding on all *members*.
- 12.11 a *member* shall not be entitled to any of the privileges of membership (including the right to attend any meeting of *members* and/or of *directors* and/or to address any such meeting and/or to make any representations to any such meeting and/or the right to vote at any such meeting whether as *member* or as *director*) if he is in *arrears* with any *levy* and/or interest thereon and/or any other sum, if any, which is or may hereafter become due and payable by that *member* to *the company*, from whatever cause arising.
- 12.12 the annual *levies* are due and payable by *members* in monthly instalments, monthly in advance by the first day of each month into the bank account of *the company*, provided and subject thereto that in the event of the annual levies being amended, any additional annual levies thus becoming payable shall be added proportionally to the relevant monthly *levies* then payable by each *member*, and shall likewise be payable in equal monthly instalments monthly in advance by the first day of each month into the bank account of *the company*; provided that a *member* shall not be liable to make payment of any such additional *levies* prior to notification of the relevant amendment to such *member*; provided that if the *member* only receives notification after the commencement date of such additional *levies*, the *member* shall be allowed, unless otherwise agreed in terms of the relevant amendment of the annual *levies*, to make payment of any additional amount that fell due for payment between the relevant date of commencement and the date of notification to the *member* within thirty (30) days after the date of notification.
- 12.13 in the event of the development of any of the *farm werwe* or any of the *erven* (other than the *remaining developer farm werwe*, *the remaining developer erwe* and *the three allocated farm werwe*, which are dealt with hereunder) not being completed to the point of a finally completed structure with a certificate of occupation by 31st December 2011, up to an maximum of five additional monthly levies per month towards annual levies may be imposed by the board in respect of the relevant farm werf or erf, so that a double levy up to a maximum of six levies shall accordingly be payable monthly, and such levies shall then be payable by the relevant owner/s of such *farm werf* or such *erf*, monthly in advance with effect from the first day of the month following such additional levy being imposed, until a finally completed structure with a certificate of occupation has been erected, or for such shorter period as *the board* may determine.
- 12.14 in the event of the development of any of the *developer farm werwe* or *the developer erven* not being completed to the point of a finally completed structure with a certificate of occupation within a period of three years after the developer has transferred such *erf* or *werf* to another party, a penalty levy of two times the normal levy up to a maximum of five times the normal monthly levy per month may be imposed by *the board* and shall likewise then be payable by the relevant owner /s of such *farm werf* or such *erf* *monthly in advance until finally completed structure with a certificate of occupation has been erected, or for such shorter period as the board may determine..*
- 12.15 in the event of the development of any of the *three allocated developer farm werwe* not being completed to the point of a finally completed structure with a certificate of occupation by the sooner of:

- 12.15.1 the expiry within a period of three years after the *developer* has approved on-alienation of such *farm werf* by the person who purchased it from *the developer*; or
- 12.15.2 the expiry of a period of three years after such *farm werf* has been further on-alienated and on-transferred by the person who purchased it from *the developer*.

one additional levy up to a maximum of five additional levies per month may also be imposed by *the board* and shall likewise then be payable monthly in advance by the relevant owner /s of such *farm werf* until a finally completed structure with a certificate of occupation has been erected, or for such shorter period as the board may determine..

- 12.16 the above is subject thereto that *the board* may consent to extend the aforementioned dates for imposition of penalty levies if considered to be in the best holistic interests of *FHAE* in order to preserve and/or to enhance the value of the relevant investments, e.g. if the benefits of such penalties do not weigh up against the disadvantage of slower sales and therefore slower completion of the developments, as holistically determined in the sole and absolute discretion of *the board*; and provided furthermore that *the board* shall not unreasonably withhold such consent; provided and subject thereto that in the event of the directors not achieving consensus between all the directors in this respect, the dispute resolution procedure (clause 35 below) shall be applied;
- 12.17 where co-owners are liable to pay a levy or special levy and/or any other amount/s, such co-owners shall be liable jointly and severally, in solidum, as co-principal debtors, to make payment of such *levy* or special *levy* or amount/s to *the company*.
- 12.18 a *member* shall be liable for and pay all costs including but not limited to legal costs, including costs between attorney and client, collection, commission, admin fees, expenses and charges incurred by the company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such *member* of *the company*.
- 12.19 in the event of any dispute as regards any future allocation and/or re-allocation of *levies*, *the dispute resolution procedure* (clause 35 below) shall be applied, and pending finality the levies last payable prior to such dispute shall remain payable, but shall be adjusted annually on each anniversary of the last date of determination of levies by *the board*, with the highest average rate of inflation in respect of luxury building and/or construction costs within the Western Cape, as determined by the auditor in his sole and absolute discretion, *inter alia* with reference to the official consumer price index for *the Republic*; provided that such determination of inflation and such determination in terms of the *dispute resolution procedure* may be with retrospective effect to the date when the levies were allocated or re-allocated, and that interest shall be payable retrospective to such date; provided furthermore that such interest shall not be less than prime rate plus 5%;
- 12.20 pending the first determination of *levies* by *the board*, the last monthly *levies* as were payable by members in terms of the determinations that were arrived at between the trustees of each of *the historic associations*, and as were invoiced to the *members* by the company acting as de facto caretaker for the *historic associations*, shall continue to be payable by *members*, mutatis mutandis as though determined under these (amended) *articles*.
- 12.21 where any *levies* and/or any other amount/s payable by a *member* to *the company* is in *arrears*, interest at prime rate plus five percent (5%) (but always limited to no more than the maximum permissible rate of interest in terms of the laws of *the Republic*), shall accrue on such arrears; provided and subject thereto that where a different

interest arrangement has been agreed to in terms of a *debt rescheduling agreement*, the terms as regards interest agreed upon in such arrangement shall apply; provided furthermore that failing a special interest arrangement in terms of such *debt rescheduling agreement*, the foregoing rate of interest shall nevertheless apply, notwithstanding such *debt re-scheduling agreement*.

13. BREACH BY A MEMBER

- 13.1 *the company* may institute legal proceedings in accordance with the provisions of this *article 13*;
- 13.2 if any *member* fails to observe any of the provisions of these *articles* with regard to *improvements* and/or any approval of plans and/or compliance with the *architectural guidelines* and/or fails to comply with any rule or regulation made in terms hereof, *the company* may give notice to such *member* calling upon him/her to remedy such breach within a time specified in such notice and, failing timeous compliance:
- 13.2.1 enter upon the relevant farm *werf* or *erf* or *residential sectional title property unit* or *the agricultural land* (and any relevant common property associated therewith) to take such action as may be reasonably required to remedy the breach, and the member concerned shall be liable to the company for all costs so incurred which costs shall be due and payable upon demand; and/or
- 13.2.2 call upon such *member* in writing to remove or alter within a specified period any portion of the improvements or any addition erected contrary to any provision of these articles read with *the architectural guidelines* and, failing which, the matter shall be referred to a special general meeting of the *members* to afford *members* the opportunity to give directions to *the company*. The resolution of *the members* at such meeting shall be binding upon such defaulting *member* and shall be implemented by *the company*; and/or
- 13.2.3 institute proceedings in any court of competent jurisdiction for such relief as *the board* may consider necessary and such *member* shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining such relief.
- 13.3 if any *member* is in *arrears* with payment of *levies* or other amounts payable by such member to *the company*, *the board* may give notice to such member requiring him/her to remedy such breach within such period as *the board* may determine and should he/she fail timeously to remedy his/her breach, *the company* may, institute legal proceedings against such member without further notice, and such member shall be liable for and shall pay all legal costs on the scale as between attorney and own client, together with collection commission and any other expenses and charges incurred by *the company* in obtaining recovery, as well as interest at prime rate plus 5% from date of default until date of payment, on any amount/s overdue for payment by such member from time to time.
- 13.4 nothing in the aforementioned shall derogate from or in any way diminish the right of *the company* to institute proceedings in any court of competent jurisdiction for recovery of any money due by any *member* arising from any cause whatsoever or for any other relief, whether arising from a breach of *these articles* or otherwise howsoever.
- 13.5 in the event of any breach of *these articles* and or any rules and regulations (made in terms of article 15.6) by *the member* or any member of his household and/or his/her

invitees and/or guests and/or employees and/or lessees and/or agents and/or contractors and/or sub-contractors, such breach shall be deemed to have been committed by *the member* himself/herself, but, without prejudice to the foregoing, *the company* shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceeding against *the member*.

13.6 For the sake of clarity it is recorded and agreed that the company shall be entitled to institute proceedings such as referred to in article 13.3 and/or 13.4 and/or 13.5 in any competent court having jurisdiction, and to proceed therewith to finality, regardless of any dispute having been declared by a member, and shall not be required first to apply the dispute resolution procedure (clause 35 below) or to await the outcome thereof before instituting such proceedings or proceeding therewith to finality.

14. **DIRECTORS:**

14.1 *the board* shall comprise of at least four (4) but not more than six (6) *directors*

14.2 until the developer exit date (as defined), one director shall be a representative of the developer nominated by the developer to be a member of the board, and such *developer director* shall be *the chairperson*, unless *the developer director declines the office of chairperson in writing*.

14.3 at least three *directors* shall be *member directors*, of which:

14.3.1 at least one shall be a *director* nominated by an owner or co-owner or owner/s representative/s of one the *riverside lane erven*, out of the owners or co-owners or owner/s representative/s of *riverside lane erven*.

14.3.2 at least one shall be a *director* nominated by an owner or co-owner or owner/s representative/s of one the *fynbos village erven*, out of the owners or co-owners or owner/s representative/s of the *fynbos village erven*.

14.3.3 at least one shall be a *director* nominated by an owner or co-owner or owner/s representative/s of one the *farm werwe*, out of the owners or co-owners or owner/s representative/s of the *farm werwe*.

14.4 subject to *article 14.2* above, a *director* shall be a natural person and shall either be a *member or an owner's representative* (as defined).

14.5 a director shall, by accepting his/her appointment as such, be deemed to have agreed to be bound by the provisions of *these articles*.

14.6 subject to *article 14.8* below, each *member director* shall continue to hold office until the first annual general meeting of the company following his/her appointment, at which meeting each *member director* shall be deemed, subject to *article 18.2* hereunder, to have retired from office but will be eligible for re-election at such meeting.

14.7 a developer director shall remain a director until removed by written notice by *the developer* to *the board* or until *the developer exit date* (whichever may be the soonest), and *the developer* shall at any time by written notice be entitled to remove any *developer director*, and upon such removal at any time prior to *the developer exit date*, or upon any *developer director* ceasing to hold office for any other reason at any time prior to *the developer exit date*, *the developer* shall then be entitled by written notice to appoint in his stead another person as a *developer director*, **and**, unless *the developer director declines the office of chairperson in writing*, as chairperson.

- 14.8 a director shall be deemed to have vacated his/her office upon:
- 14.8.1 his/her estate being sequestrated, whether provisionally or finally or upon his/her surrendering his estate.
 - 14.8.2 his/her making any arrangement or composition with his/her creditors.
 - 14.8.3 his/her conviction of any offence involving dishonesty.
 - 14.8.4 his/her becoming of unsound mind and being found lunatic.
 - 14.8.5 his/her resigning from such office in writing.
 - 14.8.6 his/her death.
 - 14.8.7 he/she being removed from office by a resolution of *the directors*.
 - 14.8.8 he/she losing his/her right to exercise a vote in terms of *these articles* provided he/she is a member director.
 - 14.8.9 upon his/her not being voted in by the members, after having stood for election or re-election at an annual general meeting, or a general meeting specially convened for the purposes of electing directors; provided that it is recorded, for the sake of avoidance of doubt, that the foregoing provisions of this *article* 14.8.9 shall until *the developer exit date* not relate to a *developer director*.
- 14.9 notwithstanding the fact that a director shall be deemed to have vacated his/her office as provided in *article* 14.7 or 14.8, anything done by such *director* in the capacity of a *director* in good faith shall be valid until the fact that he/she is no longer a *director* has been recorded in the minute book of *the board*. Should the office of a *director* fall vacant prior to the next annual general meeting of the *members* of *the company*, the vacancy in question may, prior to the developer exit date be filled by a person appointed by or on behalf of the *developer* if the vacancy is in respect of a *developer director*, and by the remaining *member directors*, if the vacancy is in respect of any *member director*, or if it is after *the developer exit date*. In the case of a *developer director* the person so appointed shall hold office as director and, unless the *developer director* declines the office of chairperson in writing, also as chairperson until removed by *the developer* or until *the developer exit date*, and in the case of a *member director* as director until the next annual general meeting, and in the case of a *member director* becoming chairperson (after *the developer exit date*, or prior thereto if the office of chairperson is declined in writing by *the developer director*), he shall, subject to *article* 14.11 hereunder, hold such office until the next annual general meeting.
- 14.10 subject to *articles* 14.2, 14.7 and 14.9 above, the *directors* shall appoint from amongst themselves a *chairperson*. The directors shall also appoint from amongst themselves a vice-chairperson.
- 14.11 *within 7 (seven) days after the developer exit date or*, prior thereto within 7 (seven days) days after *the developer* director has in writing declined the office of *chairperson*, and thereafter also within seven (7) days of the holding of each annual general meeting of the *members* of *the company*, the *directors* shall meet and shall elect from their own number the *chairperson*, who shall hold office until the annual general meeting held next after his/her appointment, provided that the office of *chairperson* shall ipso facto be vacated by the *director* holding such office upon his/her ceasing to be a *director* for any reason. In the event of any vacancy occurring in the aforesaid office, the *directors* shall meet as soon as reasonably possible to

appoint one of their number as a replacement in such office; provided that the foregoing shall not detract from *articles* 14.2, 14.7 and 14.9 above.

- 14.12 save as otherwise provided in *these articles*, the *chairperson* shall preside at all meetings of the *directors* and all general meetings of *members of the company* and shall perform all duties incidental to the office of chairperson and such other duties as may be prescribed by the *directors* or by *members* in general meeting and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a *member's* spouse shall be entitled to speak at any meeting of the *members of the company*.
- 14.13 if the *chairperson* vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting or unable to perform his/her duties, the vice-chairperson shall assume the power and duties of the *chairperson* for as long as the *chairperson* is unable to perform such duties.
- 14.14 subject to the provisions of *articles* 4.2, 4.7 and 4.9, if any *chairperson* vacates his/her office as the *chairperson* or no longer continues in office for any reason, the *directors* shall elect another *chairperson* who shall hold office for the remainder of the period of office for the first mentioned *chairperson*;
- 14.15 a *director* shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the company, by virtue of any interest he/she, or the party by whom or on whose behalf he/she was appointed, may have therein.
- 14.16 no contract concluded on behalf of the *directors* shall be valid and binding unless it is signed either by the *chairperson* or by one director, the latter specifically appointed as authorised signatory in terms of a resolution adopted by the *directors*.
- 14.17 a *director* shall be entitled to be repaid all reasonable and bona fide expenses incurred by him in or about the performance of his duties as *director* and/or *chairperson*, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fee or salary from *the company* in respect of the performance of such duties; provided that the foregoing shall not detract from the proviso to *article* 31.1 hereunder.
- 14.18 if a *director* or a entity wherein a *director* has an interest renders special bona fide services to the *board* or to *the company* which are beyond the scope of the duties of such *director* in his/her capacity as such, such *director* or such entity shall be entitled to be reasonably compensated for such services at a bona fide and market related rate, subject to approval by *the board* for such payment first being granted, whether before or after such services were rendered.
- 14.19 *the directors* may not make loans on behalf of *the company* to *members* or to themselves.
- 14.20 a *director* may hold any other office or place of profit under *the company* (except that of auditor) in conjunction with his office of *director*, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled as a director) and otherwise as a disinterested *quorum* of the *directors* may determine.
- 14.21 a *director of the company* may be or become a *director* or other officer of, or otherwise interested in, any company promoted by *the company* or in which *the company* may be interested as shareholder or otherwise and (except in so far as otherwise decided by *the directors*) he shall not be accountable for any remuneration or other benefits received by him as a *director* or officer of or from his interest in such other company.

- 14.22 any *director* may *with the approval of the board* act by himself or through his firm in a professional capacity for *the company* (otherwise than as auditor) and he or his firm shall *with the approval* of the board be entitled to remuneration for professional services as if he were not a *director*. In the event of such director or his firm having bona fide so acted, but such approval not having been granted prior to him so acting (e.g. by reason of bona fide oversight), *the board* may nevertheless grant such approval retrospectively, and may also then approve such payment retrospectively.
- 14.23 a *director* who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with *the company*, shall declare the nature of his interest in accordance with *the Act*.
- 14.24 Subject to the provisions of article 14.23 above, and articles 14.30 and 14.31 hereunder and without detracting therefrom, no *director* or intended *director* shall be disqualified by his office from contracting with *the company* with regard to:
- 14.24.1 professional services rendered or to be rendered by such *director*.
- 14.24.2 any sale or other transaction.
- 14.25 Subject to the provisions of article 14.23 above, and articles 14.30 and 14.31 hereunder, and without detracting therefrom, no *director* or intended *director* shall be disqualified from his office as director by reason of his tenure of any other office or place of profit under *the company* or *the developer* or *the current agricultural land operator* or *the future agricultural land operator* or *the agricultural land owning company* or any owner of any land in *fhn*, and, subject to the provisions of article 14.23 above, and articles 14.30 and 14.31 hereunder and without detracting therefrom, no director or intended director shall be disqualified by reason of his office as *director of the company* from contracting on behalf of any of the aforementioned with *the company*.
- 14.26 a *director* may not vote or be counted in the *quorum* (and if he shall do so his vote shall not be counted) on any resolution for his own appointment to any other office or place of profit under *the company* or in respect of any contract or arrangement in which he is interested, but this prohibition shall, subject to the provisions of article 14.23 above and article 14.30 and 14.31 hereunder and without detracting therefrom, not apply to:
- 14.26.1 any arrangement for giving to any *director* any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of *the company*; or
- 14.26.2 any arrangement for the giving by *the company* of any security to a third party in respect of a debt or obligation of *the company* which *the director* has himself guaranteed or secured;
- 14.26.3 any contract or arrangement with a corporation in which he is interested by reason only of being a passive minority shareholder in, and not an employee, officer or director of, such corporation;

and these prohibitions may at any time be suspended or relaxed either generally, or in respect of any particular contract or arrangement, by *the company* in general meeting;

provided that subject to articles 14.30 and 14.31 hereunder, and without detracting therefrom, a mere interest or beneficial interest in respect of land or a residential sectional title property unit **within fhae** or the fact that the director is the representative member in respect thereof or a director or member or trustee of the owner or of a co-owner thereof or of the beneficial owner thereof, shall not *per se* disqualify a *director* from exercising his voting power;

- 14.27 subject to the provisions of article 14.23 above being fully complied with at the relevant general meeting a contract which violates the terms of article 14.26 and/or articles 14.30 and/or 14.31 hereunder, can be ratified by *the company* in general meeting.
- 14.28 the terms and provisions of article 14.26 and/or 14.27, shall not be interpreted as preventing a *director* from voting as a *member* at a general meeting at which a resolution in which he has a personal interest is tabled.
- 14.29 the directors may exercise the voting powers conferred by shares held or owned by *the company* in any other company in such manner in all respects as they think fit, including the exercise thereof in favour of any resolution appointing themselves or any of them to be directors or officers of such other company or for determining any payment of or remuneration to the directors or officers of such other company.
- 14.30 notwithstanding anything to the contrary appearing from these articles, a director shall not be entitled to vote at a meeting of directors of *the company*, or to exercise any voting power as a director of *the company* in relation to a contract or any other matter wherein he has a personal interest or if there is some other conflict of interests between his interests and those of the company; provided that subject to article 14.31 hereunder, and without detracting therefrom, a mere interest or beneficial interest in respect of land or a residential sectional title property unit within *phae* or the fact that the director is the representative member in respect thereof or a director or member or trustee of the owner or of a co-owner thereof or of the beneficial owner thereof, shall not *per se* disqualify a *director* from exercising his voting power;
- 14.31 notwithstanding anything to the contrary appearing from these articles a *director* shall not be entitled to exercise his voting power at a meeting of directors of *the company* or to exercise any voting power as a director of *the company* in relation to a contract or any other matter if such exercising of his voting power should not be in accordance with the principles of good corporate governance; provided that any disagreement or dispute in this regard shall be determined in terms of the dispute resolution procedure;

15. **FUNCTION, POWERS AND DUTIES OF DIRECTORS**

- 15.1 subject to the provisions of these articles *the board* shall manage and control the business and affairs of *the company*, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any *managing agent* and/or *manager*, and *the board* may exercise all such powers of *the company* and do all such acts on behalf of *the company* as may be exercised and done by the company and as are not by *these articles* required to be exercised or done by the *members* in general meeting; provided that the foregoing is subject however to such regulations as may be made by the *members* in general meeting, provided that no rule or regulation made by the *members* in general meeting shall invalidate any prior act or of *the board* or of any *director* which would have been valid if such regulation had not been made.
- 15.2 save as specifically provided in these articles, *the board* shall at all times, taking into account the best interests of *the company* and its *members*, have the right to engage on behalf of *the company* the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, *managing agents*, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by *the directors* on such terms as *the board* shall decide.
- 15.3. *the board* shall have the right to vary, cancel or modify any of their decisions and/or resolutions from time to time.
- 15.4 *the board* shall have the right to co-opt any person chosen by them as a *director*. A co-opted *director* shall enjoy all the rights and be subject to all the obligations of *the*

directors, provided that such co-opted *director* shall only serve until the next annual general meeting.

- 15.5 *the board* may, should they so decide, investigate any suspected or alleged breach by any member or director of these articles in such reasonable manner as *the board* shall decide from time to time.
- 15.6 *the board* may make regulations and rules not inconsistent with *these articles* or any regulations or rules prescribed by *the members* in general meeting:
- 15.6.1 for the resolution of disputes generally.
- 15.6.2 for the furtherance or promotion of any of the objects of *the company*.
- 15.6.3 for the management of the affairs of *the company*.
- 15.6.4 for the advancement of the interests of *members*.
- 15.6.5 for the conduct of meetings of *the board* and meetings of *the members*.
- 15.6.6 to levy and collect contributions from *members* in accordance with *these articles*.
- 15.6.7 to levy against and to recover from *members* monies which are necessary to defray expenses payable to *the local authority* in the event of *the local authority* imposing any levies or imposts against *the company*.
- 15.6.8 to assist it in administering and governing its activities generally.
- 15.7 Without in any way limiting the powers granted, the duties and powers of *the board* shall further specifically include:
- 15.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and improvements of all *farm werwe* and/or *erven* in *FHAE* in strict accordance with the provisions of *the architectural guidelines*. *The board* shall be entitled to require any *member*, who shall be obliged, to repaint, repair or renovate any *improvements to his farm werf and/or erf and/or his residential sectional title property unit*, if in the reasonable opinion of *the board* such *improvements* require essential repairs or have become dilapidated.
- 15.7.2 entering into agreements with third parties on behalf of *the company* for any purposes of *the company*.
- 15.7.3 the employment on behalf of *the company* of agents, employees and any other party and the payment of such person;
- 15.7.4 the taking of steps in all matters of common interest in respect of *the company* and, without detracting from the generality thereof, such as *common property*, common sewerage, water supply, electricity supply, landscaping, maintenance of roads, refuse facilities, removal of refuse and such like, where applicable.
- 15.7.5 instituting and/or defending of actions by or against *the company*, and to appoint legal representatives for such purpose.

16. PROCEEDINGS OF DIRECTORS

- 16.1 *the directors* may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provision of *these articles*.

- 16.2 meetings of *the directors* shall be held at least once every four (4) months provided that if all *the directors* have waived this requirement in respect of a particular four (4) month period, a *board* meeting does not need to be held during such four (4) month period.
- 16.3 the *chairperson* has the right to convene meetings of *directors*.
- 16.4 a *director* may, provided he/she has the support in writing of at least two (2) other *directors* at any time convene a meeting of *directors* by giving to the other *directors* not less than fourteen (14) days *written notice* of a meeting proposed by him, which notice shall specify the reason for calling such a meeting, provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 16.5 a resolution in writing signed by a *quorum* of all *the directors* shall be valid and effectual as if it had been passed at meeting of *directors* duly called and constituted, and may be signed sequentially and in more than one counterpart, provided and subject to it being co-signed by a *developer director* until *the developer exit date*; provided furthermore and subject thereto that such signature shall not be unreasonably withheld, and that notice of any such withholding of signature by *the developer director* shall be given to members within five (5) business days after it has been withheld, and that in the event of any dispute or disagreement in this regard *the dispute resolution procedure* shall be applied; provided and subject furthermore thereto that such co-signature by a *developer director* shall not be required in the event of the majority of directors supporting an objection to an application for an amendment to and/or a departure from *the approvals* and/or any resolution in relation to landscaping and/or any resolution in relation to the appointment and/or termination of the appointment of any contractor to the Company and/or of any sub-contractor to the Company and/or of any service provider to the Company; and provided furthermore that any *member*, inclusive of *the developer*, shall give reasonable prior notice to *the Board* before making any application for an amendment to and/or a departure from *the approvals*.
- 16.6 the *quorum* necessary for the holding of any meeting of directors shall be **4 (four)** *directors* (inclusive of a *developer director* until *the developer exit date*), present personally, or in communication simultaneously and substantially continuously and audibly, via personal presence and/or telephone conference facilities and/or “skype” conference facilities and/or cellular telephone conference facilities and/or video conference facilities and/or via other electronic means, or via three *directors* (inclusive of a *developer director* until *the developer exit date*) consequentially signing a “round robin resolution” as provided in *article* 16.5 above albeit that they are not together personally and in immediate communication while so signing. If no *quorum* is present within fifteen (15) minutes after the time for commencement of the meeting, then it shall stand adjourned to the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a *quorum* is not present within thirty (30) minutes after the time appointed for the meeting, *the directors* then present shall be a quorum, provided and subject to one (1) *developer director* being included until *the developer exit date*; provided and subject thereto that *the developer director* shall not unreasonably absent himself so as to prevent a quorum from being formed, and shall not unreasonably withhold his signature or his support to any resolution supported by a majority of the directors, and that in the event of any dispute or disagreement in this regard *the dispute resolution procedure* shall be applied; provided and subject furthermore thereto that such co-signature by a *developer director* shall not be required in the event of the majority of directors supporting an objection to an application for an amendment to and/or a departure from *the approvals* and/or any resolution in relation to landscaping and/or any resolution in relation to the appointment and/or termination of the appointment of any contractor to the Company and/or of any sub-contractor to the Company and/or of service provider to the Company; and provided furthermore that any *member*,

inclusive of *the developer* shall give reasonable prior notice to *the Board* before making any application for an amendment to and/or a departure from *the approvals*.

- 16.7 Any resolution of the *directors* shall be carried by a simple majority of all votes, cast. In the case of an equality of votes for and against a resolution, the *chairperson* shall have a second or casting vote; provided that such second or casting vote shall not be unreasonably utilized, and in the event of any dispute or disagreement in this regard, the dispute resolution procedure (clause 35 below) shall be applied; provided furthermore that until the developer exit date a resolution that does not enjoy the support of the developer will not be valid; provided furthermore that such support by *the developer* shall not be unreasonably withheld, and that notice of any such *withholding of support by the developer* shall be given to members within five (5) business days after it has been withheld, and in the event of any dispute or disagreement in this regard, *the dispute resolution procedure* shall be applied.
- 16.8 the *chairperson* shall preside at all meetings of *directors* provided that, should at any meeting of *directors* the *chairperson* not be present within fifteen (15) minutes after the time appointed for the holding thereof, those present of the *directors* shall vote to appoint a *chairperson* for the meeting who shall thereupon exercise all the powers and duties of the *chairperson* in relation to such meeting.
- 16.9 a *director* may be represented at a meeting of *directors* by a proxy provided such proxy is a *director*.
- 16.10 the instrument appointing a proxy shall be in writing and signed by *the director* concerned but need not be in any particular form. The proxy shall be deposited with the *chairperson* at any time before the time appointed for the commencement of a meeting and shall be valid only during such meeting or any adjournment thereof.
- 16.11 the *directors* shall:
- 16.11.1 ensure that minutes, although not necessarily verbatim, are taken of every meeting of *directors* (by a *minute keeper* who shall be a *director* appointed for such purpose by the meeting which *minute keeper* shall not be the *chairperson* of the meeting), which minutes shall be reduced to writing without undue delay after the meeting has closed, and shall, if correct, then be certified correct by the relevant *chairperson* of the meeting in which event such minutes shall be deemed prima facie to be correct, but if not regarded as correct by the relevant *chairperson*, shall be circulated for consideration with corrective notes by the relevant *chairperson* and for the approval by the *directors*; provided that if such minutes, with or without such corrective notes are confirmed to be substantially correct by a majority of *directors*, such minutes shall be *prima facie* be deemed correct; provided furthermore that any dispute or disagreement in this regard shall be resolved by application of *the dispute resolution procedure* (clause 35 below);
- 16.11.2 cause such minutes to be kept of all meetings of the *directors* in a minute book of meetings of *directors* kept for that purpose.
- 16.11.3 keep all books of meetings of *directors*, in the case of each meeting for a period of twenty (20) years following thereafter;
- 16.11.4 on the reasonable and bona fide written application of any *member*, make all minutes of their proceedings available for inspection by such *member*; provided that such application shall state the purpose and reasons of the request, and if such request should be considered

by *the board* to be frivolous or vexatious the board may decline such request, unless it be so resolved in terms of the dispute resolution procedure (clause 35 below) which shall be applied in the event of any dispute in this regard.

- 16.12 all resolutions recorded in the minutes of any meeting of *the directors* shall be valid and of full force and effect as therein recorded with effect from the passing of such resolution and until varied or rescinded, but no resolution or purported resolution of *directors* shall be of any force or effect or shall be binding upon the *members* or any of the *directors* unless such resolution is competent within the powers of *the directors*.
- 16.13 save as otherwise provided in *these articles*, the proceedings at any meeting of *the directors* shall be conducted in such reasonable manner as the *chairperson* of the meeting shall decide.
- 16.14 A *director* shall be entitled, with the approval of a majority of the other *directors*, to appoint a particular person as an alternate director to act as a director in his place when he is not available so to act; provided and subject thereto that such alternate director shall be a member of the Company or a member's representative; and provided that a *director* shall not be entitled to appoint an alternator or different alternate directors for more than an aggregate of 30 (thirty) days during any financial year . Such alternate director shall whilst he is so acting have mutatis mutandis the same powers as *the director* who appointed him and be subject to the same limitations as though he is a director of the Company.

17. DELEGATION OF POWERS OF *THE BOARD*

- 17.1 *the board* shall, in addition to the powers set out elsewhere herein, have the power from time to time, if deemed necessary, to appoint, in terms of a written authorization, an *executive committee*, or another committee of *directors*, or a particular *director*, or a *managing agent* or a *manager* to control, manage and administer the administrative affairs of *the company*, and to delegate to all such further powers and duties as may be required to be entrusted to such *executive committee*, committee, *director* or *managing agent* or *manager* or to any service provider, including the power to collect *levies* and/or *special levies* and/or or any other amount/s due to *the company* for any reason whatsoever; provided that none of them shall be appointed for longer than a year at a time, and unless *the board* notifies the appointee in writing to the contrary, such appointment will be automatically reviewed and be terminable on a three monthly basis; provided and subject thereto, without detracting from the foregoing, that *the board* shall be entitled at any time, subject to any relevant agreement that may be in force (if any), to terminate any such appointee/s services and/or contract and/or mandate and/or authorization on good and reasonable cause.
- 17.2 *the board* shall reasonably endeavor to ensure that there is included in the contract of appointment of a managing agent, a provision to the effect that if the managing agent is in breach of any of the provisions of his/her contract or if he/she is guilty of conduct which at common law would justify the termination of a contract between employer and employee, the company, may, without notice, cancel the relevant contract and the managing agent shall have no claim whatsoever against the company as a result of such cancellation; provided and subject thereto that such provision shall not detract from *the company's* rights to terminate such contract for other lawful reason.

18. RETIREMENT OF DIRECTORS

- 18.1 subject to the provisions of article 18.4 hereunder, each *director* shall hold office as such from the date of his appointment until removed from office under 14.7 or until he is deemed to have vacated his office under 14.8 or until the next annual general meeting following his appointment.

- 18.2 a *director* who retired or who is deemed to have retired, shall, subject to 18,3 hereunder, be eligible for re-election, unless:
- 18.2.1 he is removed by the developer under article 14.7; or
- 18.2.2 he is deemed to have vacated under articles 14.8.1 or 14.8.2 or 14.8.3, or 14.8.4 or 14.8.6 or 14.8.7; or
- 18.2.3 he does not at the time of election have a right to vote in terms of these articles.
- 18.3 a director (other than a *developer director*) shall not, without re-election, be entitled, to remain in office beyond the second annual general meeting following on his appointment as such; provided that if he was appointed between annual general meetings, he shall not be entitled, *without re-election*, to remain in office beyond until the third annual general meeting following on his appointment; provided and subject furthermore thereto that a director shall not be entitled to serve without substantial interruption of at least two (2) years, for a period in excess of nine (9) years.
- 18.4 article 18.1 is subject thereto that:
- 18.4.1 a *developer director* shall remain in office until the developer exit date, unless:
- 18.4.1.1 he resigns; or
- 18.4.1.2 is removed by the developer as provided in article 14.7; or
- 18.4.1.3 is deemed to have vacated under articles 14.8.1 or 14.8.2 or 14.8.3 or 14.8.4 or 14.8.6 or 14.8.7
- in which event the person nominated by *the developer* in his place, shall ipso facto become a *developer director*, until *the developer exit date*. The foregoing shall also continue to apply mutatis mutandis whenever a *developer director* resigns or is so removed or is so deemed to have vacated.
- 18.4.2 a *director* shall in all cases other than by virtue of article 14.7 (removal of *developer director* by *the developer*) and 14.8.1 or 14.8.2 or 14.8.3 or 14.8.4 or 14.8.6 or 14.8.7 (deemed to have vacated) be deemed only to have retired from office with effect from:
- 18.4.2.1 the completion of the election of at least three (3) *member directors*; and
- 18.4.2.1 in the event of the office of developer director also being vacant and the developer exit date not yet having arrived, the nomination by the developer of a *developer director*.
- 18.5 no person, other than a *director* retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of a director at any general meeting, unless:
- 18.5.1 not more than 14 (fourteen), but at least 7 (seven) clear days before the day appointed for the meeting, there shall have been delivered at the administrative offices of the company a notice in writing by a *member* (who may also be the proposed *director*) duly qualified to be present and vote at the meeting for which such notice is given; and

- 18.5.2 such notice sets out the *member's* intention to propose a specific person for election as *director*; and
- 18.5.3 notice in writing by the proposed person of his willingness to be elected is attached thereto (except where the proposer is the same person as the proposed).
- 18.6 *the board* may at the meeting at which a *director* retires, fill the vacated office (other than that of a developer director prior to the developer exit date) by electing a person thereto and in default thereof, the retiring director, if willing to continue to act, shall be deemed to have been re-elected, unless:
- 18.6.1 it is expressly resolved at such meeting not to fill such vacated office; or
- 18.6.2 a resolution for the re-election of such director shall have been put to the meeting and rejected.
- 18.7 *the company* in general meeting or *the board* may co-opt and appoint any person who is a *member* or an *owners representative* as director to fill a casual vacancy.

19. GENERAL MEETINGS OF THE MEMBERS OF THE COMPANY

- 19.1 *the company* shall, within twelve (12) months of the date of commencement as provided above, hold a general meeting as its first annual general meeting. Thereafter *the company* shall within four (4) months after each financial year end of *the company*, hold second and subsequent annual general meetings.
- 19.2 such annual general meetings shall be held at such time and place in *the Republic*, subject to the foregoing provisions, as *the board* shall decide from time to time.
- 19.3. *the board* may, whenever it deems fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than twenty five percent (25%) of members or should *the board* then fail to do so, such meeting may be convened by the requisitionists themselves provided that notice thereof shall be given in accordance with the requirements of *article 20*.

20. NOTICE OF GENERAL MEETINGS OF MEMBERS

- 20.1 an annual general meeting shall be called by not less than twenty-one (21) days notice and a general meeting as provided in Article 19.3 by not less than fourteen (14) days notice. The notice shall specify the place of the meeting within *the Republic*, the day and the hour of the meeting and, shall in the case of special business in addition to any other requirements contained in these articles, the general nature of that business and the reasons for it shall be given in the manner hereafter mentioned or in such other manner, if any, as may be prescribed by *the board*, to such persons as are, under these articles, entitled to receive such notices, provided that a special general meeting or an annual general meeting of *the members of the company* shall, notwithstanding that it is called by shorter notice than that specified in these articles, be deemed to have been duly called if it is agreed to by not less than 60% of the voting power of members present in person or by proxy, exercisable at the meeting.
- 20.2 the bona fide accidental omission to give notice of any resolution or to present any document required to be given or sent in terms of *these articles*, shall not invalidate the proceedings or any resolution passed at any meeting, provided a quorum is present and the majority of members who attend the relevant meeting do not object to the meeting proceeding.

- 20.3 notice of the annual general meeting and/or a special general meeting shall be given in writing to every *member* at the domicile address of the member; provided and subject thereto that if a *last contact facility* is on record with the company, notice shall also be given via such means insofar as then apparently functioning; provided that if an e-mail has been successfully transmitted a fax or "sms" shall not be required; provided that if an fax has been successfully transmitted an e-mail or "sms" shall not be required; provided that "sms" shall only be used if neither an e-mail nor a fax can be successfully transmitted.
- 20.4 the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

21. PROXIES FOR GENERAL MEETINGS OF MEMBERS

- 21.1 a *member* may be represented at an annual general meeting and/or general meeting by a proxy who shall be a *member of the company*, or an *owner/s representative*.
- 21.2 the instrument appointing a proxy shall be in writing signed by *the member* or the owner or any of the co-owners concerned or the duly authorised agent of any of the aforementioned but need not be in any particular form; provided that if a *member or the owner or owners representative* is more than one person, any one of those persons may sign the instrument appointing a proxy on such *member's* behalf. If a *member* or any owner of the relevant land is a company or closed corporation, the proxy may be signed by any director or member or the secretary or accounting officer thereof or by any representative signatory who was authorised to sign the proxy by any director or member thereof or by its secretary or by its accounting officer, and, if any association of persons, by the secretary or by any trustee thereof or any representative signatory who was authorised to sign the proxy by the secretary or any trustee thereof and, if a trust, by any trustee of such trust or by any representative signatory who was authorised to sign the proxy by any trustee of such trust.
- 21.3 the instrument appointing a proxy, the power of attorney or other authority (if any) under which it is signed or a notarial certified copy thereof shall be lodged with the company at least 24 hours before the scheduled time for the commencement of the meeting or adjournment meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 21.4 notwithstanding the foregoing, the *chairperson* of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 21.5 merely by way of example and for convenience, a specimen proxy is printed hereunder:

PROXY TO ATTEND AND VOTE AT GENERAL MEETING OF MEMBERS OF TUSCALOOSA 142 (Section 21 Company)

Note!! Insert full personal names of the undersigning signatory:

***being a member/s of Tuscaloosa 142 (Company incorporated under Section 21) in relation to the farm werf/farm werwe/ erf/erven/residential sectional title property unit/s on a farm werf on Fransche Hoek Agricultural Estate detailed hereunder;**

***and/or being the *owner/ *co-owner thereof;**

***and/or being a *director or* member or *trustee of the entity which is the owner*/co-owner thereof;**

(* Note!!!: delete what is not applicable above)

Details of property/ies _____

the name of the registered owner*/ co-owner of such property/ies being:

myself*/ _____
 (* Note!!!: delete if not owned by yourself and then insert name of owner)

do hereby appoint the following person as proxy to attend the general meeting of members of the said Tuscaloosa 143 on behalf of the member/s in relation to such*farm werf/*farm werwe/*erf/*erven/residential sectional title property unit thereon, convened to be held on the following date, time and place:

Date of meeting : _____
 Place of meeting : _____
 Time of meeting : _____

and also at any adjournment thereof, and to exercise all such voting power as I/we and/or such member/s and/or such owner/s may have:

name first proxy : _____

provided, that if my/our aforesaid proxy should not attend, the following person is hereby likewise so appointed and authorised:

name alternate proxy: _____

but failing him also, then the chairman of the said meeting is hereby likewise so authorised and appointed

**I/we hereby authorise such proxy to represent me*/the said member in his/her discretion and to vote as he/she deems fit.

or

*I/we limit the aforesaid proxy to vote as set out hereunder:

(**note!!!: delete above what is not, applicable and initial)

	In favour of	Against	Abstain
***Resolution No
***Resolution No
***Resolution No

(***Note: Indicate limitation of instruction to proxy by way of a cross in the space provided above)

Signed this _____ day of _____

Signature, hereby declaring and warranting to be duly authorised

(Important note: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and on a poll vote in his stead, but such proxy must be a member of Tuscaloosa 142 or an owner/s representative/s (e.g. a director/member/partner/trustee of the relevant property-owning entity that owns the relevant property underlying the membership)

22. QUORUM FOR GENERAL MEETINGS OF MEMBERS

22.1 no business shall be transacted and no resolution shall be passed at any annual general meeting or general meeting of *the company*, unless a *quorum* is present. The *quorum* necessary for the holding of any meeting shall be *members* present in person or by proxy entitled to exercise at least twenty five percent (25%) of the

(overall) voting power exercisable in terms of these articles, without reference to or distinction in respect of any particular section or sections of *FHAE*.

- 22.2 if, within thirty (30) minutes after the time appointed for the commencement of the meeting, a *quorum* is not present, the meeting, if convened on the requisition of *members*, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a *quorum* is not present, the *members* present shall be deemed to constitute a *quorum*.

23. AGENDA AT GENERAL MEETINGS OF MEMBERS

in addition to any other matter required by legislation or by *these articles* to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:

- 23.1 consideration of the *chairman's* report.
- 23.2 election of *member directors*.
- 23.3 consideration of the financial statements of *the company*, for the last financial year of *the company* preceding the date of such meeting.
- 23.4 consideration of the budget, as presented by *the board* and confirmation of *levies* as levied by *the board*.
- 23.5 any other matter pertinent to such meeting, including any resolution proposed for adoption by such meeting and the voting upon any such resolutions.

24. PROCEDURE AT GENERAL MEETINGS OF MEMBERS

- 24.1 *the chairperson* shall preside at all meetings provided that should he/she not be present within 15 minutes after the time appointed for the holding thereof, then the *directors* present at such meetings shall vote to appoint a *chairperson* for the meeting who shall thereupon exercise all the powers and duties of *the chairperson* in relation to such meeting.
- 24.2 *the chairperson* may, with the consent of any meeting at which a *quorum* is present (and if so directed by the meeting), adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business that might have been transacted at the meeting from which the adjournment took place. No notice needs to be given of the adjournment meeting, save for an announcement at the meeting of the date, time and venue of the adjourned meeting, unless the meeting is to be adjourned for thirty (30) days or more, in which event notice is to be given in the same manner as the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

25. VOTING RIGHTS AT GENERAL MEETINGS OF MEMBERS

- 25.1 voting rights shall be deemed to be limited as follows:
- 25.1.1 if any of the *farm werwe* or *erven* or any *residential sectional title property unit* on a *farm werf* is owned by more than one registered owner, all the registered co-owners of the relevant *farm werf* or of the relevant *erf* or of the relevant *residential sectional title property unit* on a *farm werf* shall be jointly deemed to be only one (1) member of the company and shall be jointly entitled to only one (1) vote at general meetings of members of the company, which vote shall in that event only be exercisable by written and signed agreement

between the relevant co-owners made available to *the chairman* of the meeting prior to such voting.

25.1.2 article 25.1.1 is subject thereto that:

25.1.2.1 where more than one residential sectional title property unit is registered on a farm werf, the registered owner or co-owners of each such residential sectional title property unit shall be deemed to be one member of the company and shall be entitled to one vote at meetings of the members of the company; provided furthermore that where any such residential sectional title property unit is owned by more than one registered owner, all the registered owners of such residential sectional title property unit shall jointly be deemed to be only one member of the company and shall jointly only be entitled to one vote at meetings of the members of the company, which vote shall only be exercisable by written and signed consensus between the relevant co-owners made available to the chairman of the meeting prior to such voting.

25.1.3 decisions *by members* shall be by way of majority vote, on the basis of "one levy one vote" and with a casting vote to the *chairperson* of the meeting.

25.1.4 at any meeting of *members*, a resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any member. If a poll is duly demanded, it shall be taken in such manner as the *chairperson* directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

25.1.5 save as expressly provided for in these articles, no person other than a *member* duly registered and who is not in arrears in respect of every levy and/or any other sum (if any) which shall be due and payable to *the company* in respect of or arising out of his/her membership and who is not under suspension, shall be entitled to be present and to vote on any question either personally or by proxy.

25.1.6 at any annual general meeting or general meeting, a resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by *members* entitled to attend and vote thereon present in person or by proxy in accordance with the value of votes recorded above.

25.1.7 voting on any question of adjournment shall be decided on an ordinary majority of votes represented by *members* entitled to attend and vote there at present in person or by proxy.

25.1.8 every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

25.1.9 unless a *member* present in person or by proxy at a meeting shall before closure of the meeting have objected to any declaration made by the *chairperson* of the meeting as to the result of any voting at the meeting, or to the propriety 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 minutes of the meeting 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 resolution so recorded if such entry

conforms with the declaration made by the *chairperson* of the meeting as to the result of any voting at the meeting.

26. MINUTES OF GENERAL MEETINGS OF MEMBERS

26.1 *the board* shall:

26.1.1 ensure that minutes, although not necessarily verbatim, are taken of every general meeting of members (*by a minute keeper who shall be a director appointed for such purpose by the Board which minute keeper shall not be the chairperson of the meeting*), which minutes shall be reduced to writing without undue delay after the meeting has closed, and shall, *if correct*, then be certified correct by the relevant *chairperson* of the meeting in which event such minutes shall be deemed prima facie to be correct, but if not regarded as correct by the relevant chairperson, shall be circulated for consideration with corrective notes by the relevant chairperson and for the approval by the directors; provided that if such minutes, with or without such corrective notes are confirmed to be substantially correct by a majority of directors, such minutes shall be *prima facie* be deemed correct; provided furthermore that any dispute or disagreement in this regard shall be resolved by application of *the dispute resolution procedure (Clause 35 below)*;

26.1.2 cause minutes to be kept of all general meetings of *the company* in a minute book of general meetings of the *members* kept for the purpose.

26.2 *the board* shall keep the minutes of each general meeting of *the company*, for a period of twenty (20) years.

26.3 on the written application of any member, *the board* shall make all minutes of any of the proceedings and/or meetings of the members in general meeting, available for inspection by such *member*.

26.4 all resolutions recorded in the minutes of any such meetings shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution shall be of any force or effect or shall be binding upon the members or any of the *directors*, unless such resolution is competent within the powers of the *company*.

26.5 save as otherwise provided in *these articles*, the proceedings at any meeting of the *members* shall be conducted in such reasonable manner and form as the *chairperson* of the meeting shall decide.

27. FINANCIAL YEAR

the financial year end of *the company* is the last day of February of each year.

28. ACCOUNTS

28.1 *the board* shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of *the company* including:

28.1.1 a record of the assets and liabilities of *the company*.

28.1.2 a record of all sums of money received and expended by *the company* and the matters in respect of which such receipt and expenditure occurred.

28.1.3 a register of *members* showing in each case their available contact details.

28.1.4 an individual ledger of accounts in respect of each *member*.

28.2 on the bona fide application of any *member* *the board* shall make all or any of the books of account and records available for inspection by such *member*; provided that *the board* shall in its discretion be entitled to refuse release of private contact details and other private details of a *member* unless the *member* requiring these first provides satisfactory proof to the satisfaction of *the board* that the relevant *member* has consented thereto in writing, duly signed, or it has been so determined in terms of the dispute resolution procedure (clause 35 below); and provided that the member requiring inspection shall provide details of the purpose and reasons for the request, which shall not be allowed if it is considered frivolous or vexatious or not bona fide, unless so determined in terms of the dispute resolution procedure.

28.3 *the board* shall cause all books of account and records to be retained for a period of six (6) years after completion of the transactions, acts or operations to which they relate, or such longer period as may be required in terms of the statutory provisions.

28.4 *the members* in general meeting or *the board* may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by *members* of the accounts and books of *the company*, or any of them.

28.5 at each annual general meeting *the board* shall lay before the *members* financial statements for the immediately preceding financial year of *the company*, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practice and shall be accompanied by such additional reports as may be necessary at the discretion of *the directors*.

29. DEPOSIT AND INVESTMENT OF FUNDS

29.1 *the board* shall cause all monies received by *the company* to be deposited to the credit of an account or accounts with a registered commercial bank in the name of *the company*, and, subject to any direction given or restriction imposed at a general meeting of *the company*, such monies shall only be withdrawn for the purpose of payment of the expenses of *the company* or investment in the name of *the company*.

29.2 any funds not immediately required for disbursements may be invested in a savings or similar account with any reputable financial institution or any other reputable registered deposit receiving institution approved by *the board* from time to time.

29.3 interest on monies invested shall be used by *the company* for any lawful purpose in the interest of *the company*.

30. AUDIT

30.1 once at least in every year, the accounts of *the company* shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the auditors and audited insofar as required by the laws of *the Republic*.

30.2 the duties of the auditors shall be regulated in accordance with general practice and applicable professional standards.

31. INDEMNITY

31.1 all *the directors* are indemnified by *the company* against any liabilities bona fide and reasonably incurred by them in their capacities as such and in the case of the *chairperson* in his/her capacity as *chairperson*, as well as for all costs, losses and expenses (including traveling expenses) which they may reasonably and bona fide incur or bona fide become liable for by reason of any authorised contract bona fide and reasonably entered into on behalf or for the benefit of *the company*, or any bona

fide authorised act or deed done, in the bona fide and reasonable discharge of any of their duties and, without detracting from the generality thereof, where reasonably defending any proceedings, civil or criminal or otherwise in which relief is granted by a court; provided and subject thereto that it is recorded that it is not the intention that *directors* are to be indemnified against ordinary and routine administrative, stationary, printing, telephone, cellular, postage, e-mail, internet expenses and/or other minimal routine expenses, and/or in respect of their traveling and/or accommodation costs in order to attend board meetings and/or annual general meetings of members and/or other general meetings of members, and that notwithstanding anything to the contrary set out in these articles these expenses shall not be borne by *the company* unless *the board* should specially so resolve for good and special reasons and in unusual circumstances, whether before or after the relevant expenses were incurred.

- 31.2 a *director* shall not be liable for the acts, or omissions of the auditors or any of the other directors whether in their capacities as directors or as *chairperson* or for any loss or expense sustained or incurred by *the company* through the insufficiency or deficiency of any security in or upon which monies of *the company* are invested or from loss or damage arising from the insolvency or wrongful act of any person with whom any monies, securities or effects are deposited or for any loss or damage occasioned by any error of judgment or oversight on his/her part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his/her duties or in relation thereto, unless occurring as a result of *mala fide* breach of duty or of trust.

32. OWN RISK

Any person using any of the services, land or facilities of the company or of FHAE or of FHE or of *the company* does so entirely at his/her own risk.

33. WATER, ELECTRICITY, AND REFUSE REMOVAL

- 33.1 in addition to the monthly *levies*, each party who is responsible to make payment of *levies* shall (jointly and severally with all other parties liable for the particular levies) be liable to make payment to *the company*:
- 33.1.1 for such water (if any) as may be supplied or be kept or made available by the company to the relevant *farm werf* or *erf* or *any residential sectional title property unit/s* on a *farm werf*.
- 33.1.2 for such electricity (if any) as may be supplied or be kept or made available by *the company* to the relevant *farm werf* or *erf* or *residential sectional title property unit/s* on a *farm werf*.
- 33.1.3 for such refuse removal services (if any) as may be provided or may be kept or made available by and/or on behalf of *the company* in respect of the relevant *farm werf* or *erf* or *residential sectional title property unit*, but only insofar as not yet included in the levies.
- 33.1.4 for such other services as may be provided to the relevant *farm werf* or *erf* or *residential sectional title property unit/s* on a *farm werf* at the cost and/or expense of *the company*.
- 33.2 such water, electricity, services and/or supplies and/or the availability thereof shall be bona fide charged out and debited by *the company* at such reasonable rates as the board may determine from time to time, also bearing in mind actual cost to *the company* and the need to provide for maintenance and/or replacement of any relevant infrastructure. In this regard it is recorded and agreed that:

- 33.2.1.1 unless the contrary be proved by the relevant party responsible for payment of the electricity and/or water, the measurement and/or metering and/or reading of such supplies and/or consumption through such meter/s as may be installed from time to time and as read by such representative as *the company* may appoint to do such reading from time to time, shall be deemed to be correct.
- 33.2.1.2 in the event of the relevant meters for any reason whatsoever not having been read, *the company* and/or the relevant meter reader/s or such other person/s as *the board* may appoint to do so, shall be entitled to estimate the likely usage and/or consumption of water and/or electricity on the relevant land, and the relevant party responsible to pay for the electricity and/or water shall be obliged to make payment in accordance with such estimation; provided and subject thereto that as and when the relevant meter is then indeed read, the necessary credit or debit shall be passed in favour of and/or against the relevant party responsible for payment of the electricity and/or water.
- 33.3 insofar as any *farm werwe* and/or any *erven* or any *residential sectional title property unit of a farm werf* may in future have direct water and/or electricity supply from any competent authority or supplier other than via *the company*, the relevant *member* shall, unless the supplier/s have agreed with *the company* that *the company* is responsible for payment, be obliged to pay the supplier/s directly for such water and/or electricity.
- 33.4 the above is subject thereto that if *the company* is billed directly by the relevant *local authority* or supplier for such water and/or electricity supplies, then a sub-meter (if not yet installed) shall be installed by *the company* at the cost of the relevant *member* who shall pay to *the company* from time to time for such water and/or electricity, in the manner determined by *the board*, and article 33.2 shall apply mutatis mutandis.
- 33.5 all water consumed in relation to the common property shall be paid for by *the company* out of the funds or *levies* collected.
- 33.6 any supply of water and/or electricity by *the company* shall be subject to availability thereof to *the company* from the relevant source/s and/or suppliers and the reliability and/or stability of such source/s and/or supplies, and *the company* shall not be liable in respect of any interruptions and/or stoppages and/or fluctuations and/or spiking of electrical current and/or for any damage and/or consequential damages arising therefrom.
- 33.8 *the company* shall have the right to terminate any supply of electricity and/or water in the event of the party responsible being or falling into *arrears* with payment in respect thereof.

34. **RATES AND TAXES**

Each owner of a *farm werf* and/or an *erf* and/or *residential sectional title property unit on a farm werf*, and of *the agricultural land*, shall pay to *the local authority* the rates and taxes levied in respect of such property .

35. DISPUTE RESOLUTION PROCEDURE

- 35.1** Subject to the provisions of articles 13.6 above and **35.2** hereunder, should any dispute or disagreement arise between *members* or *members* and *the board*, or

between of the members and the board, herein after referred to as *the parties*, arising out of or in regard to:

35.1.1 the interpretation of; and/or

35.1.2 the effect of; and/or

35.1.3 their respective rights or obligations under; and/or

35.1.4 a breach of (save for non-payment of *levies* or any other amount due by a member in terms of these *articles*);

these articles, such dispute or disagreement shall be resolved in terms of *the dispute resolution procedure* set out in *article 35.3* hereunder.

35.2 In respect of any claim arising from non-payment of *levies* or any other amount due by a *member* to *the company* in terms of these articles, *the company* shall continue to enjoy common law rights and shall not be required to proceed in terms of the dispute resolution procedure and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

35.3 *the dispute resolution procedure* referred to in article 35.1 is the following procedure:

35.3.1 *the parties* in dispute or disagreement shall submit the matter in dispute or the matter in respect whereof agreement cannot be reached to negotiations bona fide aimed at achieving resolution of the dispute or disagreement. No legal representatives are allowed to participate in these negotiations.

35.3.2 if agreement cannot be reached through negotiation within five (5) days or such longer period as the parties may agree upon, *the parties* in dispute or disagreement shall employ a consultant enjoying the confidence of all *the parties* in the dispute to assist them to arrive at a sensible and fair resolution of the dispute or disagreement through mediation aimed towards the bona fide resolution of the dispute of disagreement.

35.3.3 if the parties cannot reach agreement about the consultant to be appointed within ten (10) days or such longer period as the parties may agree upon after any of the parties in dispute has called in writing for the appointment of the consultant, a consultant shall be appointed by the then President or Chairperson of the *Cape Law Society* or of the then substantial successor of the said law society, or his/her nominee, at the request of any of *the parties* involved in the dispute or disagreement.

35.3.4 if resolution of the dispute or disagreement is not negotiated through such mediation within ten (10) days after the consultant has been appointed or such longer period as may be agreed upon by all the parties involved the dispute or disagreement will be referred for final resolution by an arbitrator to be appointed by agreement, which arbitrator may be the consultant who undertook the mediation, but only with the agreement of all the parties involved in the dispute or disagreement.

35.3.5 If the parties cannot agree upon the arbitrator to be appointed, article **35.3.3** above will be applicable, mutatis mutandis, with regard to such arbitrators' appointment, but in that event the consultant who undertook the mediation shall not be appointed.

35.3.6 such arbitrator's determination will be final and will bind the parties and shall be deemed to stand as a consensual agreement between them, and there

shall be no recourse to any court of law in relation thereto, save only if such determination was not made bona fide, and save to have it enforced.

35.3.7 such arbitrator shall also, within such resolution, make provision for any costs and/or disbursements incurred by any of the parties in relation to the mediation and/or his own determination, also including his own charges and disbursements and also inclusive of those of any experts he and/or the mediator may have consulted in the process, in his sole and absolute discretion.

35.3.8 pending resolution of the dispute or disagreement, each of the parties involved shall equally contribute to any reasonably required up-front payment/s and/or progress payments required by the relevant mediator or arbitrator in relation to his/her own fees and disbursements, and the reasonable bona fide costs of any expert he/she may reasonably consult with in their own bona fide discretion.

35.4 notwithstanding anything to the contrary contained in this *article 35*, *the company* shall be entitled to institute legal proceedings by way of application, action or otherwise in a court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of these articles, including the *architectural guidelines*.

36. DOMICILIUM

36.1 *the board* shall from time to time determine the address constituting the *domicilium citandi et executandi* of *the company*, subject to the following:

36.1.1 unless otherwise determined by *the board* and notified to a member, such address shall be deemed to be the address of the chairperson of the board or the address of any duly appointed managing agent.

36.1.2 *the board* shall give notice to all *members* of any change of such address.

36.2 the *domicilium citandi et executandi* of each *member*, shall be the street address of the member's farm *werf* or *erf* or the street address of the *member's residential sectional title property unit* on a *farm werf*.

36.3 where the *member's last registered contact facility* has remained functional for such *member*:

36.3.1 it shall be competent to give notice to the *member* via *the member's last registered contact facility*.

36.3.2 no notice delivered on behalf of *the company* at the chosen *domicilium citandi et executandi* of such a member shall be valid unless the *member* ordinarily resides at such address or unless such notice was also given via the *member's last registered contact facility* (only required if it is then still functional).

provided that any process of the court may be served as prescribed by the relevant rules of court, and that the foregoing provisions of article **36.3.2** shall not apply in relation to such service duly effected by the sheriff of the court; provided that the company shall prior to such service at an address where the member is not ordinarily resident, be required to have given notice to the member of the legal proceedings intended and the intended service by the sheriff of the court at his *domicilium citandi et executandi*, by way of notice transmitted via his last registered contact facility; provided that this shall only be required if his *last registered contact facility* is still functional.

36.4 a member may by notice in writing to *the board* alter his domicilium citandi et executandi, and also his *last registered contact facility*; provided that any such altered domicilium citandi et executandi may not be a post office box or post restante, and shall be within *the Republic*, and that such alteration shall not be effective until fourteen (14) days after receipt of such notification.

36.5 notwithstanding anything to the contrary herein contained, a written or electronic notice or communication actually received by a *member* shall be adequate written notice or communication to such member, notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi* or to his *last registered contact facility*.

36.6 any notice to a *member* successfully transmitted to his last *registered contact facility* shall be deemed to have been received on the day of transmission (unless the contrary is proved).

37. REGISTER OF MEMBERS

37.1 *the company* shall keep a register of *members* at the place and in the manner specified in *the Act*.

37.2 *the directors* may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by *the Act*.

38. CO-ORDINATED DEVELOPMENT ON FARM WERWE AND ERVEN

38.1 it is recorded that it is the intention that each further separate development of any particular *farm werf* or on any particular *erf* should be undertaken and completed in a co-ordinated manner and as soon as reasonably possible after commencement thereof, under reasonable and co-ordinated management, and without unreasonable interruptions and stoppages, and that "stop start" and haphazard developments, and developments with unreasonable interruptions shall in the case of each such separate development not be allowed.

38.2 each such separate development shall be brought to completion within the time limit allowed in terms of the buildings regulations as these may stand from time to time, but in any event within not more than eighteen (18) months from date when the first trenches were dug, failing which an additional monthly levy up to a maximum of five additional levies per month shall become payable by the member, in respect of the entire period during which the aforesaid time limits are exceeded.

39. AMENDMENT OF THESE ARTICLES OF ASSOCIATION

39.1 subject to the entrenched provisions, the provisions of *these articles* may be amended by special resolution given at a general meeting called specifically for such purpose. The notice of such meeting shall, *inter alia*, set out in specific terms of the proposed amendment of these articles.

39.2 notwithstanding the provisions of Article **39.1**, the provisions of *these articles* are entrenched and shall not be amended:

39.2.1 without the prior written consent of the *local authority* where such amendment(s) have an effect on the *approvals*; and

39.2.2 shall in any event also not be amended in relation to *the fremco levies* without the prior written and signed consent of *fremco trust*.

39.2.3 shall not prior to *the developer exit date* be amended so as to erode any voting or other rights of the *developer* or any rights of the *developer* to have representation on *the board* through a *developer director* or to *appoint the chairperson*, without the prior written and signed consent of *the developer*; provided that the foregoing shall not detract from the obligations set out above in terms whereof *the developer director* shall not unreasonably withhold his/her support to resolutions and shall not unreasonably absent himself/herself so as to prevent a quorum being formed.

39.3 without detracting from the provisions of Article **39.1** and **39.2**, any addition amendment, substitution, or repeal shall require the approval of at least 66% of the total number of votes of *members* of *the company* present in person or by proxy at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirements for the convening of a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed, altered or amended.

40. GENERAL

40.1 the provisions of *these articles* shall be binding upon all *members* and all persons occupying any land through or under any *member*, whatever the nature of such occupation.

40.2 no *member* ceasing to be a member of *the company* for any reason shall (nor shall such *members'* executors, curators, trustees or liquidators) have any claim upon or interest in or rights to the funds or any property and/or rights and/or assets of *the company*.

40.3 each *member* shall have the obligation to provide *the company* with contact information in the form of an e-mail address and/or a fax number, as well as a physical address and/or a postal address and shall also provide *the company* with a contact telephone number and/or mobile telephone number. Unless the *member* alters any of the aforesaid by way of written notification given to *the company* it shall be deemed to be the valid contact means/address/number for the relevant *member*.

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Appendix A

