



PEZULA

MEMORANDUM OF INCORPORATION

PEZULA GOLF ESTATE HOME OWNERS ASSOCIATION (RF) NPC

REGISTRATION NO : 1999/002020/08



raubenheimers attorneys

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1. NAME OF COMPANY

The name of the Company is :

PEZULA GOLF ESTATE HOME OWNERS ASSOCIATION (RF) NPC

2. INCORPORATION

2.1 The Company is incorporated as a non-profit company, as defined in the Act.

2.2 The Company is incorporated in accordance with, and governed by –

2.2.1 the unalterable provisions of the Act that are applicable to non-profit companies;

2.2.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

2.2.3 the provisions of this Memorandum.

3. DEFINITIONS AND INTERPRETATIONS

3.1 In this Memorandum, the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them :

3.1.1 “**the Act**” means the Companies Act No 71 of 2008, and words or expressions defined in the Act shall, when used in these articles,

bear the meanings assigned to such words and expressions in terms of the Act;

- 3.1.2 “**article**” means an article of this Memorandum;
- 3.1.3 “**alienate**” means the alienation of any erf or any part thereof and includes alienation by way of sale, exchange, donation, partition deed, intestate succession, will, cession, assignment, lease, court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and ‘alienation’ shall have a corresponding meaning;
- 3.1.4 “**authorized representative**” means a person authorized in terms of the Act by a company or other body corporate to act as its representative at any general meeting;
- 3.1.5 “**Association**” means Pezula Golf Estate Home Owners Association, a company incorporated in terms of the Act, and “**the Company**” shall have a corresponding meaning;
- 3.1.6 “**auditors**” means the auditors of the Association appointed by the annual general meeting from time to time;
- 3.1.7 “**board of directors**” or “**board**” means the board of directors of the Association duly appointed in terms of the Act;
- 3.1.8 “**chairperson**” means the chairperson for the time being of the board of directors appointed in terms of article 13.6;
- 3.1.9 “**the club**” means Pezula golf club conducted as the main business of Pezula Club;
- 3.1.10 “**cluster development**” means a cluster housing scheme having a shared or common area for amenities;
- 3.1.11 “**common property**” means :
 - 3.1.11.1 a part of Pezula belonging to the Association which is not subject to an exclusive right of use by a member but excludes the golf course land and the club house and the other facilities thereon, and includes any swimming pool and tennis courts;
 - 3.1.11.2 any land which may be designated by the board of directors for the purposes of use in common by the members; and

- 3.1.11.3 any land which may be designated in any manner or in terms of any law or condition or authority for purposes of use in common by the members and/or the public;
- 3.1.12 “**development node**” means a node or area comprising a group of separate erven grouped together in a particular area or node of Pezula;
- 3.1.13 “**erf**” means any of the erven forming part of Pezula;
- 3.1.14 “**facilities**” means all and any facilities or amenities of whatsoever nature which may be provided within Pezula, but excluding the golf course land and the club house and any other facilities thereon and including any swimming pools and tennis courts;
- 3.1.15 “**financial year**” means the financial year of the Association which shall run from the first day of March in any year until the last day of February in a subsequent year or such other period as the board of directors may determine;
- 3.1.16 “**the golf course**” means the golf course constructed on the golf course land and includes the club house;
- 3.1.17 “**the golf course land**” means the land indicated as such on the site plan on which the golf course has been constructed and including the land on which the club house and all other facilities are located, excluding the swimming pool and tennis court;
- 3.1.18 “**good standing**” in relation to a member means a member who is not in arrears by more than 30 (thirty) days with payment of any amount owing to the Association;
- 3.1.19 “**group housing development**” means a group housing scheme as defined in the scheme regulations to the Land Use Planning Ordinance No 15/1985(C);
- 3.1.20 “**hotel sectional title units**” means sectional title units attaching to a hotel or forming part of a hotel rental pool agreement;
- 3.1.21 “**levy**” or “**levies**” means the levy or levies referred to in article 10;
- 3.1.22 “**local authority**” means the local authority having jurisdiction in respect of Pezula or any portion thereof;

- 3.1.23 “**managing agent**” means any person or entity appointed by the Association to undertake any of the management functions of the Association;
- 3.1.24 “**member**” means a member of the Association as defined in article 7;
- 3.1.25 “**this Memorandum**” means this Memorandum of Incorporation as amended from time to time;
- 3.1.26 “**person**” includes a natural person, legal person, an association of persons, a trust and a partnership, as the case may be;
- 3.1.27 “**Pezula**” means the golf estate generally known as Pezula shown as such on the site plan, but excluding the golf course land and the club house and the other facilities thereon, including the swimming pool and tennis courts (for the avoidance of doubt it excludes the hotel which consists of sectional title units and the five share block units situated at the 18th hole of the golf course);
- 3.1.28 “**Pezula Club**” means Pezula Club (Pty) Limited, registration number 2001/027242/06;
- [DRAFTING NOTE : THE COMPANY IS TO BE CONVERTED FROM A PUBLIC COMPANY TO A PRIVATE COMPANY.]
- 3.1.29 “**registered owner**” means the person in whose name an erf or unit is registered in the relevant deeds registry;
- 3.1.30 “**rules**” and “**regulations**” means the rules and regulations referred to in article 12, but for the avoidance of doubt it is provided that such rules shall not be regarded as rules relating to the governance of the Company as contemplated in section 15(3) of the Act;
- 3.1.31 “**section**” means a section in terms of the Act;
- 3.1.32 “**services**” means such utilities, amenities and services as may be provided by or on behalf of the Association for the registered owners and residents within Pezula, including the services crossing the golf course land;
- 3.1.33 “**the site plan**” means the plan annexed to this Memorandum as annexure A;

- 3.1.34 “unit” means a unit as defined in terms of the Sectional Titles Act 95 of 1986 within Pezula, excluding the hotel sectional title units.
- 3.2 Unless the context otherwise indicates, any words importing the singular shall also include the plural and visa versa, words importing any one gender shall include the other genders, and words importing persons shall include corporations.
- 3.3 The headings to the respective articles are for reference purposes only and shall not be taken into account in the interpretation of these articles.
- 3.4 Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed by the Association, and shall be given prior to the member taking action.
- 3.5 In the event of a member consisting of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this Memorandum.
- 3.6 All references in this Memorandum to an erf shall apply *mutatis mutandis* in respect of a unit : Provided that should there be any discrepancy between the provisions set out in this Memorandum and the management or conduct rules of the sectional title scheme concerned, the provisions of this Memorandum shall prevail.
- 3.7 Should Pezula contain sectional title units, the owners of such units shall be members of both the body corporate of such sectional title scheme and of the Company.
- 3.8 If any period is referred to in this Memorandum by way of reference to a number of business days, the days shall be reckoned exclusively of any Saturday, Sunday or public holiday in the Republic of South Africa.
- 3.9 Any notice which is required to be in writing may be given by electronic communication or faxed to the addressee’s e-mail address or fax number of which the person concerned notified the Company or which he normally uses in his communication with the Company.
- 3.10 Any word or expression which is defined in the Act and which is not otherwise defined in this Memorandum shall have the meaning assigned thereto in the Act.

4. OBJECTS AND POWERS OF THE COMPANY

- 4.1 The sole object of the Company is to manage the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable.
- 4.2 The main business and object of the Association shall include the following :
- 4.2.1 to maintain and control the common property;
 - 4.2.2 to provide security services for Pezula and to control access to and egress from Pezula;
 - 4.2.3 the promotion, advancement and protection of the communal and group interest of the members generally in regard to Pezula and that of tenants, occupiers and visitors to Pezula;
 - 4.2.4 to enter into service agreements and/or lease agreements with the local authority or any other authority or supplier of services;
 - 4.2.5 acquiring and holding an interest in the golf course land, either through direct ownership or through shareholding in the registered owner of the golf course land;
 - 4.2.6 giving of financial assistance to Pezula Club with due regard to the provisions of article 25, which financial assistance may be for purposes of the maintenance and upkeep of the golf course, the golf course land, the club house and the club facilities as well as contributing towards the running costs of Pezula Club : Provided that any such financial assistance shall be subject to approval by an ordinary resolution passed at any general meeting.
- 4.3 Except to the extent necessarily implied by the stated objects and subject to the provisions of this Memorandum, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.
- 4.4 The Company is subject to the restrictive conditions and requirement for the amendment of such condition in addition to the requirements set out in section 16, as set out in articles 9.4, 31 and 32.

- 4.5 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions set out in article 31.
- 4.6 The Company shall apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum.
- 4.7 The Company shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or who was an incorporator of the Company, or who is a member or director, or person appointing a director, of the Company, except as reasonable remuneration for goods delivered or services rendered or expenses incurred, as a payment of any amount due and payable in terms of a bona fide agreement, as a payment in order to advance a stated object of the Company or in respect of any legal obligation binding on the Company as more fully set out in item 1(3) of schedule 1 of the Act.
- 4.8 The Company shall be entitled to purchase from Pezula Club the leasehold improvements to the club house (situated on the golf course land, which is owned by the Company) at a price to be agreed upon with Pezula Club (the value of the said leasehold improvements on 1st September 2012 reflected in the books of account of Pezula Club Limited at the sum of R8,200,000-00 (eight million two hundred thousand Rand)), which amount shall –
- 4.8.1 constitute a loan owed to Pezula Club;
- 4.8.2 be interest free; and
- 4.8.3 be reduced from time to time by amount(s) determined by the board and paid to Pezula Club in terms of the provisions of article 25.2.
- 4.9 For the avoidance of doubt it is provided that the balance of the loan referred to in article 4.8 may not at any time be called up by Pezula Club and Pezula Club shall not be entitled to demand or take steps to accelerate payment of the balance of the loan from time to time.
- 4.10 The Company shall not be entitled to undertake the development of any portion of its immovable property (i.e. by erecting thereon buildings and suchlike structures) or to dispose of any portion of its immovable property without the prior approval of such action by special resolution passed at any general meeting.

5. MEMORANDUM OF INCORPORATION AND COMPANY RULES

- 5.1 This Memorandum may be altered or amended in the manner set out in section 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) read with article 30.
- 5.2 The authority of the Company's board of directors to make rules for the Company, as contemplated in section 15(3) is limited and restricted to the extent set out in article 12.
- 5.3 The board must notify all members in writing of any rules made in terms of article 12.
- 5.4 The Company must publish a notice of any alteration of this Memorandum or the rules by notifying all members thereof in writing.

6. OPTIONAL PROVISIONS OF COMPANIES ACT, 2008 DO NOT APPLY

The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act.

7. MEMBERS OF THE COMPANY

- 7.1 As contemplated in item 4(1) of Schedule 1 of the Act, the Company has members, who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the Company.
- 7.2 Membership of the Association shall be compulsory for every registered owner of an erf or a unit in Pezula.
- 7.3 Membership shall commence simultaneously with registration of transfer of an erf or unit into the name of the transferee.
- 7.4 When a member ceases to be the registered owner of an erf or a unit, he shall ipso facto cease to be a member of the Association.
- 7.5 Membership of the Association shall be limited to :
 - 7.5.1 any person who is a registered owner of a unit or an erf; and

- 7.5.2 a person who is entitled to obtain a certificate of registered title in respect of any erf or unit shall be deemed to be the registered owner thereof.
- 7.6 Where a unit or erf is owned by more than one person, all such registered owners shall together be deemed to be one member of the Association and shall have the rights and obligations of one member of the Association, subject to the provisions of article 24.
- 7.7 The rights and obligations of a member shall not be transferable and every member shall -
- 7.7.1 to the best of the ability of such member further the object and interest of the Association; and
- 7.7.2 observe all rules and regulations made by the Association or the directors.
- 7.8 The Company shall maintain a membership register.
- 7.9 No member ceasing to be a member of the Association for any reason shall, nor shall any such member's executor, curators, trustees or liquidators, have any claim upon or interest in the funds or property of the Association, but this article shall be without prejudice to the rights of the Association to claim from such member or the estate of such member any arrears to subscriptions or other sums due from such member to the Association at the time of such person so ceasing to be a member.

8. RIGHTS OF MEMBERS AND ENTRENCHED PROVISIONS

8.1 Members' authority to act

It is recorded that not every member of the Company shall be a director of the Company.

8.2 Members' right to information

In addition to the rights to access information set out in section 26(1), a member of the Company has the further rights to information as set out in article 27.3 of this Memorandum.

8.3 Representation by concurrent proxies

The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a) is not limited, restricted or varied by this Memorandum.

8.4 Authority of proxy to delegate

The authority of a member's proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b) is not limited or restricted by this Memorandum.

8.5 Requirement to deliver proxy instrument to the Company

The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58(3)(c) is varied to the extent set out in article 21.2.

8.6 Deliberative authority of proxy

The authority of a member's proxy to decide without direction from the member whether to exercise, or abstain from exercising any voting right of the member, as set out in section 58(7) is not limited or restricted by this Memorandum.

8.7 Record date for exercise of member rights

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3).

8.8 Subdivision, consolidation and rezoning

No erf or unit shall be subdivided, rezoned or consolidated without the prior approval of the Association in general meeting : Provided that no consolidation or rezoning shall have the effect of reducing the levies that would have been payable without any such consolidation or rezoning.

9. ALIENATION

- 9.1 No owner shall be entitled to sell or transfer in any manner his erf or unit (or any part thereof) which includes all the improvements thereon in Pezula unless it is a condition of such alienation that -
- 9.1.1 the transferee becomes a member of the Association;
 - 9.1.2 the registration of transfer of the erf or unit concerned into the name of the transferee shall ipso facto constitute the transferee as a member of the Association;
 - 9.1.3 the member first obtains the written consent of the Association which consent shall be given provided that -
 - 9.1.3.1 the transferee of such erf or unit agrees in writing to be bound by the articles and the rules of the Association;
 - 9.1.3.2 such member has paid all levies and other amounts owing by such member to the Association as at the date of transfer of the erf or unit;
 - 9.1.3.3 such member has duly complied with all of the obligations of such member in terms of these articles.
- 9.2 The registered owner of an erf shall not be entitled to resign as member of the Association.
- 9.3 The following servitude will be registered against the title deed of every erf or unit in Pezula namely :
- 9.3.1 The owner of an erf or unit or any interest therein shall at the date of registration of the erf or unit in the Deeds Office become a member of the Association subject, however, to its rules.
 - 9.3.2 The owner of an erf or unit shall only be entitled to sell or transfer in any manner (which includes the sale of shares in the case of a company, members interest in the case of a close corporation or the change of beneficiaries in the case of a trust, donation or testamentary or intestate dispositions) the erf or unit to a third party after such purchaser, his executor, trustees or assigns has first obtained the written consent of the Association, which consent will not unreasonably be withheld.

9.4 The above servitude shall be applicable *ad infinitum* on every **erf** or **unit** in Pezula and may only be varied or cancelled with the written consent of the company, approved by special resolution at a general meeting.

10. LEVIES

10.1 The board of directors shall from time to time impose levies (both general and specific) upon the members for the purpose of meeting all the expenses which the Association has incurred, or which the board of directors reasonably anticipates the Association will be put to by way of payment of all charges payable by the Association, and/or the services rendered to it, and/or for payment of all expenses necessarily or reasonably incurred including (but not limited to) all such expenses incurred in respect of :

10.1.1 the maintenance, repair, improvement and keeping in good order and condition of all such facilities as it is obliged to maintain and/or provide;

10.1.2 the fulfillment of any other duties of the Association.

10.2 In calculating levies, the board of directors shall take into account the income (if any) earned by the Association and any amounts intended to be paid to Pezula Club pursuant to the provisions of article 25.

10.3 The board of directors shall estimate the amount which shall be required by the Association to meet the expenses during each financial year, together with such estimated deficiency (if any) as shall result from the preceding financial year, and shall impose a levy upon the members equal as near as is reasonably practical to such estimated amount. The board of directors may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly installments due in advance on the first day of each and every succeeding month of such financial year : Provided that the board may, if deemed necessary, impose a special levy as a once-off payment or to allow a discount on monthly payments if the annual amount is paid once-off in advance.

10.4 The board shall not less than 30 days prior to the end of each financial year give every member at the address chosen by him a written notice

of the contribution payable by that member in respect of such expenses and reserve fund.

- 10.5 In the event of the board for any reason whatsoever failing to prepare and timeously give notice of the estimate referred to in article 10.3 above, every member shall until served with such estimate, continue to pay the levy previously imposed and shall after such notice pay such levy as may be specified in the notice, in the manner specified in the notice referred to in article 10.3 above, together with any arrear levies.
- 10.6 The board may from time to time impose special levies upon the members in respect of all such expenses as are mentioned in article 10.1 above (which are not included in any estimate made in terms of articles 10.3) and such levies may be imposed in the sum or by such installments and at such time or times as the trustees shall think fit.
- 10.7 In calculating the levy payable by each member, the board shall as far as reasonably practical -
 - 10.7.1 assign those expenses attributable to a particular erf or unit itself, to the registered owner thereof;
 - 10.7.2 assign those expenses attributable to a particular sectional title development to the registered owners of units in such development pro rata to their participation quota in terms of the particular sectional title scheme;
 - 10.7.3 assign those expenses attributable to a particular cluster development or group housing development to the registered owners of erven in such development equally;
 - 10.7.4 assign those expenses attributable to any other development node (including a single residential development node) to the registered owners of all erven in such development node equally;
 - 10.7.5 assign those expenses relating to Pezula generally and/or any other expenses not assigned in accordance with articles 10.7.1, 10.7.2, 10.7.3 or 10.7.4 above, to the owners of all erven or units equally; provided, however, that the board may in any case where the board considers equitable to do so, assign to any member any greater or lesser share of such expenses as may be reasonable in the circumstances.

- 10.8 Any amount due by a member by way of a levy shall be a debt due by such member to the Association monthly in advance. The obligation of a member to pay a levy shall, without prejudice to the Association's right to recover arrear levies, cease upon such member ceasing to be a member of the Association. No levies paid by a member shall under any circumstances be repayable by the Association upon such member's ceasing to be a member. A member's successor-in-title in respect of an erf or unit shall be liable, as from the date upon which such person becomes a member pursuant to the transfer of that erf or unit into his name, to pay the levy attributable to that erf or unit. No member shall be entitled to transfer such member's erf or unit until the Association has certified that the member has as at the date of transfer fulfilled all such member's financial obligations to the Association.
- 10.9 No member shall be entitled to any of the privileges of membership of the Association unless and until he shall have paid every levy, subscription or other sum (if any) which shall be due and payable to the Association in respect of his membership thereof.
- 10.10 The board shall be empowered to impose fines in respect of non-compliance with the provisions of these articles and/or to charge interest on any arrear levies and to determine the rate of interest from time to time chargeable upon such arrear levies, which shall be in addition to such other rights as the Association may have in law against the members, provided that such interest shall not exceed the rate laid down in terms of the relevant Act.
- 10.11 Should any dispute arise at any time between the members and the board in regard to the determination or calculation of the levies, the decision of the auditors for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute shall be final and binding on the members and the board.
- 10.12 In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute, pay the levies determined by the board.
- 10.13 A member shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the Association in obtaining the recovery of any arrear levy or other amounts due and owing to the Association. This includes enforcing compliance with any rules or regulations made by the Association from time to time.

11 COMMUNAL AREAS AND COMMUNAL FACILITIES

- 11.1 The Association shall be obliged to maintain the common property and the facilities and shall have the right to supplement the function of the local authority in respect of the maintenance of existing services or the provision of additional services : Provided that prior approval is obtained in writing should any maintenance or improvement be done to a municipal service, and subject to such conditions as the local authority may impose.
- 11.2 For the purposes of article 11.1, the Association shall be entitled to employ the services of independent contractors.
- 11.3 The Association shall at all times promote environmental awareness and responsibility within Pezula and its members from time to time.
- 11.4 Management and maintenance of all facilities and private open spaces owned by the Association shall vest in the Association and the management and maintenance of the golf course land, including the golf course, the club house and all other facilities thereon shall vest in the owner of the golf course land, and the local authority shall have no responsibility in this regard.
- 11.5 The Association shall be responsible to the Council for compliance with the conditions of approval of the township of which Pezula forms part to the extent that it relates to the successor-in-title of the developer concerned.

12 RULES

- 12.1 Subject to any restriction imposed or direction given at a general meeting of the Association and subject to the conditions imposed by the local authority in approving the rezoning and subdivision of the land on which Pezula is located the board of directors may from time to time make rules, guidelines and regulations (herein referred to as rules and regulations) in regard to :
- 12.1.1 the standards and guidelines for the architectural design of all buildings and out-buildings, structures of any nature, swimming pools, and all additions and alterations to any such buildings, out-buildings or structures, including fencing erected or to be erected on the land, and in particular to control the design of the exterior of such buildings, out-buildings or structures and the materials used

- on such exteriors to ensure an attractive, aesthetically pleasing and co-ordinated character to all buildings within the development;
- 12.1.2 the siting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts, and all additions and alterations to any thereof;
 - 12.1.3 the preservation of the built and general environment;
 - 12.1.4 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 12.1.5 the conduct of any persons, including the public (which shall be allowed access, on such conditions as the Association shall regulate, to all amenities on the land), on the land for the prevention of nuisance of any nature to any member;
 - 12.1.6 the code of conduct applicable to all builders, contractors (including subcontractors) and suppliers within the development or any building, construction or any other work carried on within the development;
 - 12.1.7 the preservation of the natural environment vegetation and fauna within Pezula including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any erven;
 - 12.1.8 the use of services and recreational areas, amenities and facilities on Pezula;
 - 12.1.9 for the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents on Pezula;
 - 12.1.10 for the maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the land;
 - 12.1.11 the controlling of the number of occupiers permitted on any one erf or unit;
 - 12.1.12 control of traffic and parking on the land (subject to national guidelines and approval by the local authority);

- 12.1.13 the admission of any person within Pezula, and the eviction of any person not entitled to be thereon, excluding the members of the club and bona fide visitors to the club;
- 12.1.14 the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents within Pezula.
- 12.2 For the enforcement of any of the rules made by the board of directors in terms of this article, or any of the provisions of these articles generally, the board of directors may :
 - 12.2.1 give notice to the member concerned requiring such member to remedy such breach within such period as the board of directors may determine;
 - 12.2.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the Association; and/or
 - 12.2.3 take such action including proceedings in court, as the board of directors may deem fit;
 - 12.2.4 impose, in its sole discretion, spot fines, other charges and/or impost on the member concerned, as the board of directors may deem fit.
- 12.3 In the event of the board of directors instituting any legal proceedings against any member or resident on the land for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 12.4 In the event of any breach of the rules or regulations by the members of any member's household or his guests or tenants, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the board of directors may take or cause to be taken such steps against the person actually committing the breach, as the board of directors may in its sole discretion deem fit.

- 12.5 If any member disputes the fact that he has committed a breach of any of the rules or regulations, a committee of three directors appointed by the chairperson for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairperson may direct.
- 12.6 Notwithstanding anything to the contrary herein contained, the board of directors may in the name of the Association enforce the provisions of any rules or regulations by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel, as the board of directors may deem fit.
- 12.7 Twenty four hours access is to be provided to the local authority for the purpose of monitoring, inspecting or maintaining infrastructure and for meter-reading or to provide any service as may be deemed necessary.
- 12.8 The Association may in general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the board of directors from time to time.
- 12.9 All rules shall be reasonable and shall apply equally to all owners of erven or units put to substantially the same use.
- 12.10 The 'Pezula Golf Estate Rules' and 'The Pezula Golf Estate Architectural Design Manual' in respect of the development in existence on the date of approval of this Memorandum by the general shareholders meeting of the company are for all purposes deemed to be concurrently approved.

13 BOARD OF DIRECTORS

- 13.1 The board of directors of the Association shall consist of not more than 5 (five) persons who shall be solely and exclusively responsible and authorized and obliged to manage and control the entire business, affairs and undertakings of the Association in whatever form, and/or to appoint appropriate professional managers, operators and/or sub-contractors to undertake these functions.
- 13.2 The directors shall be elected by the members in general meeting : Provided that a person may only be so elected if he is in good standing : Provided further that one of the directors shall be a director of Pezula Club nominated for appointment by Pezula Club. Pezula

Club may at any time replace its nominee and the Association shall do all such things as may be requisite in order to give effect to such substitution.

- 13.3 The Company shall have no *ex officio* directors.
- 13.4 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a director of the company, a person must satisfy the additional eligibility requirements and qualifications set out in article 14.
- 13.5 A director shall be a natural person and shall not necessarily be a member of the Association. A director, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of these articles.
- 13.6 The board of directors shall appoint one of their number to act as their Chairperson for such term as they think fit, but not for longer than such person's tenure as a director. Such person shall also be the Chairperson of the general meeting.
- 13.7 The board of directors shall determine who of them shall be appointed to the board of directors of Pezula Club.
- 13.8 Pezula Club's representative on the board of directors shall be entitled to report to Pezula Club's board on any meeting of the board of the Association and that of any committee or sub-committee of the Association on which such representative may serve : Provided that any such information shall be kept confidential.

14 REMOVAL AND ROTATION OF BOARD OF DIRECTORS

14.1 The following provisions shall apply in connection with the rotation of directors other than the director nominated for appointment by Pezula Club as referred to in article 13.2 :

14.1.1 At the first annual general meeting of the Company after the date of registration of this Memorandum in terms of the Act, one-half of the directors shall retire from office, and at the annual general meeting in every subsequent year, one-half of the directors for the time being, or if their number is not an even number, the number nearest to one-half, shall retire from office.

14.1.2 The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

14.1.3 A retiring director shall be eligible for re-election.

14.2 A director shall be deemed to have vacated his office as such upon :

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

14.2.2 his/her being removed from office as provided in terms of section 71 of the Act;

14.2.3 his/her estate being sequestrated, whether provisional or finally;

14.2.4 his/her conviction for any offence involving dishonesty in terms of criminal law;

14.2.5 his/her becoming incapable of carrying out his/her duties as a director as decided by at least 60% of the directors;

14.2.6 his/her resigning from such office in writing :

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

14.3 Upon any vacancy occurring in the board of directors prior to the next annual general meeting, the vacancy in question shall, subject to

article 13.2, be filled by a person nominated by those remaining for the time being of the board of directors.

- 14.4 Each director shall have the power to nominate any person possessing the necessary qualifications of a director to act as alternate director in such director's place during such director's absence or inability to act as director, provided the appointment of an alternate director shall be approved by the board and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other members of the board of directors of the company.
- 14.5 A director, whilst acting in the stead of a director who appointed him, shall exercise and discharge all the powers, duties and functions of the director he represents. The appointment of an alternate director shall be revoked and an alternate director shall cease to hold office whenever the director who appointed such director ceases to be a director or gives notice to the secretary of the company from the alternate director representing such director has ceased to do so, and in the event of a disqualification or resignation of an alternate director during the absence and inability to act of the director whom such director represents, the vacancy so arising shall be filled by the chairman of the board of directors who shall nominate a person who is a member of the company, subject to approval by the board.

15 BOARD OF DIRECTORS EXPENSES

The directors shall be entitled to be repaid all reasonable and bona fide expenses incurred by them in or about the performance of their duties as directors.

16 PROCEEDINGS OF BOARD OF DIRECTORS

- 16.1 The board of directors shall, at their first meeting or thereafter, as they may determine, elect a chairperson and such deputy chairperson(s) as they shall consider necessary or appropriate and determine the period for which he or she or they are to hold office.
- 16.2 In addition to such other powers and duties as may be delegated to him or her by the board from time to time, the chairperson shall :

- 16.2.1 preside and maintain order at all meetings of the board, provided that if, on the date and place appointed for a meeting, the chairperson is not present within 15 (fifteen) minutes after the time appointed for the commencement of that meeting, a deputy chairperson shall so preside or if he or she is similarly absent, then the board of directors then present shall elect one of their number to act as chairperson for that meeting;
- 16.2.2 appoint the time and place of each meeting of the board and, subject to these provisions, may on not less than 5 (five) days notice convene the board for the dispatch of business, or adjourn or otherwise regulate the meetings of the board as he or she may deem fit;
- 16.2.3 ensure that each meeting of the board is duly convened and constituted and that these provisions and any rules made by the board for the conduct of meetings are adhered to and that the proper procedure is duly followed;
- 16.2.4 convene a meeting of the board of directors, on not less than 5 (five) days' notice, upon the request of any 3 (three) or more members of the board of directors;
- 16.2.5 be entitled to determine that a meeting of the board shall be conducted by electronic communication or one or more directors may participate in a meeting by electronic communication in accordance with the provisions of section 73(3) of the Act.
- 16.3 In the event of the chairperson being absent or otherwise unable to perform his or her duties in terms hereof, any deputy chairperson and, failing him or her, any other director appointed by the board for such purpose, shall exercise the powers and perform the functions of the chairperson for so long as the chairperson remains absent or unable to perform his or her duties and for this purpose such deputy chairperson or other director shall be deemed to have all such powers and functions of the chairperson as the chairperson himself or herself might have.
- 16.4 The chairperson shall have the power to delegate any of his or her powers and duties to the deputy chairperson as he or she may deem desirable or necessary and may add to, vary or revoke any such delegation of powers or duties as he or she may deem fit.
- 16.5 The quorum necessary for the holding of any meeting of the board of directors shall be 3 (three) directors present in person at such

meeting. If no quorum is present within 15 (fifteen) minutes after the time for commencement of such meeting, then it shall stand adjourned for 7 (seven) days, or if that is not a business day then the next business day thereafter, and those directors present at the adjourned meeting shall constitute a quorum.

- 16.6 Any resolution of the board of directors shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the meeting shall have a second or casting vote.
- 16.7 The board of directors shall cause minutes to be kept of every director's meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairperson of that meeting. All minutes of board of directors' meetings shall, after certification, be placed in a board of directors' minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of board of directors of companies. The provisions of article 27.3 shall apply *mutatis mutandis* regarding access to and inspection of such minutes.
- 16.8 A decision that could be voted on at a meeting of the board of directors may instead be adopted by written consent of a majority of the directors, given in person or by electronic communication provided that each director has received notice in writing of at least 5 (five) days of the matter to be decided.
- 16.9 The board of directors shall cause an attendance register to be kept of their meetings, the particulars of which shall be included in the chairperson's report at the annual general meeting as referred to in article 20.2.1.

17 POWERS OF DIRECTORS

- 17.1 Subject to the express provisions of these articles, the board of directors shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of managing agents, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by the Act or by these articles required to be exercised or done by the Association in general meeting, subject, however, to such directives or restrictions

as may have been approved by the Association in general meeting or as may be imposed by the board of directors from time to time.

- 17.2 Save as specifically provided in these articles, the board of directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the board of directors on such terms as the board of directors shall decide.
- 17.3 The board of directors shall further have the power :
- 17.3.1 to require that any construction of any sort on the land shall be supervised to ensure that the provisions of these articles and the rules and regulations are complied with and that all such construction is performed in a proper and workmanlike manner;
- 17.3.2 to issue an architectural and environmental design and maintenance manual in respect of the land, and ensure that such manual is complied with at all times by all members.
- 17.4 The board of directors shall have the right to vary, cancel or modify its decisions and resolutions from time to time.
- 17.5 The board of directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the board of directors may from time to time deem necessary.
- 17.6 Members of the architectural review committee shall not necessarily be required to be members of the Association.
- 17.7 All plans for buildings, out-buildings, structures, additions or alterations shall be approved by the board of directors who shall first submit such plans to the architectural review committee. The board of directors shall not approve any such plan unless such plan shall first have been reviewed by the architectural review committee.

18 INDEMNITY

- 18.1 All members of the board of directors shall, to the extent not prohibited in terms of section 78 of the Act be indemnified against any liabilities bona fide incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a Court.
- 18.2 Every director, servant, agent and employee of the Association shall to the extent not prohibited in terms of section 78 of the Act be indemnified by the Association against (and it shall be the duty of the board of directors out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.
- 18.3 The Company may purchase insurance to cover any expenses and liability it may lawfully incur in terms of the provisions of articles 18.1 and 18.2.

19 GENERAL MEETINGS OF THE ASSOCIATION

- 19.1 The Association shall within 6 (six) months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other general meetings during the year, and shall specify the meeting as such in the notices in terms of section 62 of the Act.
- 19.2 Such annual general meeting shall be held at such time and place in the Magisterial District of Knysna as the board of directors shall decide from time to time.
- 19.3 All general meetings other than annual general meetings shall be called special general meetings, for purposes of which the provisions of article 19.2 shall apply *mutatis mutandis*.
- 19.4 The board of directors may, whenever they think fit, convene a special general meeting. A special general meeting may also be convened by the members on a requisition made in terms of section 61 of the Act, or should the board of directors not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that section.
- 19.5 The Company shall conduct a general meeting by electronic communication or allow participation in a meeting by electronic

communication only as and when so determined in advance by the board of directors, and subject to subsections (2) and (3) of section 63 of the Act.

- 19.6 For purposes of this Memorandum and all the resolutions to be passed at a general meeting, an '**ordinary resolution**' shall mean a resolution adopted with the support of more than 50% of the voting rights that can be exercised on the resolution and a '**special resolution**' shall mean a resolution adopted with the support of at least 75% of the voting rights that can be exercised on the resolution at a general meeting.

20 NOTICES OF MEETINGS

- 20.1 Any general meeting shall be called by not less than 15 (fifteen) business days notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and on the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in general meeting, to such persons as are, under these articles, entitled to receive such notices from the Association.
- 20.2 The annual general meeting shall deal with and dispose of, in addition to all matters prescribed by the Act, the following matters :
- 20.2.1 the consideration of the chairperson's report;
 - 20.2.2 the consideration of the annual financial statements;
 - 20.2.3 the noting of the general levy for the financial year during which such annual general meeting takes place;
 - 20.2.4 the appointment of the auditors;
 - 20.2.5 election of the members of the board of directors;
 - 20.2.6 the noting of any amount to be paid to Pezula Club in terms of the provisions of article 25; and
 - 20.2.7 any other business laid before it.

21 PROXIES

- 21.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Association or a director, member, partner or trustee of that member.

- 21.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a duly certified copy of any power of attorney or other authority under which it is signed must be lodged with the Association at least twenty four hours before the commencement of the meeting or adjourned meeting concerned but the board of directors may from time to time determine that such documents :
 - 21.2.1 are to be lodged at a particular place; or
 - 21.2.2 are to be lodged a certain number of hours, not exceeding forty eight in all, before the meeting; or
 - 21.2.3 may be lodged at any time before or during the meeting.

- 21.3 Notwithstanding the foregoing, the chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

- 21.4 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.

- 21.5 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit :

PEZULA GOLF ESTATE HOME OWNERS ASSOCIATION

"I/We, _____, of _____, being a member(s) of the Association hereby appoint _____ of _____ or failing him _____ of _____, failing him the chairman of the meeting as my/our proxy to vote for me/us and on my/our behalf at the annual general or general meeting (as the case may be) of the Association to be held on the _____ day of _____ and at any adjournment thereof as follows :

	In favour of	Against	Abstain
Resolution No _____	_____	_____	_____
Resolution No _____	_____	_____	_____
Resolution No _____	_____	_____	_____

(Indicate instruction to proxy by way of a cross in the space provided above.)

Unless otherwise instructed, my/our proxy may vote as he thinks fit.

Signed this _____ day of _____

Signature

(NOTE : A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a member of the Association).

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

22 QUORUM

- 22.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. Save as herein otherwise provided, 10% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting shall constitute a quorum.
- 22.2 If within 15 (fifteen) minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairperson, or in his/her absence, the deputy-chairperson may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time and the same day plus one day of the next week (or if that day is not a business day, the first business day following that non-business day). If a quorum is not present at such adjourned meeting, the members present in person or by valid proxy, shall constitute a quorum.
- 22.3 A general meeting at which a special resolution is required to be adopted and at which a quorum is not present, shall be adjourned in accordance with the provisions of section 64 of the Act.
- 22.4 The authority of a meeting to continue to consider a matter after a quorum has been established, is restricted to the extent set out in article 22.1, subject to the provisions of article 22.2.

23 ADJOURNMENT BY THE CHAIRPERSON WITH CONSENT OF GENERAL MEETING

- 23.1 The chairperson may adjourn a general meeting from time to time and from place to place if the general meeting approves of each adjournment by majority vote. In the event of such an adjournment :

- 23.1.1 no notice need to be given of the adjourned 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 days or more in which event notice is to be given in the same manner as for the original meeting);
- 23.1.2 only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

24 VOTING RIGHTS OF MEMBERS

- 24.1 The members shall be entitled to vote only on the matters before the general meeting concerned.
- 24.2 At every general meeting:
 - 24.2.1 each member, present in person or by proxy and entitled to vote, shall have one vote for each erf or unit registered in his name;
 - 24.2.2 if an erf or unit is registered in the name of more than one (1) person, then all such co-owners shall jointly have only one vote.
- 24.3 Save as expressly provided for in these articles, no person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of or arising from his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 24.4 Voting at general meetings shall take place by way of show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to the provisions of the Act.
- 24.5 Resolutions shall be passed by simple majority vote, save with respect to amendments of these articles, which shall be capable of amendment on the same basis *mutatis mutandis* as a special resolution in accordance with the Act, or with respect to a matter in terms of which the Act provides otherwise.
- 24.6 If a poll is duly demanded it shall be taken in such manner as the chairperson of the meeting may direct either at once or after an interval or adjournment.

- 24.7 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairperson whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 24.8 A vote cast under a proxy, power of attorney or other authority which has been revoked shall nevertheless be valid unless :
- 24.8.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 24.8.2 the chairperson of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 24.9 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairperson of the meeting whose decision shall be final and conclusive.
- 24.10 A declaration made in good faith by the chairperson of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
- 24.11 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a director or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

25 PEZULA CLUB

- 25.1 It is recorded that the Association and its members recognize that due to the direct effect the wellbeing of Pezula Club can, amongst others, have on the value of properties within Pezula, it is in the best interest of the members and the Association to assist Pezula Club financially in the maintenance and upkeep of the golf course, the club house and the club facilities as well as in respect of the running costs of Pezula Club.

- 25.2 The directors may annually contribute and pay to Pezula Club an amount or amounts to be used by Pezula Club for the maintenance and upkeep of the golf course, the golf course land, the club house and the club facilities or for defraying the running costs of Pezula Club, or for any other specific purpose the board may determine (“**the contribution**”).
- 25.3 The following provisions shall apply to and in respect of the contribution :
- 25.3.1 Any proposal or request regarding payment of the contribution shall be supported by a proper budget and cash-flow projections.
- 25.3.2 The contribution shall be used by Pezula Club in a responsible and justifiable manner in accordance with the purpose for which it is paid to Pezula Club.
- 25.3.3 The board may only approve and pay to Pezula Club the contribution if the board has satisfied itself that the Memorandum of Incorporation of Pezula Club contains provisions to the board’s satisfaction in connection with –
- 25.3.3.1 access to the up to date financial statements and management accounts of Pezula Club through the Association’s representative on the board of directors of Pezula Club; and
- 25.3.3.2 regular and comprehensive reporting to the Association on the financial affairs of Pezula Club.
- 25.3.4 All payments shall be subject to approval by an ordinary resolution passed at any general meeting.

26 SERVICE OF NOTICES

- 26.1 Subject to article 26.6, notices may be given by the Association to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him.
- 26.2 Notice of every general meeting shall be given :
- 26.2.1 to every member of the Association;

- 26.2.2 to the auditor for the time being of the Association.
- No other person shall be entitled to receive a notice of general meetings.
- 26.3 Any notice given in terms of this Memorandum shall –
- 26.3.1 if delivered by hand to a responsible person, be deemed to have been duly received by the addressee on the date of delivery;
- 26.3.2 if posted by prepaid post, be deemed to have been received by the addressee on the date of such posting, and in proving the giving of a notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 26.4 The signature to any notice given by the Association may be written or printed, or partly written and partly printed.
- 26.5 When a given number of days notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.
- 26.6 Any notice which is required to be in writing may be given by electronic communication to the addressee's e-mail address or be faxed to the addressee's fax number of which the person concerned notified the Association or which that person normally uses in his communication with the Association, and vice versa. A notice sent by e-mail or fax shall be deemed to have been received by the addressee on the day after the date of successful transmission of such notice.
- 26.7 The provisions of articles 26.1 to 26.6 shall apply mutatis mutandis to any notices to be given to members of the board.
- 26.8 All members are obliged to furnish the Association with their contact details including home and postal addresses, email (if applicable), and home and mobile telephone numbers and the onus rests with members to ensure that updated information is conveyed to the Association.

27 ACCOUNTING RECORDS

- 27.1 The board of directors shall cause such accounting records as are prescribed by section 28 of the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such account accounting records as are necessary fairly to present the state of affairs and business of the Association and to explain the transactions and financial position of the trade or business of the Association.
- 27.2 The accounting records shall be kept at the registered office of the Association or such other place or places as the board of directors think fit, and shall always be open to inspection by the board of directors.
- 27.3 The board of directors shall from time to time with due regard to section 30 of the Act, determine whether and to what extent and at what times and places and under what conditions the accounting records of the Association shall be open to inspection by members not being directors, and no member (not being a director) shall have any right of inspecting any accounting records or documents of the Association except as determined by the Act or authorized by the board of directors.
- 27.4 The board of directors shall from time to time, in accordance with section 30 of the Act, cause to be prepared and laid before the Association in general meeting such financial statements as are referred to in that section.
- 27.5 A copy of the annual financial statements which are to be laid before the Association in annual general meeting shall, not less than 15 (fifteen) business days before the date of the meeting, be sent to every member of the Association : Provided that this article shall not require a copy of those documents to be sent to any person of whose address the Association is not aware.
- 27.6 An auditor shall be appointed in accordance with Part C of Chapter 3 of the Act.

28 GENERAL

- 28.1 Whenever the directors consider that the appearance of any land or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the

board of directors may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member failing within a reasonable time, to be specified in such notice, to comply therewith, the board of directors may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Association.

- 28.2 The board of directors shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the board of directors acted unreasonably.
- 28.3 The Association may enter into agreements with any third party for the provision of amenities and service to the members and to levy a reasonable charge in respect of the provision thereof.
- 28.4 No member ceasing to be a member of the Association for any reasons shall (nor shall such members, executors, curators, board of directors or liquidators) have any claim or interest in or right to the funds or any other assets of the Association.
- 28.5 Should any member fail to pay any amount owing to the Association on due date, such amount shall bear interest (capitalized monthly in arrear) at the prime rate plus 2% charged by the Association's principal bankers from time to time as certified by any manager or accountant of such bank (whose appointment and authority and the period during which such rate applied need not be proved) which shall be prima facie proof of such rate of interest, payable from the due date until the date of payment.
- 28.6 Any person using any of the services, land or facilities of the Association does so entirely at his own risk.
- 28.7 No member or other person shall be entitled to sink or use any boreholes within Pezula without the prior written consent of the board of directors.
- 28.8 The provisions of these articles shall be binding upon all members and, insofar as they may be applicable, to all persons occupying any erf or unit by, through or under any member, whatever the nature of such occupation.

28.9 The Company shall in good faith co-operate with Pezula Club in all matters relating to the golf course land, the golf course and the club as such.

29 DISPUTES

29.1 Any dispute arising out of or in connection with these articles shall, subject to the provisions of the Act, be determined in terms of this article, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.

29.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in terms of this article 29.

29.3 If a party exercises his right in terms of article 29.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (ten) years experience in their field :

29.3.1 if the dispute is primarily an accounting matter, a practicing chartered accountant;

29.3.2 if the dispute is primarily a legal matter, a practicing attorney or advocate;

29.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practicing quantity surveyor;

29.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practicing engineer;

29.3.5 if the dispute is primarily one relating to the aesthetics of a building, on an erf, a practicing architect.

29.4 If the parties are unable to agree either on the person referred to in article 29.3 or on the classification of the dispute within a period of 3 (three) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope.

- 29.5 Any person agreed upon and nominated as aforesaid (“**the expert**”) shall in all respects act as an expert and not as an arbitrator.
- 29.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 29.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given 21 (twenty one) days or so soon thereafter as possible, after it has been demanded.
- 29.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 29.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whatever they shall be taxed as between “party and party” or as between “attorney and client”.
- 29.10 The provisions of this article constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
- 29.11 The provisions of this article 29 shall be deemed to be severable from the rest of these articles and shall remain binding and effective as between the members inter se and between the members and the Association notwithstanding that these articles may otherwise be cancelled or declared of no force and effect for any reason or a person ceasing to be member of the Association.

30 AMENDMENT OF ARTICLES AND MEMORANDUM

- 30.1 All and any amendments or variations or additions to this memorandum shall be subject to the approval on a poll of not less than 75% (seventy five percent) of the voting rights exercised on the resolution at a general meeting convened specifically for such purpose or at an annual general meeting of the company. The notice of such meeting shall be set out in specific terms the proposed amendments of these articles.

- 30.2 The provisions of article 30.1 shall apply *mutatis mutandis* in respect of all special resolutions other than special resolutions referred to in article 30.1.

31 INCOME TAX EXEMPTION

The following provisions shall apply if the Company applies for and is granted tax exemption in terms of the Income Tax Act :

- 31.1 Save for articles 4.2.6 and 25, the Company is not permitted to distribute any of its funds to any person other than to a similar organization.
- 31.2 On dissolution the remaining assets of the Company shall be distributed to a similar organization, which is also exempt from Income Tax in terms of section 10(1)(e)(i)(cc) of the Income Tax Act.
- 31.3 Any amendments to the Memorandum must be submitted to the Commissioner for the South African Revenue Services.
- 31.4 The Company is not or was not knowingly a party to, or does not knowingly permit or has not knowingly have permitted itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner for the South African Revenue Services.
- 31.5 Annual returns of Income Tax together with financial statements must be submitted to the South African Revenue Services.
- 31.6 Funds available for investment may only be invested in accordance with the conditions of approval of the South African Revenue Services.

32 LOCAL AUTHORITY REQUIREMENT

If the establishment of the Association was a requirement of the approval of the township concerned, this Memorandum may not be amended without the approval of the local authority.

ANNEXURE A
Pezula Golf Estate Site Plan

