

**.REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973
[Section 64]**

**CERTIFICATE OF INCORPORATION OF COMPANY
NOT HAVING SHARE CAPITAL**

Registration Number of Company

This is to certify that

LYNEDOCH ECOVILLAGE HOME OWNERS ASSOCIATION
[ASSOCIATION INCORPORATED UNDER SECTION 21]

was this day incorporated under the Companies Act, 1973 [Act 61 of 1973], and that the company is a company limited by guarantee and is incorporated under Section 21 of the Act.

Signed and sealed at CAPE TOWN this _____ day of _____ Two thousand and _____.

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REGISTRAR OF COMPANIES

SEAL OF COMPANIES REGISTRATION OFFICE

**LYNEDOCH HOME OWNERS' ASSOCIATION
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**MEMORANDUM OF ASSOCIATION OF A COMPANY
NOT HAVING A SHARE CAPITAL**

[Section 54 (1); and Regulation 17(3)]

Registration No. of Company

1. NAME

1.1 The name of the Company is :

LYNEDOCH ECOVILLAGE HOME OWNERS ASSOCIATION

[Association incorporated under Section 21]

[hereinafter referred to as "the Association"]

1.2 The name of the Association in the other official language of the Republic is :

LYNEDOCH HUISEIENAARSVERENIGING

1.3 The shortened form of the name of the Association is :

LYNEDOCH HOA

2. THE PURPOSE DESCRIBING THE MAIN BUSINESS

The main business which the Association is to carry on is:

- 2.1 To promote, advance and protect the communal interests of the Members of the Association in particular, and the residents of the Village in general.

In particular in so promoting, advancing and protecting the communal interests, to ensure adherence by the Members to mutually agreed aesthetic, architectural and ecologically sustainable practices.

Furthermore to create, promote and maintain living and working spaces, as well as recreational facilities within the Village, in keeping with the nature and intent of the Village.

- 2.2 To implement and maintain security measures and systems for controlled access to the Village.
- 2.3 To prescribe measures for the landscaping, development of the serviced erven and conditions of occupation in the Village, and for the architectural design and building of improvements on the erven in the Village and the control of exterior alterations, changes of colour
- 2.4 To maintain, service and repair verges, roads, sidewalks and the Common Areas within the Village.
- 2.5 To ensure that there is a supply of internal services (including refuse removal, sanitation, street lighting where applicable, stormwater drainage, roads, landscape maintenance and cleansing) and to collect a levy to cover those costs.
- 2.6 To subcontract or outsource all or part of its functions and duties as set out above to an appropriate professional manager, operators or

subcontractors for the provision of any services in connection with or relating in any way to the occupation of erven within the Village. Including the right to outsource or to subcontract to, and to enter into service agreements with, the local authority or any appropriate body or individual or company for the performance of any such services, or the provision of supplies or expertise or facilities for the benefit and enjoyment of such Members and occupiers.

3. MAIN OBJECT

The main object of the Association is to create an Association amongst the members of the Association which will promote their communal interests which includes a commitment to live in harmony with nature and the wider community in accordance with the principles of ecological sustainability and social justice. This Association will entitle the members to share in the use of and benefit from facilities (including but not limited to security facilities, parking facilities, gardens, terraces, and other common areas and facilities ("common facilities")) on a common basis, to share the costs incurred in keeping, repairing and maintaining the common facilities as a common expense and generally to regulate and control access to and the use of the common facilities.

4. ANCILLARY OBJECTS EXCLUDED

None of the ancillary objects referred to in Section 33(1) of the Act, are excluded from the ancillary objects referred to in Article 3 of the Articles of Association.

5. POWERS

5.1 The specific powers or part of any specific powers of the Association, if any, which is excluded from the plenary powers set out in Schedule 2 of the Act are powers (o) and (s).

5.2 The specific powers or part of any specific powers of the Association set out in Schedule 2 to the Act which are qualified under Section 34 of the Act are :

5.2.1 the power set out in paragraph (k) which is qualified to read as follows:

“To form and have an interest in any company or companies having the same or similar objects to the Association for the purpose of acquiring the undertaking of all or any of the assets or liabilities of that company or companies or for any other purposes which may seem, directly or indirectly, calculated to benefit the Association, and to transfer to any such company or companies the undertaking or all or any of the assets or liabilities or the Association”.

5.2.2 the power set out in paragraph (l) which is qualified to read as follows:

“To amalgamate with other companies having the same or similar objects to the Association”.

5.2.3 the power set out paragraph (m) which is qualified to read as follows:

“To take part in any management, supervision and control of business or operations of any other company or business having the same or similar objects as the Association and to enter into partnerships with any other company or business having the same or similar objects as the Association”.

5.2.4 the power set out in paragraph (n) which is qualified to read as follows:

“To remunerate any person or persons in cash for services rendered in its formation or in the development or its business”.

5.2.5 the power set out in paragraph (r) which is qualified to read as follows:

“To pay gratuities and pensions and establish pension schemes, plans and other incentive schemes, in respect of its bona fide employees”.

6. CONDITIONS AND PRINCIPLES

6.1 The special conditions which apply to the Association and the requirements additional to those prescribed in the Act for their alteration are as follows:

6.1.1 The income and revenue of the Association whensoever derived shall be applied solely towards the promotion of its main object. No portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Association or to its subsidiary.

Nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Association or to any Member thereof, in return for any services actually rendered to the Association.

6.1.2 Subject to 6.3 and 6.2.6, upon its winding-up, deregistration, or dissolution, the assets of the Association remaining after the satisfaction of all its liabilities shall be given or transferred to some other Association or institution or Associations or institutions having

objects similar to its main object and which are also exempt from normal tax in terms of the Income Tax Act 58 of 1962 of the Republic.

The Association or institution shall be determined by the Members of the Association at or before the time of its dissolution or, failing such determination, by the Court.

- 6.1.3 Those profits or gains of the Association which are derived solely from transactions with or on behalf of its individual Members may not be distributed to any persons other than the Members with whom or on whose behalf the transactions took place. No person shall be entitled to any benefit other than benefits accruing to that person from transactions with or on behalf of that person except as regards any receipt or accruals from investments of the Association, including the letting of any property, including facilities or land to non Members.

The Association does not have the object of carrying on any business that has as its object the acquisition of gain for itself or its Members. This includes any activity which results in, or creates any commercial or material benefit advantage (not necessarily a pecuniary profit), to either the Association or its Members.

- 6.1.4 The Association shall be entitled to bind Members and residents to contribute by way of a Service Charge towards the Fund of the Association. The Association shall be entitled to enforce payment of and collect and receive from Members such Service Charges.
- 6.1.5 The Association shall be entitled to enforce compliance with its Articles of Association in such manner as it may deem fit. This includes by means of a system of fines or such other penalties as it may see fit to prescribe in terms of the Articles of Association.
- 6.2 The Memorandum and Articles of Association must be interpreted and applied in a manner consistent with the following general principles:

6.2.1 Fair and inclusive decision-making processes, in that :

- (a) All members are afforded a fair opportunity to participate in the decision-making processes of the Association;
- (b) any decision to amend the Memorandum and Articles of Association or to Alienate or to Encumber the land, requires an inclusive decision-making process; and
- (c) The membership of any person may not be terminated other than provided for in the Memorandum and Articles of Association.

6.2.2 Equality of membership, in that there is no discrimination against any existing or future member of the Community, either directly or indirectly. This includes, without derogating from the generality of the foregoing, on any one or more of the following grounds, race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language;

6.2.3 Democratic processes, in that all members have the right;

- (a) to receive adequate notice of all General Meetings of the Association;
- (b) to attend, speak at and participate in the voting at any General Meeting in accordance with the agreed procedures for the conduct of such meetings;
- (c) to make copies of minutes or to have other reasonable access to records of decisions taken at General Meetings;
- (d) to inspect and make copies of the financial statement and records of the Association; and

- (e) to have access to a copy of the Memorandum and Articles of Association;

6.2.4 fair access to the Common Property and Facilities, in that :

- (a) the Association shall manage the Village for the benefit of the Members in a participatory and non-discriminatory manner;
- (b) a Member may not be excluded from access to or use of any part of her or his Unit, the Common Property or the Facilities, except in accordance with the procedures set out in the Memorandum and Articles of Association; and
- (c) the Association may not Alienate or Encumber the Land or any part of it, without the consent of a majority of the Members present at a General Meeting of the Association;

6.2.5 accountability and transparency, in that :

- (a) accountability by the Trustees to the Members of the Association is promoted;
- (b) the financial records of the Association are subject to an annual independent audit by an Auditor/Accounting Officer;
- (c) all the income of the Association shall be deposited in an account opened in the name of the Association with a Bank or a Mutual Bank registered in terms of the Mutual Banks Act, 1993 (No. 124 of 1993), or with the post Office Savings Bank contemplated in Section 52 of the Post Office Act, 1958 (No. 44 of 1958).
- (d) all funds of the Association, not acquired for immediate use may be invested with any of the foregoing institutions in such type of investment

as the Trustees deem appropriate, bearing in mind when it is expected that the funds may be required.

- (e) the Association may not invest its income in any other manner;
- (f) there shall be effective financial management and recording of the transactions of the Association;
- (g) each of the Trustees stands in a fiduciary relationship to both the Association and the Members.

Without affecting the generality of the expression "fiduciary relationship", fiduciary relationship includes that : -

- (aa) a Trustee shall, in relation to both the Association and the Members, act honestly and in good faith, including that :
 - (i) she / he shall exercise such powers as she / he may have to manage or represent the Association in the interest and for the benefit of the Members as a whole; and
 - (ii) she / he shall not act without or exceed the powers of either the Association or the Trustees.
- (bb) a Trustee shall avoid any material conflict between her or his own interests and those of the Association. This includes that she / he shall not derive any personal economic benefit to which she / he is not entitled by reason of her or his office as Trustee from either the Association, or from any other person, in circumstances in which that benefit is obtained in conflict with the interests of the Association.
- (cc) Save as otherwise provided for herein, a Trustee who in any way acquires an interest in an agreement or proposed agreement (the

“interest”), which has been or is to be entered into with the Association, shall immediately both declare the nature and extent of her or his interest in writing to the other Trustees.

“Interest” means any direct or indirect interest. Interest includes without limitation :

- (i) having any relationship with a person who is a Member of such Trustee’s Family (as defined);
 - (ii) having any form of employment either on a temporary or permanent basis including holding any office, as director or partner or otherwise in an entity which has such interest; or
 - (iii) having any direct or indirect financial interest or any control over any entity which has such interest.
- (dd) where a Trustee who has breached any duty arising from his / her fiduciary relationship, shall be liable to the Association for both :
- (i) any pecuniary loss suffered as a result thereof; and
 - (ii) any economic benefit derived by the Trustee as a result thereof.

6.2.6 The Members of the Association may not propose or vote in support of a resolution at any meeting of the Association that will lead to the winding up, deregistration or dissolution of the Association.

6.3 Subject to 6.2.6, and in the event that the Association notwithstanding reasonable notice and demand fails to meet its obligations and the members are of the opinion that they are adversely effected by such

- 6.4 failure, then in accordance with Section 29(4)(a) of the Land Use Planning Ordinance (Ordinance 15 of 1985) the local authority who has jurisdiction over the land will be required to take all the necessary steps to rectify such failure, including taking over the roles and functions of the Association if necessary.

7. PRE-INCORPORATION CONTRACTS

NONE

8. GUARANTEE

- 8.1 The liability of Members is limited to the amount referred to in 8.2.

Subject to 6.2.6, each Member undertakes to contribute to the assets of the Association in the event of it being wound-up while he / she is a Member or within 1 [one] year thereafter, for payment of the debts and liabilities of the Association contracted before he / she ceases to be a Member, and of the costs, charges and expenses of the winding-up and for the adjustment of the rights to the contributories amongst themselves, such amount as may be required : provided that the Developer undertakes, during the Development Period, as defined in the Articles of Association, and for a period of 1 [one] year thereafter, to contribute for the same purposes and upon the same terms and

- 8.2 conditions the sum of R500,00 [five hundred rand] : and provided that finally the liability of a Member shall in all cases be limited to R1.00 (one rand).

9. AMENDMENT OF MEMORANDUM

Any amendment made to this Memorandum in terms of the Articles of Association, shall forthwith be submitted to the relevant Local Authority and Taxation Authority for their approval in terms of law.

10. ASSOCIATION CLAUSE

We the several persons, whose full names, occupations, residential, business and postal addresses are subscribed are desirous of being formed into a company in pursuance of this Memorandum and Articles of Association and we respectively agree to become ordinary Members of the Association.

