

# THE MEMORANDUM OF INCORPORATION

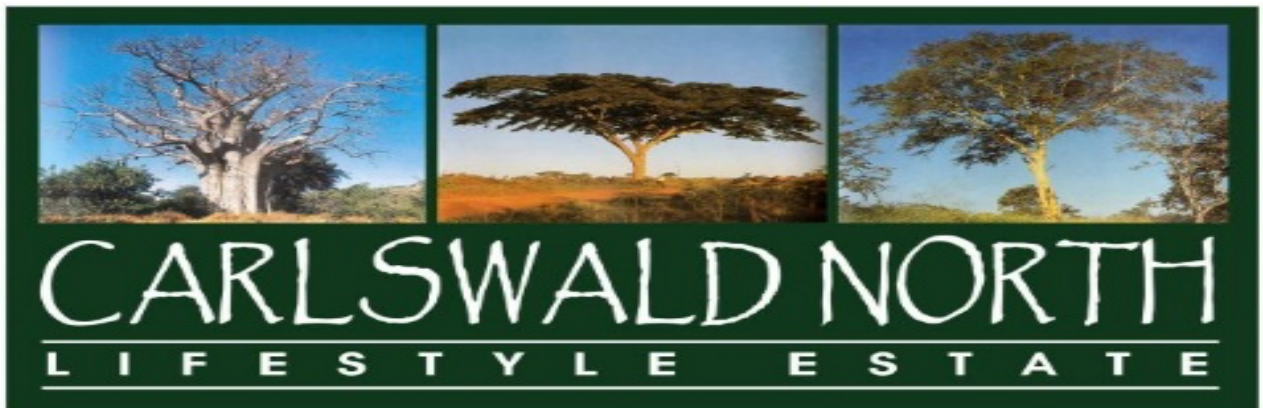
OF

## CARLSWALD NORTH LIFESTYLE ESTATE HOMEOWNERS' ASSOCIATION

(Incorporated as a non-profit Company)

(REGISTRATION NUMBER: 2004/018374/08)

which is referred to in the rest of the Memorandum of Incorporation and the Rules as  
“CNLEHOA”



This MOI was adopted by Special Resolution passed on **7 October 2021**, a copy of which was filed together with a Notice of Amendment and the MOI of **CNLEHOA**. This MOI takes effect in terms of Section 16(9)(b)(i) on the date of filing hereof and replaces all previous versions.

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- ANNEXURE “D”: Board Resolution Form

**CNLEHOA** is a Non-profit Company with Members, with the following objects:

- i) To promote the common interests of its Members.
- ii) To preserve a high quality lifestyle of its Members.
- iii) To enforce the provisions of the Act, the Memorandum and Rule, such Rules to include the Association PAIA Manual, POPI Policy, POPI Operating Procedures Manual and any other policies and procedures that may be adopted from time to time.
- iv) To impose levies, special levies, penalty levies and other charges, on the Members as are necessary for the preservation, maintenance and upkeep of the township and more particularly the common property.
- v) To promote harmonious living conditions for its Members and to provide, regulate and enforce the Memorandum, the Rules and the Act.
- vi) To ensure compliance by members with the Conditions of Establishment of the townships on the properties, with particular reference to the conditions dealing with aesthetic and building regulations and land usage requirements, and where necessary to ensure that the local authority enforces such Conditions of Establishment.
- vii) To exercise control over the rights created and still to be created over the erven on the properties and to formulate rules for the control of buildings, walling, fencing, exterior lightning, signage, aesthetic planning and landscaping of the properties and the erven and the usage of properties and to ensure compliance with such rules by members of **CNLEHOA**.
- viii) To implement and control the principal concepts of the development relating to the security, architecture, landscaping, parking, signage and advertising, exterior finishing and maintenance as detailed by urban designers, landscape

architects and ecological planners of the properties appointed by the aesthetics committee.

- ix) To ensure that each member maintains his/her/its erf and/or dwelling in a clean and tidy condition and adheres to the specifications imposed by **CNLEHOA** relating to the landscaping and ecological planning. In the event of any member failing to adhere to the specifications and maintenance of his erf and/or dwelling, the Directors shall be entitled, but not obliged, to perform the necessary acts and services and recover from such member the costs thereof.
- x) To undertake the maintenance of street verges and where required by members to maintain the vegetation and landscaping of any individual erf and/or dwelling against payment to **CNLEHOA** of a special levy.
- xi) To administer the general security arrangements on the properties, with particular reference to controlling access and the nature and type of security to be provided from time to time, excluding the security arrangements of any particular erf and/or dwelling.
- xii) To consent to or declare any proposed consolidation, sub-division or rezoning of any erf valid and to stipulate the landscaping and certain aesthetic conditions, which shall apply prior to such rezoning and sub-division, if approved.

In the Memorandum of Incorporation:

- (a) a reference to a section by number refers to the corresponding section of the Act;  
and
- (b) words that are defined in the Act, bear the same meaning in the Memorandum.

## 1. INTERPRETATION

In the Memorandum the following words shall, unless the context otherwise indicates: -

- 1.1. “**CNLEHOA**” means Carlswald North Lifestyle Estate Homeowners Association NPC, registration number 2004/018374/08;
- 1.2. “the Act” means the Companies Act No 71 of 2008, including any amendments, consolidation or re-enactment thereof;
- 1.3. “Section” reference to a section by number refers to the corresponding section of the Act;
- 1.4. “by-laws” means all by-laws, regulations, town planning schemes and other legislation or regulations imposed by the Local Authority or any other competent authority relating to the ownership, use or development of property or any other matter applicable to **CNLEHOA**, its members, the Development and/or the dwellings;
- 1.5. “the Memorandum” means the Memorandum of Incorporation, together with the applicable annexures, of **CNLEHOA**, as may be amended from time to time;
- 1.6. “the auditors” means the auditors of the Association as appointed from time to time;
- 1.7. “the Sectional Titles Act” means the Sectional Titles Act No 95 of 1986, as amended;
- 1.8. “Sectional Title Body Corporate” means any Body Corporate constituted in terms of the Sectional Titles Act;

- 1.9. “CSOSA” means the Community Schemes Ombud Service Act 9 of 2011;
- 1.10. “ECTA” means the Electronic Communications and Transactions Act 36 of 2006;
- 1.11. “POPIA” means the Protection of Personal Information Act 4 of 2013;
- 1.12. “PAIA” means the Promotion of Access to Information Act 2 of 2000;
- 1.13. “PAIA Manual” means the manual as required in terms of Section 51 of the PAIA Act;
- 1.14. “Rules” means the rules which shall apply to governance of **CNLEHOA** and the conduct of its Members and Directors, as determined and amended from time to time by the Directors in accordance herewith and with section 15(3) of the Act. The Rules will govern the conduct of all owners, residents, visitors and occupants of erven and/or dwellings on the properties. Such Rules to include **CNLEHOA’s** PAIA Manual, POPI Policy and POPI Operating Procedures Manual together with the relevant annexures and forms and any such Rules that may be adopted from time to time. The Rules shall be provided by the Directors to each owner, who irrevocably undertakes to strictly abide to the said rules, in accordance with the provisions hereof;
- 1.15. “developer” means Clidet No. 69 (Proprietary) Limited, Registration Number 1992/002246/07, the developer of Summerset Extension 6, Summerset Extension 13, Summerset Extension 3 and Summerset Ext 32 Townships;
- 1.16. “the properties” mean:
- 1.16.1. Portion 590 (a portion of portion 589) of the farm Witpoort 406, Registration Division JR, Province of Gauteng,

measuring 34,2640 (thirty four comma two six four zero) hectares, which will become the township known as Summerset Extension 6;

1.16.2. Portion 87 (a portion of portion 2) of the farm Witpoort 406, Registration Division JR, Province of Gauteng, and Portion 93 (a portion of portion 2) of the farm Witpoort 406, Registration Division JR, Province of Gauteng, measuring 8,7450 (eight comma seven four five zero) hectares and 8,7449 (eight comma seven four four nine) hectares respectively (to be consolidated and known as Portion 597 of the farm Witpoort 406, Registration Division JR, Gauteng), which will become the township known as Summerset Extension 13;

1.16.3. Portion 88 (a portion of portion 2) of the farm Witpoort 406, Registration Division JR, Province of Gauteng, measuring 8,7450 (eight comma seven four five zero) hectares, which will become the township known as Summerset Extension 3; and

1.16.4. Portion 659 (a portion of portion 11) of the Farm Witpoort 406, Registration division JR, Gauteng, measuring: 9272 (Nine Two Seven Two) square metres, which will become the township known as Summerset Ext 32.

1.17. “the common property” shall mean:

1.17.1. Summerset Extension 6: Stands 553 and 564 as well as Stands 549 and 552 situated in the township of Summerset Extension 6 (Portion 590 (a portion of portion 589)) of the farm Witpoort 406, Registration Division JR, Province of Gauteng);



- 1.17.2. Summerset Extension 13: Stands 669, 586 to 597 as well as Stand 693 situated in the proposed township of Summerset Extension 13 (Portion 87 and 93 (a portion of portion 2) of the farm Witpoort 406, Registration Division JR, Province of Gauteng (to be consolidated and known as Portion 597 of the farm Witpoort 406, Registration Division JR, Gauteng);
- 1.17.3. Summerset Extension 3: Stand 205 situated in the proposed township of Summerset Extension 3 (portion 88 (a portion of portion 2) of the Warm Witpoort 406, Registration Division JR, Province of Gauteng);
- 1.18. Summerset Extension 32: Stand 1139 (access) and 1140 (private open space) situated in the proposed township of Summerset Extension 32 (portion 659 [a portion of portion 11] of the Farm Witpoort 406, Registration Division JR, Gauteng).
- 1.19. “Deeds Office” means the registration office in Pretoria as described in the Registration of Deeds Act, Act 47 of 1937, as amended;
- 1.20. “the aesthetics committee” means a committee appointed by the Directors for the consideration, evaluation and approval of development of and/or improvements to stands in the townships respectively known or to be known as Summerset Extension 6, Summerset Extension 13 and Summerset Extension 3;
- 1.21. “secretary” means any person or body corporate appointed by the Directors to perform the statutory secretarial duties of **CNLEHOA**;
- 1.22. “Council” means the City of Johannesburg Metropolitan Municipality;
- 1.23. “the development” means collectively the townships Summerset Extension 6, Summerset Extension 13, Summerset Extension 3 and

Summerset Extension 32, which together comprise a residential estate known as Carlswald North Lifestyle Estate;

- 1.24. “annual general meeting” means the annual general meeting of **CNLEHOA**;
- 1.25. “Annexure A” means the Code of Conduct for Directors adopted by **CNLEHOA** which may be amended from time to time by special resolution;
- 1.26. “Annexure B” means the Proxy Form adopted by the Association which may be amended from time to time and which the members shall utilize as the instrument for appointing a proxy herein;
- 1.27. “Annexure C” means the Nomination Form for the nomination of Directors adopted by **CNLEHOA** and which may be amended from time to time;
- 1.28. “Annexure D” means the Director Resolution Form used by the board of directors adopted by **CNLEHOA** and which may be amended from time to time;
- 1.29. “arrear levies” means levies as defined herein which have become due and payable and have not been paid in accordance with the due date as per the levy statement issued;
- 1.30. “the Directors” means a Member of the board of **CNLEHOA**, as contemplated in section 66, or an alternate Director of **CNLEHOA** and includes any person occupying the position of a Director or alternate Director, by whatever name designated;
- 1.31. “Levy” means such levy, special levy or fine, as may be determined from time to time, for which a Member/s shall become liable to **CNLEHOA**;

- 1.32. “Member” means a person who is the owner of an erf and/or dwelling in the development;
- 1.33. “Management” means such persons as are appointed by the Association to undertake the administrative and management functions of **CNLEHOA**;
- 1.34. “Managing Agent” means such person as may be appointed by **CNLEHOA** as an independent contractor to undertake any administrative and/or management function on behalf of **CNLEHOA**;
- 1.35. “Person” means any person, company, close corporation, trust, partnership, firm, association or other entity whether registered or not or whether or not having separate legal personality;
- 1.36. “Public Officer” means such person as may be appointed by **CNLEHOA** to attend to such matters on behalf of **CNLEHOA** with regard to public regulation as defined by the Act;
- 1.37. “Information Officer” means any such person as may be appointed in terms of POPIA;
- 1.38. “IFRS” means the International Financial Reporting Standards;
- 1.39. “the Lofts” means the sectional title scheme established on Erf 372 Summerset Extension 6 Township, comprising 108 units;
- 1.40. “dwelling” means any dwelling in the development, as defined:
- 1.40.1. one or more rooms including a kitchen/s designed as a unit for occupancy for the purpose of cooking, living and sleeping which includes nearby outbuildings, sheds and granny flats within the curtilage of the property

- 1.40.2. situated alone on a single erf in the development;
  - 1.40.3. one of two or more dwellings on a single erf with multiple dwelling rights; or
  - 1.40.4. a section in a sectional title scheme established on any erf (but excluding the sections in the Lofts) and includes, for purposes of membership, voting rights and levies, an unimproved erf;
- 1.41. Unless the context otherwise requires, any words importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other gender;
- 1.42. Subject to the aforesaid, any words or expressions defined in the Act or any statutory modifications of such Act, in force at the date on which this Memorandum becomes binding on **CNLEHOA**, if not inconsistent with the subject or context, bear the same meaning in the Memorandum; and
- 1.43. The headings to the respective clauses are for reference purposes and shall not be taken into account in the interpretation of these clauses;
- 1.44. Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed by a director duly authorised by **CNLEHOA**, and shall be given prior to the member taking action; and
- 1.45. 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 the Memorandum.

## 2. PRELIMINARY

- 2.1. If the provisions of this Memorandum are in any way inconsistent with any of the unalterable provisions of the Act, the relevant provisions of the Act shall prevail, and the Memorandum shall be read and interpreted in all respects subject to the Act; and
- 2.2. Notwithstanding the omission from the Memorandum or any provision to that effect, **CNLEHOA** may do anything which the Act empowers a company to do if so authorised by its Memorandum of Incorporation.

## 3. INCORPORATION

- 3.1. **CNLEHOA** is incorporated as a non-profit company as defined in the Act.
- 3.2. **CNLEHOA** shall henceforth be governed by –
  - 3.2.1. the provisions of the Memorandum and Rules;
  - 3.2.2. the alterable provisions of the Act that are applicable to non-profit companies that have not been altered by the Memorandum; and
  - 3.2.3. the unalterable provisions of the Act that are applicable to non-profit companies, subject to the limitations and / or extensions set out in the Memorandum.

## 4. OBJECTS AND POWERS OF CNLEHOA

- 4.1. The objects of **CNLEHOA** are set out in on the preamble and, except to the extent necessarily implied by the stated objects, the purposes and powers of **CNLEHOA** are subject to the restrictions, limitations or

qualifications, as contemplated in section 19(1)(b)(ii), as set out in Part A of Schedule 1 except for Item 4(b).

4.2. **CNLEHOA** must apply all of its assets and income, however derived, to advance its stated objects, as set out herein and may not pay any dividends to its Members; and subject to that stated herein **CNLEHOA** may acquire and hold securities issued by a profit company or, directly or indirectly, alone with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.

4.3. **CNLEHOA** may 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 was an incorporator of **CNLEHOA**, or who is a member or director, or person appointing a director, of **CNLEHOA** except-

4.3.1. as reasonable-

4.3.1.1. remuneration for goods delivered or services rendered to, or at the direction of, **CNLEHOA**; or

4.3.1.2. payment of, or reimbursement for, expenses incurred to advance a stated object of **CNLEHOA**;

4.3.2. as a payment of an amount due and payable by **CNLEHOA** in terms of a bona fide agreement between **CNLEHOA** and that person or another;

4.3.3. as a payment in respect of any rights of that person, to the extent that such rights are administered by **CNLEHOA** in order to advance a stated object of **CNLEHOA**; or

4.3.4. in respect of any legal obligation binding on **CNLEHOA**.

4.4. **CNLEHOA** is not subject to any provision contemplated in section 15(2)(b) or (c), which means that there are no restrictive conditions applicable to the manner in which this Memorandum may be amended and there is no prohibition to the amendment of any particular provision of the Memorandum.

## 5. **MEMORANDUM OF INCORPORATION AND RULES**

5.1. The Memorandum may be altered or amended only in the manner set out in terms hereof read together with sections 16 or 17 of the Act;

5.1.1. in compliance with a court order in the manner contemplated in section 16 (4);

5.1.2. at any other time if a special resolution to amend it –

(i) is proposed by –

(aa) the Board of **CNLEHOA**: or

(bb) members entitled to exercise at least 10% (ten present) of the voting rights that may be exercised on such a resolution; and

(ii) is adopted at a Members' meeting, or in accordance with section 60;

5.1.3. by the Board of **CNLEHOA**, or an individual authorised by the Board, in accordance with section 17, to alter the Company's rules, or its Memorandum, in any manner necessary to correct a patent error in spelling, punctuation,

reference, grammar or similar defect on the face of a document, by –

- (i) publishing a notice of the alteration, in any manner required or permitted by the Memorandum or the rules of **CNLEHOA**; and
- (ii) filing a notice of the alteration; and

5.1.4. in implementing a business rescue plan pursuant to section 152(6)(b).

- 5.2. The directors may make Rules and may alter or add to such Rules in their discretion; provided that any such Rules, amendments or additions must be ratified by the first General Meeting of members that takes place after the Rules, amendments or additions have been made. Any failure to ratify the new Rules, amendments or additions does not affect the validity of anything done in terms of those Rules during the period.
- 5.3. The Rules, amendments or additions shall, subject to clause 5.4 hereunder, apply with immediate effect.
- 5.4. Any alterations, additions or amendments to the Rules may be made by the Board of Directors for purposes of achieving the objects herein set out or relating to any other activity concerning **CNLEHOA**, which amendments, alterations or additions to the Rules, shall be delivered to members in terms of the Memorandum and which alterations, additions or amendments shall be enforceable against a particular Member, ten days after filing thereof at the Commissioner for Intellectual Properties and Companies or ten days after delivery thereof to the Member concerned, whichever is the latter and regardless of whether it came to the actual notice of the Member in question.



## 6. OPTIONAL PROVISIONS OF THE ACT

- 6.1. The **CNLEHOA** elects, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act;
- 6.2. In terms of section 84 (1) (c) (ii), **CNLEHOA** elects voluntary to appoint an auditor and to have its financial statements audited by such auditor;
- 6.3. **CNLEHOA** may voluntarily elect to appoint a company secretary; and
- 6.4. As **CNLEHOA** will be audited voluntarily, **CNLEHOA** does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditors shall be determined by the Board of Directors.

## 7. MANAGEMENT

- 7.1. The Directors may from time to time and shall if required by the Members of **CNLEHOA** in a general meeting, appoint in terms of a written contract a Manager or Managers (hereinafter referred to as “Manager”) with specified functions to control, manage and administer the administrative and operational activities of **CNLEHOA** and to exercise such powers and duties as may be entrusted to a Manager, including the power to collect contributions levied.
- 7.2. The contract with the Manager shall further provide for the appointment to be terminated and the Manager shall cease to hold office if:
  - 7.2.1. the Manager is convicted of an offence involving fraud or dishonesty,
  - 7.2.2. a special resolution of the Members of **CNLEHOA** is passed to that effect, provided that in such event the Manager so removed from office, shall not be deprived of any right he

may have to claim compensation for damages for breach of contract.

- 7.3. The Manager shall keep full records of his administration and shall report to **CNLEHOA** on all matters which in his reasonable opinion detrimentally affect the value or amenity of any portion of the Property.
- 7.4. The Directors shall give reasonable prior notice to the Manager of all meetings of the Directors and the Manager shall be entitled to be present there at, subject to the discussion of the Board.
- 7.5. The Directors shall from time to time furnish to the Manager copies of the minutes of all meetings of the Directors and of **CNLEHOA**.
- 7.6. Should there be no Manager in office at any time, then all references in this Memorandum to the Manager shall be deemed to be a reference to the Directors.

## 8. **MEMBERSHIP**

- 8.1. Every owner of a dwelling in the development shall be a member of **CNLEHOA** and automatically becomes a member of **CNLEHOA** on the date on which his/her/its dwelling is registered in his/its name in the Deeds Office (hereinafter referred to as "owners"); The owners of units in the Lofts are not individual members of **CNLEHOA**; the Carlswald Lofts Body Corporate is a member of **CNLEHOA** and has special provisions relating to it, as set out below.
- 8.2. Where an owner becomes the owner of more than one dwelling such owner shall be regarded as one member of **CNLEHOA**, subject to 18.1 below.
- 8.3. Where more than one person becomes the joint owner of a dwelling, the joint owners are a single member and must nominate and appoint one

from their ranks to represent them as a member of **CNLEHOA** for the receipt of notices from **CNLEHOA**. The joint owners shall advise **CNLEHOA** in writing of the full first names, surname, residential and postal address of such representative. Joint owners may with written notification to **CNLEHOA** change their representative provided that such representative shall at all times be one of the joint owners of the dwelling.

- 8.4. The membership of an existing owner is automatically terminated on the date on which ownership of his/its dwelling is transferred to another person in the Deeds Office, on which date the new owner automatically becomes a member of **CNLEHOA**.
- 8.5. An owner cannot resign as member of **CNLEHOA**.
- 8.6. Any individual being an owner, joint owner or the representative of a body corporate or trust, which is an owner or joint owner, may be elected to any office in **CNLEHOA**.
- 8.7. A member shall not be entitled to any rights and/or privileges associated with his membership of **CNLEHOA**, including his rights to vote at a general meeting of **CNLEHOA** and to the use of any facilities, amenities or privileges provided by **CNLEHOA** if any amount of money arising from any cause whatsoever (including without limitation any fine or penalty) is due by such member to **CNLEHOA** and is unpaid.
- 8.8. The address of the dwelling of each Member shall be the *domicilium citandi et executandi* for the Member for purposes of delivering or serving all legal processes, proceedings and/or notices on the member. Any Member can change his *domicilium* address, in writing to another physical address which is not a postal box or restante within the Republic of South Africa and such new address will be effective only

when **CNLEHOA** receives written notice thereof at its registered address.

8.9. A member may elect to receive electronic communications upon furnishing such contact details to **CNLEHOA** in writing. If, for whatsoever reason such contact details become dysfunctional then the address of the Member's dwelling shall remain the Member's *domicilium citandi et executandi*.

8.10. **CNLEHOA** shall maintain at its registered office a register of members of **CNLEHOA** as provided in section 24(4)(a) of the Act. The register of members shall be open to inspection, as provided in section 26 of the Act.

## 9. **MEMBERS RIGHT TO INFORMATION**

9.1. Pursuant to the provisions of section 26.1, a person who is a Member has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of **CNLEHOA**:

- (a) **CNLEHOA's** Memorandum and any amendments to it, and any Rules made by the **CNLEHOA**;
- (b) The records in respect of **CNLEHOA's** Directors;
- (c) The reports to annual meetings, and annual financial statements,
- (d) The notices and minutes of annual general meetings and communications;

- (e) Contracts and Service Level Agreements with Service Providers once the requisite consent from the Service Providers has been obtained; and
- (f) The Members' register of **CNLEHOA**.

9.2. A person not contemplated in aforementioned clause 9.1 has a right to inspect or copy the Members register or the register of Directors of **CNLEHOA**, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection. Any access to information will be processed in terms of **CNLEHOA's** PAIA Manual.

## 10. **DEVELOPMENT OF ERVEN AND/OR DWELLINGS, ALTERATIONS AND IMPROVEMENTS**

10.1. No member shall undertake any development of and/or improvement to his erf and/or dwelling without having submitted the plans in respect of such development and/or improvement, conforming to the requirements of the development and design manual, for consideration, evaluation and approval by the aesthetics committee and having obtained the prior written consent thereto from the aesthetics committee. Each member accepts the supervision rights and responsibilities of the aesthetics committee over the development of and/or improvements to the erf and/or dwelling.

10.2. Each member shall be responsible to **CNLEHOA** for the professional expenses and costs incurred by the aesthetics committee for the consideration, evaluation and approval of the plans for the development and/or improvements to his erf and/or dwelling which expenses and costs shall be payable to **CNLEHOA** on presentation of a statement of account.

10.3. No member may take occupation of the building/home until:

- 10.3.1. a certificate of occupancy has been issued by the Council in respect of the building/home; and
- 10.3.2. **CNLEHOA** has issued a certificate certifying that the building/home has been completed to the satisfaction of **CNLEHOA** in accordance with the plans and **CNLEHOA's** aesthetic and completion rules.
- 10.4. Should any member take occupation of the building/home on its erf without both the certificates referred to in 10.3, a penalty levy of R5 000.00 (five thousand Rand) per month, payable monthly in arrear, or such other amount determined by the Board of Directors from time to time will be payable by such member, until such time that the certificate is issued by **CNLEHOA**.
- 10.5. Timing of Development of erven:
- 10.5.1. Each member must commence the development of his erf by the construction of a dwelling house and related improvements:
- 10.5.1.1. within 12 months after transfer of his erf into his name; or
- 10.5.1.2. to complete the development of his erf stand within 12 months after commencement thereof.
- 10.5.2. Should a member fail to commence the development of his erf within the aforesaid period of 12 months:
- 10.5.2.1. the member shall be liable to pay, in addition to the normal monthly levies payable by members, a penalty levy which

is double the monthly levy, or such amount as may be determined from time to time; and

10.5.2.2. the penalty levy will be payable with effect from the date the property was registered in the member's name (for the avoidance of doubt, the penalty levy will be backdated from the date of the expiry of the 12 months, from the date when the building should have commenced.

10.5.3. For the avoidance of doubt:

10.5.3.1. the development of the erf shall be deemed to have commenced when the owner has paid any required fees and deposits associated with the development of the erf to **CNLEHOA** and commences with the digging of the foundation

10.5.3.2. the development of an erf shall be deemed to be completed when **CNLEHOA** issues a certificate that the building/home has been completed to the satisfaction of **CNLEHOA** in accordance with the plans and **CNLEHOA's** aesthetic and completion rules and the council has issued a certificate of occupancy in respect of the erf.

10.6. The provisions of this clause 10 shall apply, with the necessary amendments, to any additions or alterations that any owner wishes to make to his dwelling after its completion.

## 11. **MARKETING, SALE AND TRANSFER OF ERVEN AND/OR DWELLINGS**

11.1. Erven and/or dwellings may only be marketed for sale by members and/or estate agents in accordance with Rules imposed by the directors in respect of signage, accreditation, show days, access and other matters incidental to the marketing of properties in the Estate.

11.2. A member shall be entitled to sell his erf and/or dwelling to a buyer of his choice: Provided that an erf and/or dwelling shall not be transferred into the name of the purchaser unless **CNLEHOA** has issued a certificate confirming that all amounts owed by the seller to **CNLEHOA** and/or its agents have been paid and the purchaser has accepted in writing the terms and conditions contained in the Memorandum as well as the rules of townships as determined by the Directors.

11.3. The proposed purchaser's acceptance in writing to become a Member of **CNLEHOA** and to be bound by this Memorandum and Rules and Codes of Conduct of **CNLEHOA** must be lodged with **CNLEHOA** prior to transfer.

## 12. **DUTIES OF MEMBERS**

Each member shall:

12.1. Abide by and comply with the Memorandum, the Rules and the by-laws that are in force from time to time;

12.2. Abide by the Architectural/Development rules and guidelines;



- 12.3. Obtain the approval by the aesthetics committee of any building plans before submitting them for approval to the local authority and before commencing with any building, walling, fencing and signage operation, exterior lighting, painting or repainting of exterior finishes;
- 12.4. Maintain his/her/its erf and/or dwelling in a clean and tidy condition to the satisfaction of the Aesthetics Committee;
- 12.5. Should the Directors be of the opinion that a member is not complying with the Memorandum, the Rules or any by-law the Directors shall give such member reasonable notice to comply, depending on the nature of the breach, failing which, where possible, the Directors shall be entitled to perform the work or services which is required to be done or provided at the expense of the member and shall be entitled to recover the expenditure in this connection from the member;
- 12.6. Not construct a building on the erf in a manner which causes danger, nuisance or disturbance to the occupiers of the neighbouring dwellings and where applicable, the member shall cause suitable screens and/or barricades to be erected to reduce the emission of noise, dust, waste, effluent or other nuisance from the erf;
- 12.7. Not burn or permit to be burnt any materials or rubbish resulting on the erf and/or dwelling and ensure that such materials or rubbish be removed from the erf and/or dwelling and lawfully disposed of;
- 12.8. Repair at his/her/its cost and expense any damage to the infrastructure, sidewalks and road shoulders or any part of the common or public areas in the Township caused by the member or his/her/its agents;
- 12.9. Not interfere with the convenience of the common or public areas within the Township during construction of any building;

- 12.10. Ensure that all responsible means are used to prevent the roads leading to the erf and/or dwelling from being damaged by any act or omission of any agent or contractor engaged by the member;
- 12.11. Indemnify and shall keep **CNLEHOA** indemnified in respect of all loss, damage, cost or expense, which may be suffered by **CNLEHOA** as a result of any claim, demand, suit or proceedings which may be instituted against **CNLEHOA** as a result of any act or omission of the Member, his/its contractors, agents or invitees;
- 12.12. Prevent the accumulation of trash, garbage or other waste material on the erf and/or dwelling except in suitable containers located in appropriate areas screened, concealed from view and covered so that odours do not emanate from such containers. Provided that such containers may not be placed on any common or public area or upon a thoroughfare for a period exceeding 24 (twenty four) hours;
- 12.13. Prevent the erf and/or dwelling from being used for any purposes or in any manner which may be unlawful, illegal or cause a nuisance to other erven and/or dwellings or members.

### 13. **GENERAL MEETING**

- 13.1. **CNLEHOA** shall hold an annual general meeting within 5 months after its financial year end: Provided that not more than 15 (fifteen) months shall elapse between the date of one annual general meeting and that of the next.
- 13.2. Other general meetings of **CNLEHOA** may be held at any time, if called by the directors.
- 13.3. Meetings shall be held at such time and place as the Directors shall decide from time to time. Where the meeting is not held at the registered

offices of **CNLEHOA**, the Directors shall ensure it is held at a place that the Board deems is most convenient for Members.

- 13.4. An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than 21 (twenty-one) clear days' notice in writing and any other general meeting shall be called by not less than 14 (fourteen) clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of 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 manner hereinafter mentioned or in such other manner, if any, as may be prescribed by **CNLEHOA** in general meeting, to such persons as are, under the Memorandum, entitled to receive such notices from **CNLEHOA**: Provided that a meeting of **CNLEHOA** shall, notwithstanding the fact that it is called by shorter notice than that specified herein, be deemed to have been duly called if it is so agreed by a majority in the number of the members having a right to attend and vote at the meeting, being a majority holding not less than 95 (ninety-five) per cent of the total voting rights of all the members.

#### 14. **MEMBERS RIGHT TO REQUISITION A MEETING**

- 14.1. Pursuant to section 61.3 and 13.1 above the Board of **CNLEHOA**, or any other person specified in **CNLEHOA**'s Memorandum or rules, must call a Members' meeting if one or more written and signed demands for such a meeting are delivered to **CNLEHOA**, and—

(a) each such demand describes the specific purpose for which the meeting is proposed; and

(b) in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 25% (twenty five percent) of the voting

rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

14.2. **CNLEHOA**, or any Member of **CNLEHOA**, may apply to a court for an order setting aside a demand made in terms of clause 14.1 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.

14.3. At any time before the start of a Members' meeting contemplated in 14.1:

(a) a Member who submitted a demand for that meeting may withdraw that demand; and

(b) **CNLEHOA** must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.

## 15. **PROCEEDINGS AT GENERAL MEETING**

15.1. The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors and the appointment of an auditor, and may deal with any other business laid before it. All business laid before any other general meeting shall be considered special business.

15.2. No business shall be transacted at any general meeting unless a quorum of 40 (forty) members are present in person, through its representative (in the event of the member being a juristic person) or by proxy at the time when the meeting proceeds to business.

- 15.3. If within half an hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to a day not earlier than seven days and not later than twenty –one days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present in person or by proxy shall be a quorum.
- 15.4. Where a meeting has been adjourned as aforesaid, **CNLEHOA** shall, within 3 (three) days after the adjournment, forward a notice to each member stating:
- 15.4.1. the date, time and place to which the meeting has been adjourned;
  - 15.4.2. the matter before the meeting when it was adjourned; and
  - 15.4.3. the ground for the adjournment.
- 15.5. The chairperson, or, in his absence, the vice chairperson of the board of Directors shall preside as chairperson at every general meeting of **CNLEHOA**. If there is no such chairperson or vice chairperson, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present shall elect one of their number to chair the meeting.
- 15.6. The chairperson may adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of clause 15.5 above shall mutatis mutandis apply to such adjournment.

15.7. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) ruled by the chairperson, and, unless a poll is so ruled, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or declined, and an entry to that effect in the book containing the minutes of the proceedings of **CNLEHOA**, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution, the demand for a poll may be withdrawn.

15.8. If a poll is ruled 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. Scrutineers shall be elected to determine the result of the poll.

15.9. The provision of 15.1 to 15.8 above shall be subject to the provisions of 17 below.

## 16. **INSPECTION OF MINUTES**

The minutes kept of every general meeting and annual general meeting of **CNLEHOA**, may be inspected and copied by any member.

## 17. **VOTES OF MEMBERS**

At every meeting (of whatever nature) including a general meeting:

17.1. Every member other than the Lofts, present in person or by proxy and entitled to vote, shall have 1 (one) vote for each dwelling that he owns. The Body Corporate of the Lofts shall have the following voting rights at General Meetings of **CNLEHOA**:

- 17.1.1. Due to the fact that it contributes 12% of the levy income of **CNLEHOA**, The Body Corporate of the Lofts will have 12% of the total votes of all the members present and entitled to vote at the general meeting concerned; and
  - 17.1.2. The Body Corporate of the Lofts shall be represented at general meetings of **CNLEHOA** by the chairperson or vice chairperson of its board of Trustees at General Meetings, who shall be the only person entitled to speak and vote on behalf of the Body Corporate of the Lofts.
- 17.2. Save as expressly provided for in the Memorandum, no person other than a member who has paid every levy and other sum, if any, which is due and payable to **CNLEHOA** for any cause, shall be entitled to be speak at or to vote on any matter, either personally or by proxy, at any general meeting.
- 17.3. Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meetings and if not so seconded, shall be deemed not to have been proposed.
- 17.4. An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 17.5. For a special resolution to be adopted at a Members' meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided in section 65(7).
- 17.6. A special resolution adopted at a Members' meeting is not required for a matter to be determined by **CNLEHOA**, except those matters set out in section 65(11) as stipulated below;

17.6.1. For the following matters a special resolution must be adopted at a Members' meeting:

(a) amend **CNLEHOA's** Memorandum to the extent required by section 16(1)(c) and section 36(2)(a);

(b) ratify a consolidated revision of **CNLEHOA's** Memorandum, as contemplated in section 18(1)(b);

(c) ratify actions by **CNLEHOA** or Directors in excess of their authority, as contemplated in section 20(2);

(d) authorise the basis for compensation to Directors of **CNLEHOA**, as required by section 66(9);

(e) approve the voluntary winding up of **CNLEHOA**, as contemplated in section 80(1);

(f) approve the winding up of **CNLEHOA** in the circumstances contemplated in section 81(1);

(g) approve an application to transfer the registration of **CNLEHOA** to a foreign jurisdiction as contemplated in section 82(5);

(h) approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or

(i) revoke a resolution contemplated in section 164(9)(c).

17.7. The parent or guardian of a minor, and the curator *bonis* of a lunatic member, and also any person entitled to transfer the membership, may vote at any general meeting in respect thereof in the same manner as if he were the registered member: Provided that 48 (forty-eight) hours at



least before the time of holding the meeting at which he proposes to vote he shall satisfy the Directors that he is such parent, guardian or curator or that he is entitled to transfer the membership, or that the Directors have previously admitted his right to vote in respect of the membership. Co-executors of a deceased member whose names stand in the register shall, for the purposes of this clause, be deemed to be joint holders of that membership.

17.8. On a poll, votes may be given either personally or by proxy.

## 18. PROXIES

18.1. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing, or, if the appointer is a body corporate or a trust, under the hand of an officer or agent authorised by the body corporate or trust.

18.2. The instrument appointing a proxy shall be deposited at the registered office of **CNLEHOA** not less than 48 hours before the scheduled time of commencement of the meeting concerned. In default of complying herewith, the instrument of proxy shall not be treated as valid. A proxy shall only be valid for the specific meeting for which it is given.

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

18.4. The instrument appointing a proxy shall be in the form as per **Annexure "A"** attached hereto and marked "**Carlswald North Lifestyle Estate Proxy Form**."

## 19. DIRECTORS

19.1. The number of Directors shall not be less than 6 (six) nor more than 9 (nine).

- 19.2. All new Directors nominated must be elected and duly appointed by way of ordinary resolution of the voting members at a duly constituted quorate meeting of voting members as contemplated in section 66(4)(a) of the Act.
- 19.3. The nomination must be made by a minimum of 1 (one) eligible voting member using the nomination form prescribed by the Board from time to time, which is attached hereto as **Annexure “C”**, marked **“Director Nomination Form for Carlswald North Lifestyle Estate”**.
- 19.4. The nominee must accept the nomination by countersigning the aforesaid nomination form and must deliver the countersigned nomination form to **CNLEHOA** at least 14 (fourteen) days prior to the Annual General Meeting.
- 19.5. The voting members may by ordinary resolution at an Annual General meeting resolve to accept any nomination which does not comply with clauses 19.3 and 19.4, including accepting any nomination made at the Annual General Meeting.
- 19.6. Confirmation of appointment of all Directors shall be subject to credit, criminal and relevant legal verification checks.
- 19.7. The Directors shall not be paid any remuneration for their services as such.
- 19.8. The Directors may be paid any travelling, subsistence and other expenses properly incurred by them in the execution of their duties in or about the business of **CNLEHOA** and which are authorised or ratified by the Directors.
- 19.9. Only members and/or the representatives of body corporates or trusts, who are members, may be appointed as Directors for **CNLEHOA**, subject however to the provisions of clause 19.1 above.

- 19.10. The Directors shall within 14 (fourteen) days after each Annual General Meeting appoint from their number a Chairman and Vice – Chairman, who shall hold office until the end of their 2 (two) year tenure after the said appointments, provided that the office of Chairman and Vice – Chairman shall be ipso facto vacated by a Director holding office as such upon him ceasing to be a Director for any reason.
- 19.11. No 1 (one) Director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time the Board of Directors shall immediately appoint one of their number as a replacement in such office.
- 19.12. Except as otherwise herein provided, the Chairman shall preside at all meetings of the Board of Directors, Special Meetings, and all General Meetings, and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice – Chairman shall act in his stead, or failing the Vice – Chairman, a Chairman so appointed by the meeting.

## 20. **POWERS AND DUTIES DIRECTORS**

- 20.1. The Directors subscribe to good corporate governance and adherence to ethical standards as a Board of Directors, as stipulated by the King Report on Corporate Governance for South Africa, 2016 (“King IV Report”), and as may be amended from time to time.
- 20.2. Subject to the express provisions hereof, the Directors shall be responsible for the administration, control, management and services required in the fulfilment of the objects of **CNLEHOA** as set out herein. The Directors further undertake to do so in accordance with the Code of

Conduct which is referred to in **Annexure “A”**, marked **“Directors Code of Conduct for CNLEHOA”**.

- 20.3. The Directors shall manage and control the business and affairs of **CNLEHOA**. The Directors shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent and may exercise all such powers of **CNLEHOA** and do all such acts on behalf of **CNLEHOA**, subject to any restriction or direction given at a meeting of the Members, or as required by the Act or by this Memorandum.
- 20.4. Save as specifically provided in these presents, the Directors shall at all times have the rights to engage on behalf of **CNLEHOA** the services of accountants, auditors, attorneys, advocates, architects, engineers and managing agents and any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Directors and on such terms as the Directors shall decide.
- 20.5. Subject to any restriction imposed and direction given at a general meeting of **CNLEHOA**, the powers of the Directors shall include the following:
- 20.5.1. to enact a review panel to approve in principle any design concepts submitted prior to any detailed sketch plans or working drawings made and thereafter approving sketch plans being submitted;
  - 20.5.2. to attend to the final approval of any building plans prior to such plans being submitted to the local authority;
  - 20.5.3. to appoint for and on behalf of **CNLEHOA** such agent and employees as they deem fit in connection with the control, management and administration required in terms of the Memorandum, more particularly for the maintenance of the

street verges and areas of individual erven falling within building reserves;

- 20.5.4. to delegate to one or more of their members or an outside expert such of their powers and duties as they may deem fit, and at any time to revoke such delegations;
- 20.5.5. to make rules for the control, use, safety, cleanliness and aesthetic landscaping of the property (including the erven and/or dwellings in the development) and to determine by rules from time to time promulgated, inter alia, the security, vegetation, continuity, parking signage and advertising, exterior finishes and maintenance;
- 20.5.6. to establish board committees for any purpose, which committees shall be chaired by a director but may comprise members who are not directors and/or who are not members of **CNLEHOA** but have valuable skills and/or knowledge that will promote the work of the board committee. Each director is obliged and shall establish such board committees to ensure a transfer of skills, succession planning and to assist with the preservation of institutional knowledge.
- 20.5.7. to open and operate a current account and savings account with banking institution or building society;
- 20.5.8. to purchase, hire or otherwise acquire movable property for use in fulfilling the duties imposed on the Directors in terms of the Memorandum;
- 20.5.9. to liaise with the council regarding any matter falling under the ambit of the Memorandum, or on behalf of any member;

- 20.5.10. to utilise the facilities and equipment of **CNLEHOA** for purposes of providing a maintenance service in respect of the individual erf and/or dwelling of any member relating to such member's erf and/or dwelling, against a remuneration to be determined by the Directors from time to time;
  - 20.5.11. to ensure that members comply with the provisions of the Memorandum, the Rules and the By-Laws;
  - 20.5.12. to impose fines, penalty levies and other financial penalties upon members who do not comply with provisions of the Memorandum, the Rules and the By-Laws; and
  - 20.5.13. to do all things reasonably necessary for the enforcement, management, control and administration devolving upon the Directors in terms of the Memorandum.
- 20.6. The Directors are hereby empowered to establish for administrative expenses a fund sufficient in the opinion of the Directors for the upkeep, control, management and administration required to be performed by the Directors in terms of the Memorandum and for the acquisition of such assets as may be required for purposes of fulfilling the objects of **CNLEHOA**;
- 20.7. The Directors shall have the right to co-opt to the Board any person or persons chosen by it. A co-opted director need not necessarily be a member of **CNLEHOA**;
- 20.8. In discharging their duties in terms of clause 20.3, the Directors shall amongst themselves bring about certain portfolios to attend to the administration of the Estate. In this regard, the Directors may elect so many portfolios as they in their discretion deem appropriate subject to the proviso that the following must exist:

- 20.8.1. Security;
- 20.8.2. Financial, Compliance and Governance;
- 20.8.3. Legal;
- 20.8.4. Aesthetics and Landscaping;
- 20.8.5. Repairs and Maintenance;
- 20.8.6. Procurement.

## 21. **BORROWING POWERS**

The borrowing powers of the Directors shall be limited to:

- 21.1. Obtaining credit from trade creditors in respect of expenditure provided for in **CNLEHOA's** annual budget; and
- 21.2. Entering into instalment sale, lease or loan agreements on behalf of **CNLEHOA** that are specifically provided for in **CNLEHOA's** annual budget or are otherwise authorised by the members of **CNLEHOA** in general meeting.

## 22. **EXECUTIVE DIRECTORS**

- 22.1. The Directors may from time to time appoint one or more of their body to the office of executive director or managing director at such terms and conditions as may be determined from time to time and may revoke such appointment subject to the terms of any agreement entered into in any particular case.
- 22.2. The Directors may from time to time entrust to or confer upon an executive director or managing director, for the time being, such of the

powers and authorities vested in them as they may think fit, and may confer such power and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

## **23. PERSONAL FINANCIAL INTEREST AND CONFLICT OF INTEREST**

- 23.1. Each Director will, subject to the exemptions contained in section 75(2) of the Act and the qualifications contained in section 75(3) of the Act, comply with all of the provisions of section 75 of the Act in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.
- 23.2. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any personal financial interest of a Director, subject to the provisions of section 75 of the Act.
- 23.3. If any Director or a related person to such Director has a personal financial interest in any matter to be considered by the Board as contemplated in section 75 of the Act, that Director:
- 23.3.1. must notify the Board timeously of such personal financial interest in advance of any deliberation or voting on such matter;
  - 23.3.2. must disclose to the meeting any material information relating to the matter, and known to the Director;



- 23.3.3. if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in 23.3.1 or 23.3.2;
- 23.3.4. must not take part in the consideration of and/or voting in relation to the matter, except to the extent contemplated in 23.3.2;
- 23.3.5. while absent from the meeting in terms of this clause 23.3, is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum;
- 23.3.6. For the purposes of this clause (Personal Financial Interest and Conflicts of Interest), "Director" includes a Prescribed Officer, a person appointed in terms of clause 19.9 and a person who is a member of a Board Committee, irrespective of whether the person is also a member of the Board, as more fully contemplated in section 75(1) of the Act.

## 24. **MINUTES**

- 24.1. The Directors shall, in terms of section 24 of the Act, cause minutes to be kept -
  - 24.1.1. Of all appointments of officers;
  - 24.1.2. Of names of Directors present at every meeting of **CNLEHOA** and of the Directors; and
  - 24.1.3. Of all proceedings at all meetings of **CNLEHOA** and of the Directors.

- 24.2. Such minutes shall be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

## 25. **DISQUALIFICATION OF DIRECTORS**

- 25.1. The office of director shall be vacated if the director:

- 25.1.1. ceases to be a member of **CNLEHOA**, subject to the provisions of clauses 17.1 and 17.4 above; or
- 25.1.2. ceases to be the representative of a body corporate who is a member; or
- 25.1.3. is a representative of a body corporate or a trust and the body corporate or trust who appointed him, ceases to be a member; or
- 25.1.4. ceases to be a director or becomes prohibited from being a director by virtue of any provision of the Act; or
- 25.1.5. where a Director is removed by resolution of the Board, other than the Director concerned, in terms of section 70(1)(b)(vi)(bb) subject to section 71(3) of the Act; or
- 25.1.6. a notice removing him from office is signed by Members having a right to attend and vote at a Meeting of Members who hold more than 75% (seventy five percent) of the total voting rights of all the Members who are at that time entitled so to attend and to vote, at such meeting where the removal of the Director is to be tabled, and is delivered to **CNLEHOA** or lodged at its registered office; or

- 25.1.7. without the consent of **CNLEHOA** in general meeting holds any other office of profit under **CNLEHOA** except that of executive director or managing director; or
- 25.1.8. resigns his office by notice in writing to **CNLEHOA** and the registrar; or
- 25.1.9. for more than (3) three consecutive regular meetings is absent without permission of the Directors from meetings of Directors held during that period; or
- 25.1.10. is directly or indirectly interested in any contract or proposed contract with **CNLEHOA** and fails to declare his interest and the nature thereof in the manner required by the Act; or
- 25.1.11. is in arrears with his monthly levies/special levies for a minimum period of 2 (two) months.

## 26. **ROTATION OF DIRECTORS**

- 26.1. A Director shall be appointed for a tenure of 2 (two) years.
- 26.2. At the annual general meeting in every year, at least 2 (two) Directors on the expiry of their 3 (three) year term shall retire from office.
- 26.3. 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.
- 26.4. The maximum tenure for a Director shall be a period of 6 (six) consecutive years.

- 26.5. Notwithstanding clause 26.4, a Director who has completed the maximum tenure of 6 (six) years, may qualify for re-election after a cooling-off period of 3 (three) years.
- 26.6. A retiring director shall be eligible for re-election provided that the re-election is not contrary to clauses 26.4 and 26.5 above.
- 26.7. Retired directors may be co-opted into any Board Committees to ensure continuation of skills and to preserve and transfer institutional knowledge.
- 26.8. **CNLEHOA** at the annual general meeting at which a director retires in the manner aforesaid or at any other general meeting may fill the vacancy by electing a person thereto.
- 26.9. If at any meeting at which an election of Directors is to take place the office of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the provisions of 15.5 above shall apply mutatis mutandis to such adjournment, and if a such adjourned meeting the vacancies are not filled, the retiring Directors or such of them as have not had their office filled shall be deemed to have been re-elected at such adjourned meeting unless a resolution for the re-election of any such director shall have been put to the meeting and negatived.
- 26.10. **CNLEHOA** may from time to time in general meeting increase or reduce the number of Directors and may also determine in what rotation such increased or reduced number is to retire from office.
- 26.11. Unless the members otherwise determine in general meeting any casual vacancy occurring on the board of Directors may be filled by the Directors, but the director so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose stead he is appointed, was last elected a director.

26.12. The Directors shall have power at any time, and from time to time, to appoint a person as an additional director but so that the total number of Directors shall not at any time exceed the number fixed according to the Memorandum, and such director shall retire from office at the next following annual general meeting and shall then be eligible for re-election, but shall not be taken into account in determining which Directors are to retire by rotation at such meeting.

## 27. PROCEEDINGS OF DIRECTORS

27.1. The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the event of any equality of votes, the chairperson shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time convene a meeting of the Directors. In finalizing any resolutions, Directors shall record such resolutions in the form as per **Annexure "D"** attached hereto and marked "**Carlswald North Lifestyle Estate Director Resolution Form.**"

27.2. Subject to the provisions of section 75 of the Act, a director shall not vote in respect of any contract or proposed contract with **CNLEHOA** in which he is interested, or any matter arising there from, and if he does so vote, his vote shall not be counted.

27.3. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors, and unless so fixed shall, when the number of Directors exceeds three, be three and when the number of Directors does not exceed 3 (three), shall be 2 (two).

27.4. The continuing Directors may act notwithstanding any vacancy on their body, but, if and so long as their number is reduced below the number

fixed by or pursuant to the Memorandum as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of convening a general meeting of **CNLEHOA** for no other purpose.

- 27.5. The Directors may elect a chairperson of their meetings and determine the period for which it is to hold office, but if no such chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same, the Directors present may elect one of their number to be chairperson of the meeting.
- 27.6. The Directors may delegate any of their powers to committees established by them as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to the rules that may be imposed on it by the Directors.
- 27.7. A committee may meet and adjourn, as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the event of an equality of votes the chairperson shall be a second or casting vote.
- 27.8. All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a director.

## 28. **INCOME OF THE ASSOCIATION**

- 28.1. The income of **CNLEHOA** shall consist of compulsory monthly contributions (“levies”), determined in accordance with 28.2, which must be paid by members and shall be used to promote and fulfil the main objects of **CNLEHOA**.

28.2. The Directors shall prepare no later than 1 (one) month prior to the end of each financial year a budget which shall detail the anticipated expenses for the ensuing year and the provision for any budgeted fund in order to ensure that the company will be able to fulfil its main objects. The budget must reflect the total annual and monthly levies required. The levies shall, subject to adjustment in accordance with 28.5, be contributed as follows:

28.2.1. The Body Corporate of Carlswald Lofts shall pay a monthly levy equal to 12% (twelve percent) of the aggregate monthly reflected in the budget or in such amount that is to be determined by the Board of Directors and which is subject to review every 3 (three) years; and

28.2.2. Every other member of the company shall pay a monthly levy in respect of each dwelling owned by such member, which monthly levy shall be equal to the balance of the aggregate monthly levies (i.e. the difference between the aggregate monthly levies and the levies payable by the Body Corporate of Carlswald Lofts in terms of 28.2.1 Above) divided by the total number of dwellings on the properties, excluding Carlswald Lofts and the sectional title units that comprise them.

28.3. In calculating the levy payable by any member, the Directors shall as far as reasonably practicable:

28.3.1. assign those costs directly attributable to the townships and which is also directly attributable to a specific dwelling in the township to the member owning such dwelling;

28.3.2. assign those costs directly attributable to the townships, but which is not directly attributable to a dwelling in such

townships generally to the owners of all dwellings in that township;

28.3.3. assign those costs not directly attributable to a particular township to the owners of all dwellings in proclaimed townships in accordance with their general participation quota; and

28.3.4. while the Directors may have regard to all prevailing circumstances and to equity, they may in any case where they consider it equitable to do so, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances.

28.4. The budget and levies as calculated in clause 28.2 and 28.3 must be presented to a general meeting of members, such general meeting of members should be held before the commencement of the new financial year.

28.5. The monthly levies shall be due, owing and immediately payable in accordance with the due date on the levy statement issued, without deduction, demand or set-off. Each owner may pay his monthly levies by means of electronic funds transfer to the bank account for **CNLEHOA**. Owners may also pay monthly levies by means of a debit order instruction to **CNLEHOA**.

28.6. The Directors shall be entitled to charge interest on any arrear levies and / or monies due to it in terms of the Memorandum. The Directors shall further be empowered to determine the rate of interest from time to time chargeable upon such arrear levies / monies, which shall be in addition to such other rights as **CNLEHOA** may have in law against the Members, provided that such interest shall not exceed the rate prescribed in terms of the National Credit Act No 34 of 2005.



- 28.7. The Directors may at any stage introduce a special levy on all owners should the Directors realize that the budgeted income of **CNLEHOA** will be insufficient to enable **CNLEHOA** to fulfil its objects.
- 28.8. Any amount due by a member by way of levy and interest shall be a debt due by him to **CNLEHOA**. The obligations of a member to pay a levy and interest shall cease upon him ceasing to be a member without prejudice to **CNLEHOA's** right to recover arrear levies and interest. No interest or levies paid by a member shall under any circumstances be repayable by **CNLEHOA** to him upon his ceasing to be a member. A member's successor in title to a dwelling shall be liable as from the date upon which the dwelling is transferred into his name to pay the levy attributable to that dwelling.
- 28.9. **CNLEHOA** shall be entitled to withhold all services, amenities and/or privileges, including without limitation traversing rights over its access erven, security services and usage of common property to any member or such member's employees, co-residents, lessees, invitees or visitors, while such member is in breach of any of the terms and conditions of membership or rules of **CNLEHOA** (including without limitation default in payment of any amount due to **CNLEHOA**), all of which are deemed to be material.
- 28.10. **CNLEHOA** shall be entitled to withhold biometric facial recognition access and/or entry and exit into the Estate via the relevant systems in use by **CNLEHOA** to any member or such member's employees, co-residents, lessees, invitees or visitors, while such member is in breach of any of the terms and conditions of membership or rules of **CNLEHOA** (including without limitation default in payment of any amount due to **CNLEHOA**), all of which are deemed to be material.

## 29. RULES

29.1. Subject to any restriction imposed or direction given at a general meeting of **CNLEHOA**, and subject thereto that it must be equitable, the Directors may from time to time make rules in regard to:

29.1.1. the architectural design, constructions, quality and building materials of any proposed building to be erected on any erf in the Township;

29.1.2. determine from time to time Rules with regard to the security, vegetation, landscaping, parking, signage and advertising, exterior finishes and maintenance of any erf and/or dwelling or building or the properties itself;

29.1.3. the furtherance and promotion of any of the objects of **CNLEHOA** and/or the better management of the affairs of **CNLEHOA** and/or for the advancements of the interest of members and/or lessees of the dwellings;

29.1.4. the maintenance of all buildings, outbuildings, structures, electricity, water and sewerage reticulation, improvements of any nature and landscaping on the erf; and

29.1.5. the right of reasonable access to any erven and/or dwellings in order to effect the maintenance of any matter referred to above.

29.2. For the enforcement of any of the rules made by the Directors in terms hereof, the Directors may:

29.2.1. take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the costs of so doing to

the member concerned which amount shall be deemed to be a debt owing by the member concerned to **CNLEHOA**, and/or

29.2.2. impose a system of fines or other penalties. The amounts of such fines shall be reviewed and confirmed at each Annual General Meeting of **CNLEHOA**; and/or

29.2.3. take such other action including proceedings in Court, as they may deem fit.

29.3. In the event of Directors instituting any legal proceedings against any member or resident on the erf and/or dwelling for the enforcement of any of the rights of **CNLEHOA** in terms hereof, **CNLEHOA** shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and client, including collection commission charges and tracing costs.

29.4. In the event of any breach of the rules by the members or any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken steps against the person actually committing the breach as they in their discretion may deem fit.

29.5. In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of two Directors appointed by the chairman for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the rules of natural justice shall be observed) as the chairman may direct.

- 29.6. Any fine imposed upon any member shall be deemed to be a debt due by the member to **CNLEHOA** and shall be recoverable by ordinary civil process.
- 29.7. Notwithstanding anything to the contrary herein contained, the Directors may in the name of **CNLEHOA** enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and Counsel as they may deem fit.
- 29.8. The dispute resolution process set out hereinabove shall only apply in the event that any of the parties ('the affected party') that is bound by this Memorandum elects not to resolve the dispute in accordance with the Community Schemes Ombud Service Act No. 9 of 2011 (ÇSOS Act'), as amended. Accordingly, in the event the affected party submits to the dispute resolution process set out hereinabove, the affected party shall be deemed to have elected to not resolve the dispute in accordance with the provisions of the CSOS Act.
- 29.9. **CNLEHOA** may in general meeting itself make any rules which the Directors make and may in general meeting vary or modify any rules made by it or by the Directors from time to time.
30. **SECRETARY**
- 30.1. **CNLEHOA**, may appoint its Managing Agents or any other person or entity to act as Secretary in general meetings. The members in general meeting may also discharge a Secretary.
- 30.2. A director or the auditors of **CNLEHOA** may not be appointed as Secretary of **CNLEHOA**.

### 31. DISTRIBUTION OF INCOME

No part of the income or assets of **CNLEHOA** may be distributed to its members, and the same shall be applied solely towards the pursuit of **CNLEHOA's** objects, provided that this clause shall not be construed as prohibiting the payment of expenses to Directors as provided for in clause 4.3 herein.

### 32. ACCOUNTING RECORDS

32.1. The Directors shall cause such accounting records to be kept in accordance with IFRS. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of **CNLEHOA** and to explain the transaction and financial position of the trade or business of **CNLEHOA**.

32.2. The accounting records shall be kept at the registered office of **CNLEHOA** or at such other place or places as the Directors think fit and shall always be open to inspection by the Directors.

32.3. The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of **CNLEHOA** shall be open to inspection by members not being a Director.

### 33. ANNUAL FINANCIAL STATEMENTS

33.1. The Directors shall from time to time, cause to be prepared, audited and laid before **CNLEHOA** in general meeting, an Income Statement and Balance Sheet of **CNLEHOA's** state of affairs as at that date.

33.2. A copy of any annual financial statements, which are to be laid before **CNLEHOA** in annual general meeting, shall not less than 21 (twenty-

one) days before the date of the meeting be sent to every member of, and every holder of debentures of **CNLEHOA**: Provided that the Memorandum shall not require a copy of those documents to be sent to any person of whose address **CNLEHOA** is not aware or to more than one of the joint holders of any membership or debentures.

#### 34. **ACCOUNTING OR PUBLIC OFFICER**

34.1. The Board of Directors shall appoint the Managing Agent to act for and on behalf of **CNLEHOA**, whose written consent to act as above shall be filed with the Board of Directors at such place as they may think fit. The appointment shall also require that the Managing Agent also serve as the Public Officer of **CNLEHOA** who shall deal with public regulation defined by the Act.

#### 35. **NOTICES**

35.1. A notice may be given by **CNLEHOA** to any member by email to the most recent email address supplied by the member to **CNLEHOA**, by delivery to the member's domicilium as provided for in 8.8 or by mail to the postal address (if any) within the Republic supplied by such member to **CNLEHOA**.

35.2. When a notice is to be given to joint owners of a dwelling, the notice may be given by **CNLEHOA** to the joint members by giving the notice to the joint member named first in the title deed in respect of the dwelling.

35.3. Whenever a notice is to be given to a deceased member or a member under any legal disability, the notice shall be given to the deceased member's executor or the member under disability's trustee, liquidator, curator or guardian, as the case may be.

35.4. Notice of every general meeting shall be given in any manner authorised

35.4.1. to every member of **CNLEHOA** except those members who have not supplied to **CNLEHOA** an email address or a postal address within the Republic for the giving of notice to them; and

35.4.2. to the auditor for the time being of **CNLEHOA**.

35.5. Any notice sent by post shall be deemed to have been served within 3 days after the letter containing the same was posted, any notice sent by email shall be deemed to have been served on the day of transmission of the email and any notice given by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper or Gazette.

35.6. The signature to any notice given by **CNLEHOA** may be written, electronic or printed, or partly written and partly electronic or printed.

35.7. When a given number of days' notice or notice extending over any other period is required to be given, the day of service shall not be counted in such number of days or period.

### 36. **WINDING-UP, DEREGISTRATION OR DISSOLUTION**

If **CNLEHOA** should be wound up, deregistered or dissolved, the assets remaining after payment of the debts and liabilities of **CNLEHOA** and the costs of the liquidation shall be given or transferred to another company, associations or persons having objects similar to **CNLEHOA**'s main object, to be determined by the members of **CNLEHOA** at or before the time of dissolution, or, failing such determination, by the Court.

### 37. **SPECIAL CONDITIONS RELATING TO ERVEN 549 AND 552 (SUMMERSET EXTENSION 6 TOWNSHIP)**

The following special conditions shall apply in respect of Erven 549 and 552 (Summerset Extension 6 Township):

- 37.1. Each and every owner of a residential erf in the township known as Summerset Extension 6 shall have free access to or over Erven 549 and 552 to afford them access to a public road.
- 37.2. The Council's engineering services departments, and its emergency services are guaranteed 24 hour access to Erven 549 and 552 (Summerset Extension 6 Township), to maintain the Council's installations and provide services to the residents in the township.
- 37.3. The Memorandum shall not be implemented or amended without the written consent of the Council, as far as such implementation or amendment relates to the above, first being had and obtained.
38. **SPECIAL CONDITIONS RELATING TO ERF 693 (SUMMERSET EXTENSION 13 TOWNSHIP)**

The following special conditions shall apply in respect of Erf 693 (Summerset Extension 13 Township):

- 38.1. Each and every owner of a residential erf in the township known as Summerset Extension 13 shall have free access to or over Erf 693 to afford them access to a public road.
- 38.2. The Council's engineering services departments and its emergency services are guaranteed 24 hour access to Erf 693 (Summerset Extension 13 Township), to maintain the Council's installations and provide services to the residents in the township.
- 38.3. The Memorandum shall not be implemented or amended without the written consent of the Council, as far as such implementation or amendment relates to the above, first being had and obtained.



39. **SPECIAL CONDITIONS RELATING TO ERF 205 (SUMMERSET EXTENSION 3 TOWNSHIP)**

The following special conditions shall apply in respect of Erf 205 (Summerset Extension 3 Township):

39.1. Each and every owner of a residential erf in the township known as Summerset Extension 3 shall have free access to or over Erf 205 to afford them access to a public road.

39.2. The Council's engineering services department and its emergency services are guaranteed 24-hour access to Erf 205 (Summerset Extension 13 Township, to maintain the Council's installations and provide services to the residents in the township.

39.3. The Memorandum shall not be implemented or amended without the written consent of the Council, as far as such implementation or amendment relates to the above, first being had and obtained.

40. **SPECIAL CONDITIONS RELATING TO SUMMERSET EXTENSION 6, SUMMERSET EXTENSION 13 AND SUMMERSET EXTENSION 3 TOWNSHIPS**

40.1. Summerset Extension 6 Township -

40.1.1. The local authority shall not be liable for the malfunction of the surfacing of the access way and/or any services with the exception of services taken over by the local authority.

40.1.2. Erven 553 to 564, 549 and 552 cannot be sold to any person except the Association and the Erven may not be rezoned unless the consent from the Council has been obtained.

40.2. Summerset Extension 13 Township -

- 40.2.1. The local authority shall not be liable for the malfunction of the surfacing of the access way and/or any services with the exception of services taken over by the local authority.
- 40.2.2. Erven 669, 586 to 597 cannot be sold to any person except the Association and the Erven may not be rezoned unless the consent from the Council has been obtained.
- 40.3. Summerset Extension 13 Township-
- 40.3.1. The local authority shall not be liable for the malfunction of the surfacing of the access way and/or any services with the exception of services taken over by the local authority.
- 40.3.2. Erven 205 cannot be sold to any person except the Association and the Erven may not be rezoned unless the consent from the Council has been obtained.
- 40.4. Summerset Extension 6, Summerset Extension 13 and Summerset Extension 3-
- 40.4.1. It is recorded that the access Erven 549 and 552 (Summerset Extension 6), 693 (Summerset Extension 13), 205 (Summerset Extension 3) and 119 (Summerset Extension 32) shall be deemed to provide access to all the owners/members in the townships. Irrespective, of in which township the member has a dwelling, the said owner/member shall be entitled to traverse all the access Erven within the townships.
- 40.4.2. In addition to the aforesaid, it is recorded that the same principles shall mutatis mutandis apply to the other Erven registered in the name of the association relating to other recreational uses.

40.5. Special conditions relating to Erven 1139 and 1140 (Summerset Extension 32 Township)

40.5.1. The following special conditions shall apply in respect of Erven 1139 and 1140 (Summerset Extension 32 Township):

40.5.1.1. Each and every owner of a residential erf or unit in the Township known as Summerset Extension 32 shall have free access to and over Erf 1139 to afford them access to a public road.

40.5.1.2. Each and every owner of a residential erf or unit in the township known as Summerset Extension 32, shall have use of erf 1140 designated as private open space.

40.5.1.3. The council's engineering services departments and its emergency services are guaranteed 24 hour access to erf 1139 (Summerset Extension 32 Township) to maintain the council's installations and provide services to the residence in the township.

40.5.1.4. The Memorandum shall not be implemented or amended without the written consent of the council, as far as such implementation or amendment relates to the above, first being had and obtained.

40.5.2. Special conditions relating to Summerset Extension 32 Township

- 40.5.2.1. The local authority shall not be liable for any malfunction of the surfacing of the access way and/or any services with the exception of services taken over by the local authority.
- 40.5.2.2. Erven 1139 and 1140 cannot be sold to any person except to the Association and the Erven may not be rezoned unless the consent of the Council has been obtained.
- 40.5.2.3. Insofar as it may be relevant, if alternative erf numbers are allocated in respect of the access Erven or otherwise, it shall be deemed that the referral to an erf shall mutatis mutandis be deemed to have been amended in accordance with the conditions of establishment or any amendment thereof.

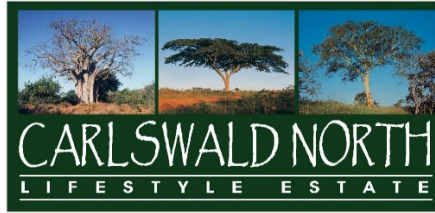
#### 41. **INDEMNITY**

Every Director, manager and officer of **CNLEHOA** and every person (whether an officer of **CNLEHOA** or not) employed by **CNLEHOA** as auditor, shall be indemnified out of the funds of **CNLEHOA** against all liability incurred by him as such director, manager, officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under the Act or any amendment thereof in which relief is granted to him by the court.

#### 42. **EXCLUSION OF LIABILITY**

**CNLEHOA**, its Directors, employees and agents shall not be liable for any damages suffered by a Member, his/its lessees, co-residents and/or invitees

arising from any cause whatsoever and howsoever arising, except for gross negligence or wilful conduct of an individual, in which event the member's recourse shall be against the specific guilty individual.



# Annexure A

## CODE OF CONDUCT FOR DIRECTORS

*Corporate Governance is the application of best management practices, compliance of law in the true letter and spirit and adherence to ethical standards for effective management ....*

- King IV Report

**The CARLSWALD NORTH LIFESTYLE ESTATE HOMEOWNERS' ASSOCIATION (CNLEHOA)** Board of Directors is ultimately accountable and responsible for the performance of the Estate. The Board endorses and is committed to the fundamental principles of good corporate governance. The Board places great emphasis on the importance of corporate disclosure, notably as a means of transparency, accountability, and responsibility, on matters of significance, interest and relevance to Members and stakeholders.

These include discipline, transparency, independence, accountability, responsibility, fairness, and social responsibility.

In accordance with this commitment, the Board of Directors embraces the principles of good governance as set out in the King Report on Corporate Governance for South Africa, 2016 ("King IV Report").

## OBJECTIVES

Ensure that the abovementioned principles underline the day-to-day operations of the Estate. This Code is to serve as a best practice guideline on Corporate Governance and ethical Board Risk Management. It is mandatory that each Director, as appointed in the Memorandum of Incorporation understands the Code of Conduct and agrees to adhere to the principles herein.

The Code serves to advise all the Directors about their responsibilities towards the **CNLEHOA** and its Members and the standards of conduct expected of them. It further serves to inform the Members that

the Board of Directors and Estate Management have adopted sound principles of Corporate Governance and Risk Management in the execution of their duties as the Directors and management of the **CNLEHOA**.

## ***DEFINITIONS***

**CODE** – means Code of Conduct for the Board of Directors and Estate Management.

**BOARD** – means the Directors of **CNLEHOA** as appointed in terms of the Memorandum of Incorporation.

**ESTATE MANAGEMENT** – means the manager/s appointed from time to time to manage the affairs of the Estate.

**ESTATE** – means Carlswald North Lifestyle Estate and the associated Carlswald North Lifestyle Estate Homeowners Association (**CNLEHOA**).

## ***APPLICABILITY***

This Code is applicable to Estate Management and all the Directors of the Board. It shall apply to any person incorporated to the Board, including the duly appointed Estate Manager/s. Every Director of the Board shall receive the Code and shall complete the compliance undertaking hereto and provide the duly completed undertaking, in writing, prior to his/her first Board meeting.

It shall be the responsibility of the Chairperson of the Board to ensure that the abovementioned compliance undertaking is duly received in the manner and time as stipulated above.

## **CODE OF CONDUCT DIRECTORS OF THE BOARD**

Each Director of the Board shall:

### **1. DUTY OF CONDUCT**

- 1.1** Respect the fiduciary capacity of a Director and transact the responsibilities associated with the office of being a Director.
- 1.2** Act with honesty, integrity and display utmost ethical conduct while executing the office of Director of the Estate.
- 1.3** Act with ethical integrity, accept and promote majority decisions and refrain from undermining the **CNLEHOA** and the image of the Estate and Board of Directors by lobbying or petitioning

without the Board's consent.

- 1.4 Avoid direct or indirect personal involvement in any transaction of the Estate and ensure that at no instance there is any conflict of interest between personal and Estate interest. Where there is any conflict, the Estate's interest shall take precedence.
- 1.5 Ensure that the assets of the Estate are not used for any personal gain. Further it shall be the duty of the Director to ensure that the assets of the Estate are not used for any unlawful purpose and further that the usage thereof not amount to misuse or wastage.
- 1.6 Owe undivided loyalty to the Estate by ensuring that any personal involvement in any opportunity or activity wherein the Estate has any right or interest is prohibited.
- 1.7 Make complete and full disclosure as to the nature of the conflict where a conflict of interest or a potential conflict of interest may be apparent.
- 1.8 Maintain complete secrecy and confidentiality of the information related to the Estate or its business. This obligation shall continue even after the termination of office.

## **2. DUTY OF CARE**

The Directors undertake to show the standard of care, diligence and expertise in directing the Estate and its business that may be reasonably expected from individuals with their knowledge and experience.

This is achieved by:

- 2.1 Understanding the business of the Estate in all operational, financial, human resources, risk management, and environmental respects.
- 2.2 Making informed decisions based on a complete understanding of the Estate's business and the issues that might materially affect it.
- 2.3 Obtaining independent professional advice in circumstances where the Director believes that, despite a good understanding of the Estate and efforts to obtain further information, he or she is unable to make an informed decision/s.
- 2.4 Diligently preparing for Board meetings by reviewing and understanding the information and/or the material contained in a Board pack, well in advance of Board meetings, actively participating in Board meetings, and bringing to bear the full measure of one's experience and expertise to which the Estate is entitled.

## **3. DUTY TO EXERCISE AN INDEPENDENT DISCRETION**

Directors accept that they are not answerable to certain groups of members or other stakeholders, but to the Estate only. An Independent mind and judgement are required to be exercised in assessing what is in the best interests of the Estate.



#### **4. DUTY OF GOOD FAITH**

Directors are at all times required to act in good faith towards and in the interests of the Estate.

This is achieved by:

- 4.1 Always setting the Estate's interests before personal or the appointing member's interests or gain.
- 4.2 Always acting impartially and independently in the best interests of the Estate, unhampered, and unfettered by any other interest (whether it be personal, another member's, stakeholder's).
- 4.3 Always conducting the affairs of the Estate with the utmost honesty and integrity.
- 4.4 Avoiding any conflict between the interests of the Estate and any personal interest. In the event of there being any possible conflict of interest, it is transparently and formally declared.
- 4.5 Avoid undermining the image, good faith and trust relation of the Estate or Board of Directors by lobbying or petitioning without prior consent of the Board of Directors.

#### **5. DUTY TO ACT WITHIN POWERS AND AUTHORITY**

Directors shall not exercise powers that are beyond the normal capacity of the Estate or request that powers be given to them unless as stipulated in the **CNLEHOA** Memorandum of Incorporation.

Compliance with this duty is achieved by strict adherence to the Memorandum of Incorporation, levels of authority as determined by the Estate in general meeting (the members), specific mandates from the Board of Directors, and in accordance with the law.

#### **6. PRIME DUTY**

The Board accepts its responsibility to act as a Board and to do so in the best interests of the Estate only and not in accordance with a Director's personal interests or in the interests of any Member a Director may represent.

#### **7. MAIN DUTIES**

The Board accepts the following as its main duties:

- 7.1 A duty of care, diligence, and skill, which can be reasonably expected from persons with their level of knowledge and experience.
- 7.2 A duty to exercise an independent discretion.
- 7.3 A duty of always acting in a *bona fide* manner, i.e., in good faith.
- 7.4 A duty to act *intra vires*, i.e., within the powers and authority bestowed upon them by the Memorandum of Incorporation.

**7.5** Duty to provide the members of the **CNLEHOA** with an accurate, true and fair report on the financial performance of the Estate.

**7.6** Duty to ensure compliance with all applicable Acts, Regulations, Rule, By-laws, or other statutory provisions, which govern the conduct of the Estate.

## **8. BOARD CHARACTERISTICS**

### **8.1 Board Size and Membership**

The board's size is such to be effective and meet in the requirements for efficient and effective operation of the Estate for the benefit of its Members and is in accordance with the Memorandum of Incorporation.

### **8.2 Suitably qualified Directors**

The following attributes are brought into consideration when Directors are nominated:

8.2.1 Calibre and credibility.

8.2.2 Skills and experience.

8.2.3 Time and attention to dedicate to role.

8.2.4 The process of Director appointment is transparent and is facilitated during the annual general meeting (AGM), in accordance with the Memorandum of Incorporation.

### **8.3 Separation of Chairperson of the Board and Estate Manager's roles**

The positions of Chairperson and Estate Manager are vested in 2 (two) separate persons.

### **8.4 Chairperson of the Board to be an Independent Director**

The chairperson is an independent Director.

### **8.5 Balance of Directors**

All members of the Board, whether elected or co-opted, are independent Directors.

### **8.6 Formal Delegation of Power and Authority to Management**

An approval framework, which defines the authority of management and matters for Board approval, is to be introduced.

### **8.7 Regular Meetings**

The Board meets regularly, at minimum of once a month to review the operational performance of the estate, strategic issues, the business plan, acquisitions, disposals, longer-term contracts and

commitments, Estate policies, stakeholder reporting and any other matter relevant and necessary for the best interests of the Estate and its members.

## **8.8 Rotation of Directors**

8.8.1 Provision is made for the rotation of directors in the Memorandum of Incorporation whereby Directors are elected for a two (2) year period, following which they must stand down but may be re-elected by the members in the general meeting.

8.8.2 The maximum period to which a Director may be in office is a consecutive 6-year period.

8.8.3 Notwithstanding clause 8.8.2 above a Director may qualify for re-election after a cooling-off period of three (3) years.

## **8.9 Access to Organisational Information and Records**

Directors have access to all organisational information and records.

## **8.10 Access to Independent Professional Advice**

The Board is at liberty to retain external professional services when required.

## **8.11 Balance between Performance and Conformance with Governance Standards**

The Estate's performance is measured according to the "triple bottom line", viz. on financial, social, and environmental levels.

# **9. FUNCTIONS OF THE BOARD**

## **9.1 Role and function of the Board**

The Board's functions include:

- Establish the strategy and values to execute and maintain the objects of **CNLEHOA** in accordance with the Memorandum of Incorporation.
- Approve the necessary framework and policies required to ensure that **CNLEHOA** meets its compliance and legal obligations.
- Ensure organisational integrity.
- Ensure independence from any vested interest.
- Appointment of Estate Manager/s and Managing Agents.
- Risk management.

- Disclosure.

## **9.2 Key Functions of the Board**

Key functions fulfilled by the Board include:

- 9.2.1 Reviewing and guiding the **CNLEHOA** strategy to ensure a safe and secure Estate, major plans of action, annual budgets, and business plans; setting performance objectives; and overseeing expenditures.
- 9.2.2 Monitoring and managing potential conflicts of interest of management, Board members.
- 9.2.3 Ensuring the integrity of the Estate's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law.
- 9.2.4 Monitoring the effectiveness of the governance practices under which it operates and making changes as required.
- 9.2.5 Overseeing the process of disclosure and communications.

## **9.3 Role and Function of the Chairperson**

The Chairperson's primary function is to preside over Directors' and Members' meetings and ensure their smooth functioning in the interests of good governance.

There is a clearly accepted division of responsibilities at the Head of the Estate to ensure balance of power and authority, so that no individual has unfettered powers of decision-making.

The Chairperson of the Board accepts responsibility for the following essential tasks:

- Providing leadership to the Board.
- Ensuring proper information to the Board.
- Planning and effectively conducting meetings, including but not limited to Board meetings, Annual General Meetings, Special General Meetings.
- Getting all Directors involved in the Board's work.
- Ensuring that the Board focuses on its key tasks.
- Engaging the Board in assessing and improving its performance.
- Supporting the Estate manager/s.

## **9.4 Role and Relationship among Directors**

The Directors shall ensure that they engage with each other with utmost respect and professionalism.

They shall ensure that they:

- Ethical and transparent with each other.

- Engage with each other in all decisions thereby ensuring they can use and leverage each other's skills, knowledge, experience, diversity, and experience.
- Delegate within the Board to promote independent judgement and assist with the balance of power and effective discharge of duties.
- Refrain from any conduct, verbal or non-verbal, or physical which may include but not be limited to bullying, harassing, intimidating, abusive, hurtful, aggressive, hostile, and threatening.

## **9.5 Role and Function of the Estate Manager**

Given the strategic and operational role of the Estate Manager, this function is separate from that of the Chairperson.

The Estate Manager is responsible for the performance of the Estate, as dictated by the Board's overall strategy. He reports to the Board of Directors.

His responsibilities include:

- Provide support in formulating and successfully implementing Estate policy.
- Directing strategy towards the effective operation of the estate.
- Provide support in developing strategic operating plans that reflect the longer-term objectives and priorities established by the Board.
- Maintaining an ongoing dialogue with the Board of Directors and Members.
- Putting in place adequate operational planning and financial control systems.
- Closely monitoring the operating and financial results against plans and budgets.
- Taking remedial action where necessary and informing the Board of significant changes.
- Maintaining the operational performance of the Estate.
- Assuming full accountability to the Board for all Estate operations.
- Building and maintaining an effective management team.

The Board of Directors is responsible for appraising the performance of the Estate Manager. The Board considers the results of such appraisal in order to evaluate the performance of the Estate Manager and to determine his remuneration.

## **9.6 Relationship between the Board and Estate Manager**

The Board is responsible for setting the strategy and objectives for the Estate. The Estate Manager is required to implement these objectives and adopt the necessary operating plans in an affirmative and proactive manner ensuring adequate operating and financial results against the plans and budgets of the Estate.

## **9.7 Remuneration**

The Board is responsible for the remuneration of the Estate Management employees.

## **9.8 Board Meetings**

Board meetings are held monthly.

## **9.9 Sub-committees of the Board**

Sub-committees make general Board meetings more productive through reports as a basis for action. Sub-committees can sort through minutiae and come forward with a well-developed proposal for the whole Board to consider. Sub-committees are delegated to assist and enable the Board to properly discharge its duties and responsibilities and to effectively fulfil its decision-taking process.

Sub-committees must have formally determined Terms of Reference in respect of:

- Composition,
- Objectives, purpose, and activities,
- Delegated authorities,
- Reporting mechanism to the Board.

The following principles are applied:

- Feedback from committees is provided at monthly Board meetings.
- Board committees are free to take independent external professional advice if deemed necessary, subject to budget constraints.
- Membership of all Board committees is disclosed in the annual general meeting and the chairpersons of Board sub-committees must attend the Estate's annual general meeting to answer questions from Members.

## **9.10 Director Selection and Evaluation**

The Board annually evaluates, with emphasis on performance:

- The Board as a whole.
- Chairperson of the Board.
- Individual Directors.
- Sub-committees.

## **9.11 The Business Judgement Rule**

This measure has been introduced to protect Directors and Estate Management against accountability where a business decision was taken based upon all available information, in good faith and without any conflicting interests, but which later proved to be a major mistake. This rule encourages innovation

and risk taking while limiting judicial intrusiveness in sector decision making.

## **10. SAFETY, SECURITY, RISK MANAGEMENT AND CONTROL**

The Board is responsible for:

- The safety, security, and risk management.
- Introducing and maintaining an effective system of safety, security, and access control.
- Introducing and maintaining an effective system of risk management and internal control.
- Determining the Estate's safety and security , strategy, and policy.
- Determining the Estate's risk management, strategy, and policy.
- Enforcement of the Estate's Rules as defined in the Memorandum of Incorporation.

### **10.1 Estate Manager's Responsibility**

The Estate Manager is accountable to the Board for:

- Designing, implementing, and monitoring the process of safety, security and access controlmanagement.
- Integrating it into the day-to-day activities of the Estate. Enforcement of the Estate's Rules as defined in the Memorandum of Incorporation.

### **10.2 Application**

An annual safety, security and risk assessment must be undertaken to address the Estate's exposure to the following:

- Physical and operational safety and security risks
- Human resource risks
- Technology risks
- Business community and disaster risk recovery
- Debit and credit risks
- Compliance risks

## **11. FINANCIAL SUB-COMMITTEE**

The Financial Sub-committee has been established and is maintained by the Board as one of its standing committees as recommended by the King Code IV.

## **12. RELATIONS WITH MEMBERS**

### **12.1 Relations with Members**

The following *modus operandi* is applied:

- Members' attendance at annual general meetings is encouraged.
- A reasonable time for discussion at general meetings is allowed.
- The ballot process is used where contentious issues are under consideration.
- Members are informed of decisions taken at general meetings.

## **12.2 General Disclosure**

Openness and substance are considered more important and of higher relevance than form. Both positive and negative aspects of performance are reported.

Characteristics pertaining to disclosure, which have been adopted

- Relevance
- Reliability
- Clarity
- Comparability
- Timeliness
- Verifiability

## **12.3 General Meetings**

Annual general meetings and other general/special meetings of the Estate are dealt with in accordance with the Estate's Memorandum of Incorporation.

## **12.4 Communication**

Communication with Members on the state of the Estate's assets, business conduct and business practices are done at least once per annum by means of the Board's annual report. To ensure timeliness of relevant information a monthly newsletter is sent to all members.

## **13. VIOLATIONS AND WAIVERS**

The Estate, through its Financial Sub-committee of the Board of Directors, will take appropriate action against any Director whose actions are found to violate the CNLEHOA Memorandum of Incorporation, this Code of Conduct, or any other rules and or policies of the Estate.

The Financial Sub-committee shall be empowered to investigate the violation and shall present its report to the Board of Directors together with its conclusion on the action to be taken. The decision of the Financial Sub-committee shall be final and binding to all concerned.



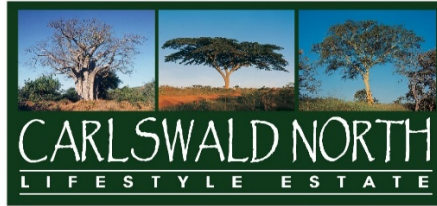
Any violation of law, the Memorandum of Incorporation, this Code or any other Estate rules or policies , shall be promptly reported to the Estate Manager or Chairperson.

The Estate reserves the right to amend this Code on review at any time. Any amendments or waiver of any provisions shall be approved by the Board of Directors and shall be adequately disclosed to Members.

#### **14. CLARIFICATIONS AND INTERPRETATION**

Any questions relating to the meaning or application of the Code, any Estate policy, or legal and regulatory requirements applicable to the Directors, or any clarification relating thereto shall be addressed to the Estate Manager or Chairperson. The questions and queries and their sources shall be maintained in strict confidence.

**END OF CODE**



## Annexure B

### FORM OF PROXY

**CARLSWALD NORTH LIFESTYLE ESTATE HOMEOWNERS' ASSOCIATION  
(2004/018374/08)**

I/We, \_\_\_\_\_ of Stand No. \_\_\_\_\_ being the Registered Owner and a member of the Carlswald North Lifestyle Estate Home Owners Association and entitled to vote, hereby appoint \_\_\_\_\_ or failing him/her, the Chair of the meeting, as my proxy to vote for me and on my behalf at the General/Special Meeting of the above Association to be held on \_\_\_\_\_, or any adjournment thereof.

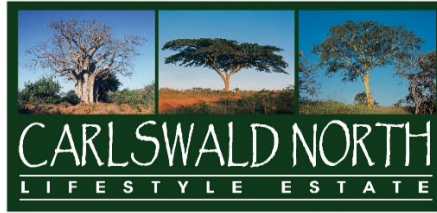
Signed by me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Signature \_\_\_\_\_

**Note:**

No person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his membership and who is not under suspension, shall be entitled to be present or to vote on any question, **either personally or by proxy\***, at any general or special meeting.

**(Note: A proxy need not be a member of the Homeowners Association and this duly completed and signed form must be delivered to the Estate Office or submitted via email to [estatemanager@carlswaldnorth.com](mailto:estatemanager@carlswaldnorth.com) 48 hours prior to the meeting).**



## Annexure C

### NOMINATION FORM

**CARLSWALD NORTH LIFESTYLE ESTATE HOMEOWNERS'  
ASSOCIATION  
(2004/018374/08)**

I, the undersigned \_\_\_\_\_, duly authorised thereto by virtue of being an owner of the above Homeowners Association, hereby nominate the following person/s as director/s of the above Association and their signatures show their consent.

No.	Name of Nominee	Acceptance and Signature of Nominee
1		
2		
3		
4		
5		
6		
7		
8		
9		

Signed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Stand No: \_\_\_\_\_

Signature: \_\_\_\_\_

