



Association Agreement document can be found on page 2.

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ASSOCIATION AGREEMENT

between

.....

and

.....

and

.....

1 DEFINITIONS

In this agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:

- 1.1 "the Act" shall mean the Close Corporations Act, 1984 (as amended);
- 1.2 "the Corporation" shall mean CC, Registration Number CK
- 1.3 "the members" shall mean , and
and "a member" shall have a corresponding meaning;
- 1.4 "a resolution of members" shall mean a resolution duly passed at a meeting of members of the Corporation, or a written resolution signed by all the members;

INTERPRETATION

- 1.5 expressions defined in the Act shall bear the meanings assigned to them therein;
- 1.6 references to sections shall be construed as referring to sections of the Act;
- 1.7 words importing natural persons shall include a reference to bodies corporate and other legal personae and *vice versa*;
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- 1.8 words importing the masculine shall include a reference to the feminine and other genders;
- 1.9 words importing the singular shall include a reference to the plural and *vice versa*;
- 1.10 annexes to this agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;
- 1.11 a reference to a party in a document includes that party's successors and permitted assigns;
- 1.12 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.13 where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;
- 1.14 when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;

1.15 a reference to a document includes an amendment or supplement to, or replacement or novation of that document;

1.16 the captions appearing in this agreement are for reference purposes only and shall not affect the interpretation hereof;

1.17 if any provision is a definition (or under this heading "*Interpretation*" and/or any other heading in this agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the agreement;

1.18 where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.

2 APPLICATION OF THE ACT

The provisions of the Act shall apply to the relationship between the parties, save to the extent that such provisions are excluded by or inconsistent with the provisions of this agreement, in which event the provisions of this agreement shall prevail.

3 MANAGEMENT

3.1 The management of the business of the Corporation shall be vested in the members collectively and neither of them shall, as between the Corporation and its members, have the power to represent the Corporation without the authority of a resolution of the members. Any power conferred by any such resolution shall be restricted to the exercise of the express authority thereby conferred.

3.2 The employment of each member shall be terminable by him or by the Corporation by the giving to the other of them of not less than three (3) months notice in writing of the termination of such employment, provided that the Corporation shall only have the right summarily to terminate the employment of any member upon grounds which justify the termination of the employment of an executive employee at law.

3.3 Each of the members shall devote the whole of his time and attention during normal working hours and such reasonable additional time as may be required by the exigencies of the Corporation's business, to the business and affairs of the Corporation, and shall use his best endeavours, in conformity with the capacity in which he is employed by the Corporation, to promote and extend the business and interests of the Corporation.

3.4 In consideration for the services which the Members will render to the Corporation, each Member will receive such remuneration as the Corporation may determine from time to time.

3.5 The members shall elect one or both of them as managing member and one of their number as secretary.

3.6 The name/s of the member/s stating their designation as such, shall be mentioned in all documents upon which the name of the Corporation is required to be mentioned in terms of Section 23(1)(b).

3.7 Without derogating from the restrictions set forth in this agreement, and save with the authority of a resolution of the members, the managing member/s shall not:

3.7.1 incur any single item of capital expenditure in excess of R

3.7.2 hire any immovable property;

3.7.3 hire or purchase on credit any movable property whatsoever by way of a transaction involving a total financial commitment on the part of the Corporation in excess of R

3.7.4 enter into any other transaction whatsoever otherwise than in the ordinary and normal course of the business of the Corporation;

3.7.5 enter into any guarantee or like commitment on behalf of the Corporation;

3.7.6 commence any litigation;

3.7.7 enter into any long term or abnormal contract with an actual or prospective client, debtor or creditor of the Corporation; or

3.7.8 enter into or effect any of the transactions or matters referred to in sub-sections 46(f)(1) - (4) inclusive of the Act.

4 LOANS

4.1 The members shall lend and advance to the Corporation such amounts of money as it may reasonably require from time to time by way of working capital.

4.2 All advances made by the members shall be credited to their respective loan accounts in the books of the Corporation.

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4.3 No member's loan account (or portion thereof) shall be repaid unless there shall exist a sufficiency of working capital in order that repayment of portion or all of any loan account will not be to the detriment of the Corporation.

4.4 Loan accounts will be repaid in such a manner so that the loan account of each member will, as far as possible, be *pro rata* to that member's interest in the Corporation.

4.5 Loan accounts will not bear any interest unless the members shall unanimously agree and then only interest at such rate as may be determined by the members from time to time.

5 MEETINGS

5.1 Any member shall have the right, by written notice to the member elected as secretary to require that a meeting of members be convened for any purpose stated in that notice and the secretary shall give notice convening such meeting not later than five (5) days after receipt of such requisition for a date not more than thirty (30) days after receipt of such notice.

5.2 Unless the members unanimously agree in writing to the holding of a meeting on shorter notice, any meeting of members of the Corporation, whether convened by a member in terms of Section 48(1) or upon the requisition of a member in terms of clause 5.1 above, shall be convened by not less than five (5) business days written notice to all members.

5.3 Unless both members otherwise agree, every meeting of members of the Corporation shall be held at the principal place of business of the Corporation.

5.4 A quorum of members shall be both members.

5.5 Either member shall have the right to appoint a proxy, who need not be a member, to attend, speak and vote on behalf of the member concerned at any meeting of members. The appointment of a proxy shall not preclude the attendance at such meeting of the member appointing such proxy, and if he attends, he shall have the right to vote to the exclusion of his proxy. An instrument appointing a proxy shall not be valid or effective unless it is received at the registered office of the Corporation not less than twenty four (24) hours before the time appointed for, or lodged at the venue of the meeting at the commencement of the meeting to which it relates. An instrument appointing a proxy shall be signed by the appointer and may be in any form, provided that the appointment is for attendance at a specific meeting and does not curtail the power of the proxy to represent his principal.

6 GUARANTEES

6.1 Neither member shall guarantee any of the Corporation's obligations unless both members have agreed to guarantee the obligations in question.

6.2 Unless otherwise unanimously agreed between the members, all guarantees which may be given by them for the obligations of the Corporation, shall be given by them jointly on the basis that their liability thereunder shall be *pro rata* to their interests in the Corporation from time to time.

6.3 In the event of both members agreeing to guarantee any of the Corporation's obligations jointly and severally and in doing so, either member shall have enforced against him a guarantee in respect of any of the Corporation's obligations whereunder only he is responsible, each member shall have recourse against the other of them in all respects so that all losses under each such guarantee shall be borne by the members *pro rata* to their interests in the Corporation from time to time.

6.4 In the context of this agreement, the term "guarantee" includes without limiting the generality thereof, reference to the obligations of a surety and co-principal debtor and the term "obligation" includes without limiting the generality thereof, reference to existing as well as prospective obligations.

7 INSURANCE

7.1 Each member shall take out with a reputable life insurance company, with himself as beneficiary, a life insurance policy on the life of each of the other of them in an amount equal to their members interest as determined in terms of 8 below.

7.2 Each member shall pay the premiums due in respect of such policy. If a member shall fail to pay any premium which is due and payable, then the remaining member may pay such premium on his behalf and recover from such defaulting member the amount so paid together with interest thereon at the prime rate charged by the Corporation's bankers to its ordinary clients in respect of overdraft facilities and reckoned from the date upon which the premium was actually paid on the defaulting member's behalf until the date of repayment to the remaining members, both dates inclusive.

7.3 Each member shall be bound to annually increase the amount of the policy taken out on the other member's life so that his policy shall at all times be in an amount not less than the value of that member's interest as determined in terms of 8 below.

8 VALUE OF MEMBERS INTEREST

8.1 The members shall meet together annually following the completion of the annual financial statements of the Corporation for each successive financial year in order to determine by agreement between them the value, for the purposes of this agreement, of the aggregate of their members interests in the Corporation.

8.2 Should the members reach agreement as aforesaid on any such value:

8.2.1 they shall reduce the agreement to writing and sign it; and

8.2.2 the value so agreed shall be the value of the interests to which it applies until completion of the following year's annual financial statements of the Corporation or for a period of 18 (eighteen) months, which ever is the earlier, or unless varied by both members in writing.

8.3 If at any relevant time the value of the members interests in the Corporation have not been determined by agreement as aforesaid, or if the time for which the last such agreement will have applied has elapsed, such value shall be determined for the purposes of this agreement by the Accounting Officer of the Corporation, who:

8.3.1 shall act as an expert and not as an arbitrator;

8.3.2 shall be entitled to demand and receive from the members who shall be obliged to furnish, all such information, assistance, books and records of the Corporation as the auditors may require;

8.3.3 may in order to determine the value of any property or other particular asset of the Corporation, engage expert assistance at the cost of the Corporation.

9 SALE OF MEMBERS INTEREST ON TERMINATION OF EMPLOYMENT OR UPON DEATH OR INCAPACITY

9.1 Upon the termination of the employment of a member ("the retiring party"), the other member whose employment shall not have terminated ("the remaining party") shall be obliged to purchase from the retiring party who shall be obliged to sell the retiring party's interests in the Corporation.

9.2 The following provisions shall be the terms of the sale and purchase of such member's interest:

9.2.1 if the termination of a member's employment shall arise from retirement and/or mutual agreement, then the price of the retiring party's interest shall be an amount equivalent to the value thereof to be determined in accordance with clause 8 above. If the termination of employment shall arise out of the retiring party having committed any act which will have entitled the Corporation to summarily terminate the retiring party's employment with the company or if the retiring party shall have terminated his employment in any other manner other than by way of his having reached a mandatory retirement age or by mutual agreement, then the price for the retiring party's interests in the Corporation shall be an amount to be determined in accordance with the formula:

$X = A \times B$

where:

X = the price of the retiring party's interests in the Corporation

A = the net tangible asset value of the Corporation as determined by reference to audited financial statements of the Corporation which are to be drawn as at the date of termination of the retiring party's employment with the Corporation

B = the retiring party's members interest (to be expressed as a percentage)

9.2.2 ownership of and the risk in and to the interest shall pass to the remaining party at the time of cessation of employment notwithstanding the actual date of registration of transfer;

9.2.3 all necessary cessions and registrations shall take place and the retiring party shall be obliged to sign all such documents and to do all such things as may be necessary to give effect thereto;

9.2.4 the remaining party shall be deemed to have purchased all and any loan claims of the retiring party against the Corporation at the face value thereof and the retiring party shall cede such claims accordingly.

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9.3 The purchase price of the retiring party's interest shall be paid in cash against transfer of such interest, or in such other manner as may be agreed upon between the parties at the time.

9.4 Upon the acquisition by the remaining party of the retiring party's interest in the Corporation in terms hereof, the remaining party shall forthwith use his best endeavours, short of actual payment, but including the tender of his own guarantee or like commitment to procure the release of the retiring party from all and any guarantee and like obligations by which he may be bound in respect of the obligations of the Corporation and pending or failing such release, indemnifies, as he hereby does, the retiring party, against all liability arising or having arisen from the relevant guarantee or other obligation aforesaid.

9.5 With effect from the date of the death or permanent incapacity of either member ("the deceased party"), the other of them ("the remaining party") shall be deemed to have purchased and the deceased party shall be deemed to have sold the deceased's party's interest in the Corporation for the value thereof determined in accordance with clause 8 together with the deceased party's loan claims against the Corporation on the same terms, *mutatis mutandis*, as set forth in this clause

For the purposes hereof "permanent incapacity" shall mean an inability to carry out the terms of his employment for a continuous period of more than six (6) months due to incapacity, injury or illness.

10 DISPOSAL OF INTEREST OTHERWISE THAN ON CESSATION OF EMPLOYMENT

10.1 Subject to the provisions of Section 34, no member shall pledge or burden his interests or any part thereof or sell or otherwise dispose of his interest or any part thereof unless the interest sought to be disposed of has been offered in writing ("the offer") for sale to the remaining member at a price equivalent to the

value thereof determined in accordance with 8. The offer shall be contained in a written notice delivered to the remaining member and in terms of which he shall be granted an option for thirty (30) days to purchase the offeror's interest in the Corporation, upon such further terms and subject to such further conditions as set out in 10.2 to 10.4 inclusive which shall, *mutatis mutandis*, apply.

10.2 Subject to the provisions of Section 34, an offeror having made an offer in terms of

10.1, shall after the refusal or expiry thereof, be entitled to sell the unexpired portion of the offer to any third person approved of by the remaining party (which approval shall not be unreasonably withheld) at a price and upon such terms and subject to such conditions no more favourable than that contained in the offer notice.

If the remaining party shall withhold his approval of any third party and the withholding thereof shall be deemed not to be unreasonable, then the offeror shall be entitled within thirty (30) days from the date upon which the remaining party shall have notified the offeror of the withholding of his approval, to offer the aggregate of the members interest in the Corporation for sale to any third party provided that such sale is on terms and conditions no more favourable than that contained in the offer notice or the offeror shall be entitled to institute proceedings for the liquidation of the Corporation.

10.3 If either member shall at any time beneficially own more than 50% of the aggregate of the members' interests in the Corporation ("the majority member"), then the majority member shall not enter into any transaction for the sale or disposal of an interest or interests in aggregate comprising a majority of the interests of all the members, unless the majority member will have given written notice to the remaining member ("the minority member") of his intention to do so, stating the full terms and conditions upon which he intends to do so. The minority member shall have the right within a period of seven (7) days after receipt of any such notice to require the majority member to refrain from entering into the transaction referred to in that notice (whereupon the majority member shall be obliged so to refrain) unless, within thirty (30) days after such requisition, the majority member procures the purchase by the same purchaser of the same proportion of the interest of the minority member as those of the majority member sought to be disposed of in that transaction, for the same unit price and upon the same terms and subject to the same conditions as are set forth in the majority member's notice to the minority member.

10.4 If:

10.4.1 either member receives an offer ("the outside offer") for the purchase of the interests of both members; and

10.4.2 a member whose interests comprise in aggregate a majority of the aggregate interests of both members ("the majority member") has signified in writing to the minority member his intention to accept that offer, which notice shall simultaneously constitute an offer by the majority member to sell his interests to the minority member, *mutatis mutandis* at the unit price and upon the terms of the outside offer which shall be irrevocable and capable of acceptance by the

minority member for a period of 14 (fourteen) days after the giving of such notice; and

10.4.3 the offer referred to in 10.4.2 is refused or expires unaccepted; and
10.4.4 the outside offer does not differentiate between the members as to the unit price payable to them or in any other respect, the provisions of clause 10.1 shall not apply and the majority member shall have the right to require the minority member to join with him in accepting the outside offer and in giving effect to the sale resulting therefrom.

11 DISTRIBUTION

11.1 The Corporation will make an annual distribution to its members of an amount equal to not less than % of the gross profit earned by the Corporation during the immediately preceding year.

11.2 The gross profit will be determined by reference to the annual financial statements of the Corporation for the financial year in question.

11.3 The distribution will be made within fourteen (14) days of delivery of the annual financial statements (signed by either member) to the Corporation.

11.4 Notwithstanding the foregoing, the Corporation shall be entitled upon the conclusion of any project, to make a special distribution to the members in such amount as sound business practise may dictate.

12 ARBITRATION

12.1 For the purpose of this clause, "*dispute*" includes, without prejudice to the generality of that term:

12.1.1 the failure to pass any resolution at a meeting of members as a result of:

12.1.1.1 a resolution requiring unanimous approval not being so approved;

12.1.1.2 a deadlock arising with regard to the passing of a resolution;

12.1.1.3 the absence of a quorum;

12.1.2 any action by any member contrary to the provisions of this association agreement;

12.1.3 any dispute between any member and the Corporation in connection with:

12.1.3.1 the interest of a member in the Corporation;

12.1.3.2 the employment or termination of the employment of the member by the Corporation;

12.1.3.3 the powers, duties or office of a managing member;

12.1.3.4 the affairs of the Corporation.

12.2 Should a dispute arise, any member or the Corporation shall be entitled to require, by written notice to the Corporation, that the dispute be submitted to arbitration in terms of this clause and copies of such written notice shall be sent immediately by the Corporation to all members.

12.3 Subject to the provisions of this clause, an arbitration shall be held under the provisions of the arbitration laws for the time being in force in the Republic of South Africa (as it is constituted from time to time) provided that:

12.3.1 the arbitrator shall be, if the question in issue is:

12.3.1.1 primarily an accounting matter, an independent person qualified for appointment as an accounting officer of a Corporation, under the Act, who has held that qualification for not less than ten (10) years;

12.3.1.2 primarily a legal matter, a practising Senior Counsel or commercial attorney of not less than ten (10) years standing;

12.3.1.3 any other matter, an independent person, agreed upon by the members who are parties to the dispute and failing such agreement, within three (3) days after the date on which the arbitration is demanded, shall be appointed by the President for the time being of the Law Society of who may be requested by any party to the dispute to make that nomination at any time after the expiry of that three (3) day period;

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12.3.2 the arbitration shall be held in accordance with the formalities and/or procedures to be settled by the arbitrator, and may be held in an informal and summary manner on the basis that it shall not be necessary to observe or carry out the usual formalities of procedures, pleadings and/or discovery or the strict rules of evidence;

12.3.3 the arbitrator shall be entitled:

12.3.3.1 to investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with the dispute and for that purpose shall have the widest powers of investigating all the books and records of the Corporation and of any member who is a party to the dispute and the right to take copies or make extracts therefrom and the right to have them produced or delivered at any reasonable place required by him for the aforesaid purposes;

12.3.3.2 to interview and question under oath any of the members;

12.3.3.3 to decide the dispute according to what he considers just and equitable in the circumstances;

12.3.3.4 to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his discretion may deem fit and appropriate;

12.3.4 the arbitration shall be held as quickly as possible after it is demanded with a view to it being completed within thirty (30) days after it has been so demanded;

12.3.5 immediately after the arbitrator has been agreed upon or nominated in terms of 12.3, any of the parties to the dispute shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.

12.4 Any award that may be made by the arbitrator:

12.4.1 shall be final and binding;

12.4.2 will be carried into effect; and

12.4.3 may be made an Order of any Court to whose jurisdiction the parties to the dispute are subject.

13 ADDRESSES AND NOTICES

13.1 For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose *domicilium citandi et executandi* ("*domicilium*") as follows:

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13.1.1 at:

13.1.2 at:

13.1.3 at:

13.1.3 the Corporation at:

13.2 A party may at any time change its *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.

13.3 Any notice given in connection with this agreement may be delivered by hand; or be sent by prepaid registered post; to the *domicilium* chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.

13.4 A notice given as set out above shall be presumed to have been duly delivered:

13.4.1 on the date of delivery if delivered by hand;

13.4.2 on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa; and

13.4.3 on the fourteenth day from the date of posting including the date of posting if posted from outside the Republic of South Africa.

14 ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this agreement shall be binding on the parties.

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15 VARIATION AND CANCELLATION

No agreement varying, adding to, deleting from or cancelling this agreement, and no waiver whether specifically, implicitly or by conduct of any right to enforce any term of this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.

16 INDULGENCES

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded from as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

THUS DONE AND SIGNED BY THE RESPECTIVE PARTIES AS FOLLOWS:

Name
Date:
Place:

Name
Date:
Place:

Name
Date:
Place: