

Companies and Intellectual Property Commission Republic of South Africa

Memorandum of Incorporation of

*Heron Banks Golf and River Estate
Homeowners Association
Registration Number
2012/017069/08*

which is referred to in the rest of this Memorandum of Incorporation as “the Company” and which is incorporated in terms of the provisions of the Companies Act, 2008, hereinafter referred to as “the Act”.

The Company is a Non Profit company with members, with the following objects:

The main business which the Company is to carry on the promotion, advancement and protection of the communal interests of the owners and occupiers of the properties comprised in the property development known as Heron Banks, to be laid out on the township of Sasolburg Extension 66 and including Portion 1 of the farm De Rust No.370, District of Parys, Province of the Free State, in extent 19,0750 hectares; Portion 2 of the farm De Rust No.370, District of Parys, Province of the Free State, in extent 41,8577 hectares; Remaining Extent of the farm Grootfontein No.328, District of Parys, Province of the Free State, in extent 54,5545 hectares; Erf 1 Vaal Park, District of Parys, Province of the Free State, in extent 1,0104 hectares (exclusive of the street portion up to Outeniqua Street); Erf 1295 Vaal Park, District of Parys, Province of Free State; and Erf 1294 Vaal Park Township, Registration Division Parys RD, Province Free State, and in particular, in so promoting the communal interests, to maintain and regulate the use of the common roadway, to install, operate and maintain security procedures and systems and to maintain and regulate the use of the waterways, the golf course and other facilities at the disposal of owners or occupiers of properties in the development.

The main object of the Company is to carry on is the promotion, advancement and protection of the communal interests of the owners and occupiers of the residential properties comprised in the property development known as Heron Banks, to be laid out on the township of Sasolburg Extension 66 and including Portion 1 of the farm De Rust No.370, District of Parys, Province of the Free State, in extent 19,0750 hectares; Portion 2 of the

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farm De Rust No.370, District of Parys, Province of the Free State, in extent 41,8577 hectares; Remaining Extent of the farm Grootfontein No.328, District of Parys, Province of the Free State, in extent 54,5545 hectares; Erf 1 Vaal Park, District of Parys, Province of the Free State, in extent 1,0104 hectares (exclusive of the street portion up to Outeniqua Street); Erf 1295 Vaal Park, District of Parys, Province of Free State; and Erf 1294 Vaal Park Township, Registration Division Parys RD, Province Free State, and in particular, in so promoting the communal interests, to maintain and regulate the use of common roadways, to install, operate and maintain security procedures and systems and to maintain and regulate the use of waterways, thegolf course and other facilities at the disposal of owners or occupiers of properties in the development.

Adoption of Memorandum of Incorporation

The incorporators of the Company have elected not to make use of a standard form Memorandum of Incorporation in terms of regulation 15(1) of the Companies Regulations, 2011, as contemplated in section 13(1)(a)(i) of the Act.

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with section 13(1) of the Act, as evidenced by the following signatures made by each of them, or on their behalf —

Name of Incorporator	Identity Number	Signature	Date
Lance Sheppard	7102045254080		22 October 2022
Gert Jacobs	7208055088084		22 October 2022
Phillip Fouche	8706245201086		22 October 2022
Gary Lance	5209225166083		22 October 2022
Jan J Van Vuuren	9211125097083		22 October 2022
Armand Lombard	9403315093085		22 October 2022
Martin Spangenberg	8709025159086		22 October 2022

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1. INTERPRETATION

- 1.1. "**Act**" means the Companies Act, No 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;
- 1.2. "**Board**" means the board of Directors from time to time of the Company or if there is only one Director, then that Director;
- 1.3. "**Body Corporate**" means the body corporate which manages sectional title units;
- 1.4. "**Boat House Body Corporate**" mean the body corporate which manages the boat houses;
- 1.5. "**Club**" means he Heron Banks Golf Course Proprietary Limited, Registration Number 2017/310381/07 under contract from Gary Lance Family Trust also referred to as The Heron Banks Golf Course;
- 1.6. "**Commission**" means the Companies and Intellectual Property Commission established by section 185;
- 1.7. "**Company**" means the company named on the first page of this Memorandum of Incorporation, duly incorporated under the registration number endorsed thereon;
- 1.8. "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.9. "**Developer**" means Heron Banks Development Trust, Registration Number IT 1025/2007;
- 1.10. "**Development Period**" means the period from the establishment of the Company until all land and portions thereof including all sectional title units in the development have been fully developed and transferred by the Developer to Members of the Company;
- 1.11. "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

- 1.12. "**Member**" means any natural or juristic person, including any profit company, admitted as a member of the Company in terms of the provisions of this Memorandum of Incorporation;
- 1.13. "**Memorandum of Incorporation**" means this memorandum of incorporation of the Company, as amended from time to time;
- 1.14. "**Non-voting Members**" means Members who are subject to this Memorandum of Incorporation, however, who do not individually vote at Member's meetings, which include owners of sectional title units and owners of boat houses;
- 1.15. "**Regulations**" means the regulations published in terms of the Act from time to time;
- 1.16. "**Republic**" means the Republic of South Africa; and
- 1.17. "**Rules**" means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act;
- 1.18. "**Voting Members**" means Members who are subject to this Memorandum of Incorporation and who vote at Member's meetings, which include full title owners, the Boat House Body Corporate, the sectional title Body Corporate and the Club representative;
- 1.19. In this Memorandum of Incorporation, unless the context clearly indicates otherwise –
 - 1.19.1. words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
 - 1.19.2. a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which this this Memorandum of Incorporation is lodged with the Commission for filing;
 - 1.19.3. in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
 - 1.19.3.1. an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and

- 1.19.3.2. an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.19.4. clause headings are for convenience only and are not to be used in its interpretation;
- 1.19.5. an expression which denotes —
 - 1.19.5.1. any gender includes the other genders;
 - 1.19.5.2. a natural person includes a juristic person and *vice versa*; and
 - 1.19.5.3. the singular includes the plural and *vice versa*;
- 1.19.6. if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.19.7. any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.19.8. a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses; and
- 1.19.9. any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.20. Any reference in this Memorandum of Incorporation to –

- 1.20.1. "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.20.2. "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.20.3. "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.21. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.22. Unless otherwise provided in this Memorandum of Incorporation or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.
- 1.23. Where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.24. Any reference herein to "**this Memorandum of Incorporation**" or any to other agreement or document shall be construed as a reference to this Memorandum of Incorporation or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

2. INCORPORATION

- 2.1. The Company is incorporated as a non-profit company with Members.
- 2.2. The Company shall at all times comply with the provisions of the Act.

3. OBJECTS OF THE COMPANY

- 3.1. The objects of the Company are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company.

4. POWERS OF THE COMPANY

- 4.1. The specific powers of the Company are as set out in Schedule 1 of the Act, and are as follows –
 - 4.1.1. The income and property of the Company howsoever derived shall be applied solely towards the promotion of its main object, and no portion of the income or property of the Company shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the Members of the Company or to its holding company or subsidiary; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any member thereof in return for any services actually rendered to the Company; and
 - 4.1.2. the Company must not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of the manner in which the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director of the Company, except as reasonable –
 - 4.1.2.1. remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - 4.1.2.2. as a payment of an amount due and payable by the Company in terms of a *bona fide*;

- 4.1.2.3. agreement between the Company and that person or another;
- 4.1.2.4. as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 4.1.2.5. in respect of any legal obligation binding on the Company.

5. RESTRICTIVE CONDITIONS

This Memorandum of Incorporation does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) or (c).

6. DISSOLUTION OF THE COMPANY

- 6.1. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company —
 - 6.1.1. no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
 - 6.1.2. the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts —
 - 6.1.2.1. having objects similar to the Company's main object; and
 - 6.1.2.2. as determined—
 - 6.1.2.2.1. in terms of this Memorandum of Incorporation; or
 - 6.1.2.2.2. by the Voting Members, failing whom the Directors, at or immediately before the time of its dissolution; or
 - 6.1.2.2.3. by the court, if no such determination is made in this Memorandum of Incorporation or by the Members or Directors.
- 6.2. Furthermore, upon its winding-up, deregistration or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities, shall be given or

transferred to some other association or institution or associations or institutions having objects similar to its main object, to be determined by the Members of the company at or before the time of its dissolution or, failing such determination, by the court provided that in any event such other association or institutions shall be charitable, educational or ecclesiastical organizations or bodies of a public character within the Republic of South Africa which are themselves exempt from tax.

7. LIMITATION OF LIABILITY

- 7.1. Each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year thereafter, for payment of the debts and liabilities of the Company contracted before he ceases to be a member, and of the costs, charges and expenses of the winding up, and for adjustment of the rights of the contributories among themselves of an amount of R1,00 (One Rand).

8. AMENDMENT OF MEMORANDUM OF INCORPORATION

- 8.1. This Memorandum of Incorporation may, subject to clause 8.4, only be altered or amended in the manner set out in sections 16, 17 or 152(6)(b) of the Act.
- 8.2. As contemplated in section 17, the Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
- 8.2.1. publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail; and
- 8.2.2. filing a notice of the alteration.
- 8.3. An amendment of this Memorandum of Incorporation will take effect from the later of –
- 8.3.1. the date on, and time at, which the Commission accepts the filing of the notice of amendment contemplated in section 16(7); or
- 8.3.2. the date, if any, set out in the said notice of amendment.

- 8.4. The Company may by special resolution do anything which in terms of the Act may be done only if authorised by its Memorandum of Incorporation and, in particular and without limiting the generality of the foregoing, alter, add to, amend, substitute or repeal its Memorandum of Incorporation in any way permitted by law subject only to any restriction in that regard contained in the Memorandum of Incorporation and provided further that during the development period, no amendment as contemplated herein shall be made unless the developer has consented thereto in writing.

9. GOVERNANCE RULES

- 9.1. The Board is authorised to make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum of Incorporation by —
- 9.1.1. ratifying the Rules by way of an ordinary resolution of the members of the Company at the first general meeting of members and which Rules shall become binding on such a date as to be determined by the Directors at the first general meeting.
- 9.1.2. Subsequent to registration of the Company, and in accordance with the provisions of section 15 of the Act, the Directors, in their discretion, may from time to time amend, alter or repeal rules relating to the governance of the Company by –
- 9.1.2.1. publishing a copy of any Rules or amendments to such Conduct Rules made in terms of section 15(3) to 15(5) by delivering a copy of such Rules or amendments to each Member by ordinary mail; and
- 9.1.2.2. filing a copy of those Rules.
- 9.2. Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4).
- 9.3. The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
- 9.3.1. publishing a notice of any alteration made by delivering a copy of such amendments to each Voting and Non-voting Member by ordinary mail; and

- 9.3.2. filing a notice of the alteration.
- 9.4. Subject to any restriction imposed or direction given at a general meeting of the Company, the Directors may from time to time make Rules which may include Rules in regard to:
 - 9.4.1. the preservation of the environment including the right to control vegetation and the right to prohibit and/or control the erection of walls, fences and hedges, whether upon or within the boundaries of any commercial or residential land or portion in the scheme;
 - 9.4.2. the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
 - 9.4.3. the use, maintenance, repair and replacement of any roadway which vests in the Company and of any services, connections and equipment under or over such roadway; including but not limited to water, storm water and sanitation;
 - 9.4.4. conditions with regard to the use and/or supply of electricity, water, sewerage reticulation on or about the scheme;
 - 9.4.5. the access to and egress from any commercial or residential land or portion in the scheme;
 - 9.4.6. the use of roads, pathways and other common facilities including appropriate traffic calming measures;
 - 9.4.7. the right to determine and control all security measures in the scheme;
 - 9.4.8. the placing or fixing of ornamentation or embellishments upon the outside of the properties in the scheme including the power to remove any such objects;
 - 9.4.9. the conduct of any persons within the scheme for the prevention of nuisance of any nature to any member;
 - 9.4.10. the control and collection of refuse;
 - 9.4.11. restrictions (“architectural guidelines”) with regard to the construction of residential or commercial land or other buildings on residential or commercial land (including

exterior decoration) and the architectural design, construction, quality and building materials of any dwelling or building;

- 9.4.12. the conduct of building operations and related rules regulating the conduct of owners and builders during the Development Period and thereafter when effecting alterations to existing dwelling and outbuildings, which rules shall collectively be referred to as the Builders' Rules;
- 9.4.13. the use of facilities in the scheme and in particular the use of waterways, the golf course and the clubhouse complex, subject to the provisions relating to the Club hereunder;
- 9.4.14. the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of Members and /or residents in the scheme; and
- 9.4.15. generally in regard to any other matter which the Directors from time to time considers appropriate.

9.5. The enforcement of the rules made from time to time is dealt with as follows:

- 9.5.1. For the enforcement of any of the rules made by the Directors in terms hereof and for the payment of any debt due to the Company, the Directors may:
 - 9.5.1.1. give notice to the Member or resident concerned requiring him to remedy a breach thereof or make payment within such reasonable period as the Directors may determine;
 - 9.5.1.2. take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the Member or resident may be guilty or recover the debt, and debit the cost of so doing to the Member or resident concerned, which amount shall be deemed to be debt owing by the Member or resident concerned to the Company;
 - 9.5.1.3. impose a system of fines or other penalties; provided that the amounts of such fines shall be reviewed and confirmed annually at a meeting of the Directors;
 - 9.5.1.4. take such other action, including proceedings in Court, as they may deem fit.

- 9.6. In the event of the Directors instituting any legal proceedings against any Member or resident within the scheme for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover, on demand, all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client.
- 9.7. In the event of any breach of the rules by the Members of any Member's or resident'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 such steps against the person actually committing the breach as they in their discretion may deem fit.
- 9.8. In the event of any Member or resident disputing the fact that he has committed a breach of any of the rules, a committee of three Directors appointed by the Chairperson for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairperson may direct. Disputes shall at all times be resolved by alternative dispute resolution before recourse is had to the Courts.
- 9.9. Any fine imposed upon any Member or resident shall be deemed to be a debt by the member or resident to the Company and shall be recoverable by ordinary civil process.
- 9.10. Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company 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.
- 9.11. The Company may in general meeting itself make any rules which the Directors may make and may in general meeting vary or modify any rules made by it or by the Directors from time to time.
- 9.12. For the enforcement of any of the rules made by the Directors in terms hereof, and notwithstanding the provisions relating to dispute resolution in the above provisions, the Directors may also, with specific regard to the provisions of sections 166 and 167 of the Act:

- 9.12.1. take such other action, including referring a matter to the Companies Tribunal, or an *accredited entity*, as defined in section 166(1) of the Act, for resolution by mediation, conciliation or arbitration, as they may deem fit.
- 9.12.2. to apply to court to have a consent order obtained in terms of (i) above made an order of court, together with an award regarding possible damages.
- 9.13. The above provisions provide parties to a dispute with an alternative to applying to court for relief but do not preclude either party from doing so.
- 9.14. The owner hereby agrees that the unit /s within the Complex is his chosen *domicilium citandi et executandi* where all legal documents and notices shall be served on him or deemed to have been served on him
- 9.15. Rules, the amendment, repeal or alteration thereof shall be published in terms of section 15 of the Act, by the Directors, in the following manner –
 - 9.15.1. a copy of the document shall be delivered to the Members of the Company by either email; hand delivery or registered mail and the Directors shall keep a record of the manner in which such delivery was effected as well as the acknowledgement of receipt thereof by the owner.
- 9.16. The notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) shall be published in the same manner as set out in clause 9.15 above.

10. LEVIES AND FEES

- 10.1. The following class levies apply to Members of the scheme –
 - 10.1.1. Full Title levy, which will be paid by any full title, residential, business or commercial erf;
 - 10.1.2. sectional title levy, being 60% (sixty per centum) of the full title levy, which each sectional title owner will be required to pay to the Body Corporate, who will then pay such levy to the Company monthly;

- 10.1.3. The Boat House Body Corporate will pay 1 (one) levy, once 50% (per centum) of the boathouses have transferred; full title
- 10.1.4. The clubhouse erf and Hotel erf will pay a full title levy respectively (all sport and recreational erven are except).
- 10.2. Such levies will comprise of direct expenses relating to such sites, including but not limited to security and access control. Such levies will be calculated on the same basis as the levies payable by other Members.
- 10.3. In addition to the above, the Directors –
 - 10.3.1. may from time to time determine the levies payable by the Members for the purpose of meeting all the expenses which the Company has incurred, or to which the Directors reasonably anticipate the Company will be put in the attainment of its objects or the pursuit of its business. These expenses shall include (but not be limited to) the cost of maintaining all the available facilities, internal and external gardens on the common property, water features, pavements, boundary walls and security systems as well as the costs of manning the guard house;
 - 10.3.2. shall not less than 30 (thirty) days prior to the end of each Financial Year, or so soon thereafter as is reasonably possible, prepare and serve upon every Member (with the exception of the sectional title members, represented by the Body Corporate) at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Company to meet the expenses during the following Financial Year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
 - 10.3.3. Each notice to each Member shall specify the contribution payable by that member to such expenses and reserve fund, except for the sectional title owners, as the notice will specify the contribution of all sectional title owners, as represented by the Body Corporate. Unless otherwise determined by special resolution, the levy payable by each Member shall be equal, subject to 10.1

above, and provided that the Directors may from time to time determine the levies payable in respect of communal- sport-or recreational facilities in the scheme.

- 10.3.4. Every levy shall be payable in equal monthly installments, due in advance by the 7th (seventh) day of every month of each Financial Year.
- 10.3.5. In the event of the Directors for any reason whatsoever failing to prepare and timeously serve the estimate referred to in 10.3.2 above, every Member shall, until served with such estimate, continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice, in the manner specified in the notice referred to in 10.3.2.
- 10.3.6. The Directors may from time to time impose special levies upon the Members in respect of all expenses as are mentioned in 10.3.1, which are not included in any estimate made in terms of 10.3.2 and may in imposing such levies further determine the terms of payment thereof.
- 10.3.7. The Directors shall be empowered, in addition to such other rights as the Company may have in law against its Members to determine the rate of interest from time to time chargeable upon arrear levies, or any other amount payable and owing to the Company.
- 10.3.8. Any amount due by a Member by way of levy and interest shall be a debt due by him to the Company. The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member without prejudice to the Company's right to recover arrear levies and interest. No levies or interest paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member. A Member's successor in title to any commercial or residential land shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that land, to pay the levy and interest attributable to that land.
- 10.3.9. No commercial or residential land, or any interest in such commercial or residential land, in the scheme shall be capable of being transferred without a Certificate first being obtained from the Company confirming that all levies and interest have been paid up to and including date of registration of transfer of such commercial or

residential land and all the Conduct Rules of the scheme have been complied with.

10.3.10. Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the Developer shall not be obliged to pay any levy in respect of unsold erven in the scheme of which it is the registered owner. The levy obligation of the Members shall always be determined without reference to the erven in the scheme held by the Developer.

10.3.11. No Member shall be entitled to the privileges of Membership unless and until he shall have paid every levy and other sum (if applicable) which shall be due and payable to the Company in respect of his Membership thereof.

10.4. It is the intention that there shall be an ongoing flow of information between the Club and the Company to promote good co-operation and a pleasant working relationship to the mutual benefit of the Club and the Company. It is further recorded that 29% of the monthly levies received from the Members of the Company, as determined by its Directors in terms of 10.3.1, shall be transferred to the Club automatically by the fund administrators. It is furthermore recorded that the Company shall only be liable to transfer 29% of the levies aforementioned which have been collected at the date when transfer to the Club is due. The Company shall not be held liable for any levies which may be in arrears.

11. APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

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

12. MEMBERS OF THE COMPANY

12.1. As contemplated in item 4(2) of Schedule 1 of the Act, the Company has Members are in either of two classes, being Voting Members and Non-voting Members, respectively.

12.2. Subject to clause 12.3, Membership of the Company shall be limited to the Developer in his capacity as such, its authorised nominees, and to any other person who is in terms of the Deeds Registries Act, 1937 reflected in the records of the Deeds Office

concerned as the registered owner of any commercial or residential land in the scheme.

- 12.3. The subscribers to this Memorandum of Incorporation shall be the first members of the Company but they shall cease to be members automatically when the first seven transferees contemplated in 12.2 above are reflected as the registered owners of commercial or residential land in the scheme.
- 12.4. Where any full title commercial or residential land in the scheme is owned by more than one person, all the registered owners of that full title commercial or residential land shall together be deemed to be 1 (one) Voting Member of the Company and have the rights and obligations of 1 (one) Voting Member of the Company, provided however that all co-owners of any full title commercial or residential land shall be jointly and severally liable for the due performance of any obligation to the Company.
- 12.5. When a person becomes the registered owner of any full title commercial or residential land in the scheme, he shall *ipso facto* become a Voting Member of the Company, and when he ceases to be the owner of any such commercial or residential land, he shall *ipso facto* cease to be a Voting Member of the Company.
- 12.6. No Member shall let or otherwise part with occupation of any land/unit in the scheme, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such erf /unit as a *stipulatio alteri* in favour of the Company that such occupier shall be bound by all the terms and conditions of this Memorandum of Incorporation of the Company, and such written agreement is lodged with the Company prior to the proposed occupier taking occupation of the commercial or residential land in question.
- 12.7. A registered owner of any commercial or residential land in the scheme may not resign as a Member of the Company.
- 12.8. The rights and obligations of any Member shall not be transferable.
- 12.9. When a person becomes the registered owner of any sectional title unit in the scheme, he shall *ipso facto* become a Non-Voting Member of the Company subject to the Memorandum of Incorporation, and when he ceases to be the owner of any

such sectional title unit, he shall *ipso facto* cease to be a Non-Voting Member of the Company.

- 12.10. The Body Corporate will represent the sectional title owners as a Voting Member of the Company and as such the Body Corporate will have 1 (one) voting right
- 12.11. The boat house owners will become Non-Voting Members of the Company and therefore subject to this Memorandum of Incorporation, with the Boat House Body Corporate acting as representative of the boat house owners as a Voting Member with 1 (one) voting right.
- 12.12. The Club shall form a sub-committee and elect a representative who will represent the Club owners as a Voting Member of the Company with 1 (one) voting right.
- 12.13. Each Member of the Company, except those members who live/own residential land in the Retirement Village, shall become a member of the Club upon transfer of an erf/unit to such Member by the Developer and shall be liable for the annual Club fees applicable as determined by the Club from time to time. No Member of the Company shall be entitled to resign as member of the Club.
- 12.14. The Directors shall designate from their number, a Director(s) to serve on a management sub-committee formed by the Club, entrusted with the matters of the Company as it affects the Club. The Club and the Company shall have equal representation on this sub-committee and in the event of deadlock the elected chairperson of the sub-committee shall have a casting vote. It is recorded that the Club shall remain autonomous and that the Company shall have no direct representation on the Management Committee of the Club. Members shall, however, be represented via their membership of the Club and their rights in terms of the Constitution of the Club, which rights shall be the same as for all other members.
- 12.15. Subject to the obligations of membership prescribed by these articles, every Non-voting Member and Voting Member shall:
 - 12.15.1. further, to the best of his ability, the objects and interests of the Company;

- 12.15.2. observe all rules made by the Company in general meeting or by the Directors;
- 12.15.3. subject to the provisions of 10.3.10 above, pay all levies due by the member to the Company in terms of the levy provisions above;
- 12.15.4. sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of the access portion or any other portion or any other commercial or residential land or portion in the scheme, including the provision of security facilities;
- 12.16. Subject to the rights of membership prescribed by the Act and by this Memorandum of Incorporation, membership shall confer upon each Voting Member of the following rights:
 - 12.16.1. the right to nominate and elect the Directors of the Company;
 - 12.16.2. the right to receive copies of the annual financial statements of the Company;
 - 12.16.3. subject to the provisions of 22.4 below, the right to receive notice of, attend, speak and vote at general meetings of the Company.
- 12.17. Nothing contained in this Memorandum of Incorporation shall prevent a Member from ceding his rights in terms hereof, as security to the mortgagee of that Member's commercial or residential land in the scheme.
- 12.18. Members shall ensure that they update their personal and contact details with the Directors, who shall keep a register thereof, on a regular basis so as to ensure that all notices, accounts, statements may be delivered promptly.

13. MEMBERS' AUTHORITY TO ACT

- 13.1. If, at any time, every Voting Member of the Company is also a Director of the Company, as contemplated in section 57(4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is limited as follows –
 - 13.1.1. Members and Directors of the Company are obliged to act in accordance with the provisions of the relevant clauses contained herein relating to their respective

powers and duties and cannot act without meeting the formal requirements contained in the aforementioned clauses.

14. MEMBERS RIGHT TO INFORMATION

- 14.1. Each Voting Member is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –
 - 14.1.1. this Memorandum of Incorporation, and any amendments or alterations thereof, and any Conduct Rules of the Company;
 - 14.1.2. a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
 - 14.1.3. all –
 - 14.1.3.1. reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the Company is not required to, and does not, in fact, hold an annual general meeting; and
 - 14.1.3.2. annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;
 - 14.1.4. notice and minutes of all meeting of members, including –
 - 14.1.4.1. all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
 - 14.1.4.2. any document that was made available by the Company to Members in relation to each such resolution;
 - 14.1.5. any written communications sent generally by the Company to all Members, for a period of 7 (seven) years after the date on which each of such communications was issued; and
 - 14.1.6. the Members' register of the Company.

- 14.2. A person not contemplated in clause 14.1 has a right to inspect the Members' register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

15. PROXIES AND REPRESENTATIVES

- 15.1. A Voting Member shall be entitled to appoint one person or more than one person in the alternative to each other as his proxy/ies to attend, speak and vote at a general meeting on his behalf, but not more than one person concurrently.
- 15.2. A proxy need not be a Member of the Company.
- 15.3. The instrument appointing a proxy shall be in writing under the hand of the Voting Member or his agent duly authorised in writing or, if the Voting Member is a body corporate, under the hand of the authorised representative. A proxy need not be witnessed. Whether he is himself a Voting Member or not, the holder of a general or special power of attorney given by a Voting Member shall, if duly authorised under that power to attend and take part in meetings and proceedings of the Company or companies generally, be entitled to attend general meetings and to vote thereat.
- 15.4. A form of proxy may be issued at the Company's expense only if it is sent to all Members who are entitled to attend and vote at the general meeting to which the proxy form relates.
- 15.5. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, (or a notarially certified copy of such power or authority) shall be deposited at the office the Company not less than 48 (forty eight) hours (or at such other place and such lesser period as the Directors may determine in relation to any particular meeting) before the time for the holding of the meeting at which the person named in the instrument proposes to speak and vote. A form of power of attorney or proxy shall be invalid if this provision is not complied with.
- 15.6. Except insofar as the form appointing a proxy indicates otherwise, the appointment of a proxy shall be deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specially directed to vote for or against or to abstain from voting on any proposal or resolution), the power generally to act

for the Voting Member giving that proxy at the general meeting in question as the proxy may think fit, including delegating his powers to another person if so specified in the form. Unless the contrary is stated thereon, the form appointing a proxy shall be valid for each adjournment of the general meeting to which it relates.

- 15.7. No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date on which it was signed unless specifically stated to the contrary in the instrument of proxy itself.
- 15.8. The instrument appointing a proxy may be in any usual or common form approved by the Directors but shall be so worded that the holder thereof may vote for or against or abstain from voting on any one or more of the resolutions proposed at the general meeting at which the proxy is to be used.
- 15.9. If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59 of the Act, the record date for the relevant matter should be determined in accordance with section 59(3) of the Act.

16. MEMBER MEETINGS

- 16.1. The Company is required to hold meetings as specifically required by the Act.
- 16.2. The Company shall hold its first Annual General Meeting within 24 (twenty four) months after the date of its incorporation and shall thereafter hold an Annual General Meeting not later than 6 (six) months after the end of each Financial Year of the Company. The Company shall within 6 (six) months after the end of each financial year hold a general meeting as its Annual General Meeting in addition to any other general meetings during that year.
- 16.3. All meetings other than Annual General Meetings shall be called general meetings.
- 16.4. The Directors may, whenever they deem it necessary, convene a general meeting, and a general meeting shall also be convened on the requisition of at least 10% Voting Members made in terms of section 61 of the Act.

17. NOTICE OF GENERAL MEETING

- 17.1. Subject to the provisions of the Act an Annual General Meeting and a meeting called for the passing of a special resolution shall be called on not less than 21 (twenty-one) days' notice in writing and any other general meeting shall be called on not less than 15 (fifteen) days' notice in writing. Notice in terms of this provision shall be exclusive of the date on which it is served or deemed to be served and exclusive of the date for which it is given.
- 17.2. The notice of a meeting of the Company shall specify –
 - 17.2.1. the place;
 - 17.2.2. the date and the hour of the meeting; and
 - 17.2.3. in the case of special business, the general nature of such business; and
 - 17.2.4. shall be given in the manner hereinafter provided or in such other manner as may be prescribed by the Company in general meeting and to such persons as are, under this Memorandum of Incorporation entitled to receive such notices from the Company.
- 17.3. Notwithstanding the provisions of this Memorandum of Incorporation, but subject always to the Act –
 - 17.3.1. a general meeting shall, notwithstanding that it is called by shorter notice than that specified in these articles, be deemed to have been duly called if it is so agreed by a majority in number of the Voting Members, who hold not less than 95% (ninety-five per centum) of the total voting rights of all the Members;
 - 17.3.2. a general meeting shall be entitled to deal with special business, the general nature of which has not been notified, if it is so agreed by a majority in number of the Voting Members, who between them hold not less than 50% (fifty per centum) of the total voting rights of the Members.
- 17.4. It is further recorded that –
 - 17.4.1. A notice may be given by the Company to any Member, in the manner set out in 17.5.1 below, at the address the address if any within the Republic furnished by him to the Company for such purpose.

- 17.5. Notice of every general meeting shall be given in writing and shall be delivered either by hand, or sent by post, or sent by facsimile, or sent by email:
- 17.5.1. to every Voting Member except those persons who have not supplied an address contemplated in 17.4.1 above;
 - 17.5.2. to the auditor for the time being of the Company;
 - 17.5.3. to every Director of the Company whether a Member or not, and no other person shall be entitled to receive notice of any general meetings.
- 17.6. A notice served by post or email shall irrefutably be deemed to have been received and brought to the notice of the addressee at the time of posting or transmission and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 17.7. Any notice by the Company shall be signed by a Director or by someone authorised by the Director.
- 17.8. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 17.9. The Company shall not be responsible for the loss in transmission of documents sent through the post to the address furnished by any Member to the Company for the giving of notices to him, whether or not it was so sent at his request.

18. PROCEEDINGS AT GENERAL MEETINGS

- 18.1. In addition to any other matters required by the Act or in terms of these articles to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- 18.1.1. the consideration of the Chairperson's report;
 - 18.1.2. the election of Directors;

- 18.1.3. the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions;
- 18.1.4. the consideration of the accounts of the Company for the preceding financial year;
- 18.1.5. the consideration of the report of the auditors and the fixing of remuneration for the auditors;
- 18.1.6. any other business laid before it and of which notice has been duly given in terms of this Memorandum of Incorporation or in respect of which notice has been waived in terms of 17.3.2 above.
- 18.2. Where a company or other body corporate is a Voting Member of the Company it may, in the appropriate manner, nominate any person it deems fit to act as its authorised representative at any general meeting and such authorised representative shall be entitled to exercise the same rights and powers which that company would have had at that meeting if it were a natural person and present in person or by proxy.
- 18.3. Business may be transacted at a general meeting only while a quorum of Voting Members is present.

19. LOCATION OF MEMBERS MEETINGS

- 19.1. The Company records that all meetings of its Members and/or Directors will be held within the Republic of South Africa, at the time, place and venue as shall be specified in the notices served to the Members for such meetings, from time to time.
- 19.2. An Annual General Meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty-one) days' notice in writing at least, and an extraordinary general meeting, other than one called for the passing of a special resolution, shall be called for by at least 14 (fourteen) days' notice in writing. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting, subject to the meeting being held within the Republic of South Africa.

- 19.3. In the case of special business, if any, in addition to any other requirements contained herein, the notice shall contain the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Directors to such persons as are entitled to receive such notices from the Company: provided that a general meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified herein, be deemed to have been duly called if it is so agreed –
- 19.3.1. In the case of a meeting called as the Annual General Meeting, by all the Voting Members; and
- 19.3.2. In the case of a general meeting, by a majority in number of the Voting Members, being a majority together holding not less than 95% (ninety five percent) of the total voting rights of all Members.
- 19.4. Insofar as special notice may be required of a resolution, whether by any provision of the Act or these presents, then the provisions of Section 186 of the Act shall apply.
- 19.5. The Company shall comply with the provisions of Section 185 of the Act as to giving of notice and circulating statements on the requisition of Voting Members.
- 19.6. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification or present any document required to be given or sent in terms of these presents, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at, any meeting.

20. ELECTRONIC PARTICIPATION IN MEMBERS MEETINGS

- 20.1. Directors may choose to send notice of a meeting by electronic means, but all meetings shall be held in person only and not by electronic communication.

21. QUORUM FOR MEMBERS MEETINGS

- 21.1. The quorum requirement for a meeting of members to begin or for a matter to be considered are as set out in section 64(1) without variation and, accordingly –

- 21.1.1. a meeting of members may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 21.1.2. a matter to be decided at a meeting of members may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda, provided that, if the Company has more than 2 (two) Members, a meeting may not begin, or a matter begin to be debated, unless –
 - 21.1.3. at least 3 (three) Voting-Members are present at the meeting; and
 - 21.1.4. the requirements of clauses 21.1.1 and 21.1.2 are satisfied.
- 21.2. The time periods allowed in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements of clause 21.1 –
 - 21.2.1. for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;
 - 21.2.2. for consideration of a particular matter to begin have not been satisfied –
 - 21.2.2.1. if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or
 - 21.2.2.2. if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 21.1 may extend the 1 (one) hour limit allowed in clause 21.2 for a reasonable period on the grounds that –

- 21.2.3. exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
- 21.2.4. one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of clause 21.1.
- 21.3. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of a General Meeting shall be:
 - 21.3.1. during the Development Period, all the votes of the Developer plus 10% (ten percent) of the total number of votes of the other members of the Company entitled to vote for the time being; or
 - 21.3.2. after the Development Period, 20% (twenty percent) of the total number of votes of all Members of the Company entitled to vote for the time being;provided that at no stage shall a quorum of less than 3 (three) Voting Members be present.
- 21.4. If within half an hour after the time appointed for the general meeting a quorum is not present, the general meeting, if convened upon requisition of the Voting Members, shall be dissolved. In any other case the general meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is not a business day to the next succeeding business day, and if at such adjourned general meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person or represented by proxy shall constitute a quorum.
- 21.5. The Chairperson of the Board of Directors shall preside at all general meetings of the Company and, in the event of his not being present within 15 (fifteen) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice Chairperson shall act in his stead or, failing the Vice Chairperson, a chairperson appointed by the Voting Members present at the meeting.

- 21.6. The Chairperson of a general meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place. Subject to the Act, when a meeting is adjourned it shall not be necessary to give notice thereof.
- 21.7. No resolution at a general meeting will require a seconder.

22. VOTING

- 22.1. At every general meeting –
- 22.1.1. during the Development Period, the Developer shall have 1 000 (one thousand) votes in addition to votes conferred upon it in terms of 22.1.2 below;
- 22.1.2. on a show of hands, every Voting Member, including the Developer, present in person or represented by proxy and if a Voting Member is a company or a body corporate, its representative, shall have 1 (one) vote only and on poll every Voting Member present in person or by proxy shall be entitled to 1 (one) vote for each portion of commercial or residential land in the scheme registered in his name;
- 22.1.3. if the Voting Member is the Body Corporate representing the sectional title owners, they shall have 1 (one) vote; and.
- 22.1.4. if the Voting Member is the Club representative, they shall have 1 (one) vote.
- 22.2. If the commercial or residential land or a portion of the commercial or residential land in the scheme is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
- 22.3. Every Voting Member, including the Developer, holding undeveloped commercial or residential land in the scheme shall have 1 (one) vote for each separate piece of commercial or residential land registered in his or its name.
- 22.4. Subject to the provisions of this Memorandum of Incorporation, no person other than a duly registered member who has paid every levy and other sum, if any, which is due and payable to the Company in respect of or arising out of his membership and

who is not under suspension, shall be entitled to presentor vote on any question, either personally or by proxy, at any general meeting.

- 22.5. At any general meeting a resolution put to the vote 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) demanded by any person entitled to vote at the meeting. No poll shall, however, be demanded on the election of the Chairperson of the meeting or on any question of adjournment. Unless a poll is demanded, a declaration by the Chairperson of the meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negatived and on entry to that effect in the minute book shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.
- 22.6. If a poll is demanded:
- 22.6.1. the poll shall be taken in such manner and at such time as the Chairperson of the meeting shall direct;
- 22.6.2. the Chairperson of the meeting shall be entitled to appoint scrutineers;
- 22.6.3. no notice of a poll other than an announcement at the meeting at which it is demanded shall berequired;
- 22.6.4. the demand for a poll shall not prevent the continuation of the meeting for the transaction of anybusiness other than the question on which the poll has been demanded;
- 22.6.5. a demand for a poll may be withdrawn;
- 22.6.6. the result of a poll shall be deemed to be the resolution of the meeting on any question on whichthe poll is taken.
- 22.7. In the case of an equality of votes, whether on a show of hands or a poll, the Chairperson of the meetingat which the show of hands takes place or at which the poll is taken shall not be entitled to a second or casting vote.
- 22.8. Any objection to the admissibility of a vote on a show of hands or on a poll shall be raised at the generalmeeting at which that show of hands or poll is to take place or

takes place. That objection shall be determined by the Chairperson of that general meeting and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at that meeting shall be valid for all purposes.

- 22.9. A resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the Chairperson of that meeting (whose decisions thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless, in the opinion of the Chairperson of that meeting (whose decisions thereon shall be final and binding), in the inclusion of that vote would have altered the result of the voting on that resolution.

23. ADJOURNMENT OF MEMBERS MEETINGS

The maximum period allowable for an adjournment of a member meeting is set out in section 64(13) of the Act subject to the stipulation that if within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place as the Chairperson of the meeting shall appoint, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

24. MEMBERS RESOLUTIONS

- 24.1. For an ordinary resolution to be approved it must be supported by more than 50% (fifty per centum) of the voting rights of Voting Members exercised on the resolution, as provided in section 65(7).
- 24.2. An ordinary resolution, including a resolution for the removal of a Director, shall be adopted by a simple majority of votes;
- 24.3. For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five per centum) of the voting rights exercised on the resolution, as provided in section 65(9).

- 24.4. Apart from the provisions set out in section 65(11), a special resolution shall also be necessary when a vote is taken on the expenditure allowance of the Board of Directors, or when same is amended and when deciding upon remuneration if any, of Directors or when same is amended.

25. COMPOSITION OF THE BOARD OF DIRECTORS

- 25.1. the Board must comprise at least 3 (three) Directors, and 0 (nil) alternate Directors each of whom is to be elected –
- 25.1.1. to be appointed in the manner set out in clause 26; and
- 25.1.2. serves for a term of 1 (one) year.
- 25.2. The Company shall only have the Directors appointed by the Board and there shall be no Directors appointed by any other person or *ex officio* Directors as contemplated in section 66(4).
- 25.3. In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a Director of the Company, a person need not satisfy any further eligibility requirements or qualifications.

26. DIRECTORS

- 26.1. Subject to the provisions of the Act, there shall be a Board of Directors of the Company which shall consist of not less than 3 (three) and nor more than 7 (seven) Directors, provided that during the Development Period the Developer shall be entitled to nominate and appoint not less than 50% (fifty per centum) of the number of Directors of the Company, the total number of which shall not be less than three Directors.
- 26.2. A Director need not himself be a Member of the Company. A Director however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of the Memorandum of Incorporation of the Company;
- 26.3. On the expiry of the Development Period the Director so appointed by the Developer shall be a Director as if elected at an annual general meeting and shall be subject to

the provisions of 27 below. Any other Director to be appointed shall be elected by the Voting Members in a general meeting.

27. REMOVAL AND ROTATION OF DIRECTORS

27.1. Save as set out in 26, each Director shall continue to hold office from the date of his appointment until the annual general meeting next following his appointment, at which meeting each Director shall be deemed to have retired from office but will be eligible for re-election to the board of Directors at such meeting.

27.2. A Director shall be deemed to have vacated his office upon –

27.2.1. his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;

27.2.2. his making arrangement or composition with his creditors;

27.2.3. his conviction for any offence involving dishonesty;

27.2.4. his becoming of unsound mind and being found a lunatic;

27.2.5. his resigning from such office in writing;

27.2.6. his death;

27.2.7. his being removed from office by a resolution of the Directors;

27.2.8. in the event of his being a Member of the Company, his being disentitled to exercise a vote interms of the provisions of 22.4 above.

27.3. Upon any vacancy occurring in the board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by the remaining Directors for the time being in office.

28. CHAIRPERSON AND VICE CHAIRPERSON

28.1. The Directors shall within 14 (fourteen) days after each Annual General Meeting appoint from their number a Chairperson and Vice Chairperson, who shall hold their respective offices until the next Annual General Meeting after their said appointments, provided that the office of Chairperson or Vice Chairperson shall *ipso*

facto be vacated by a Director holding such office upon his ceasing to be a Director for any reason. No 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.

- 28.2. Except as otherwise provided, the Chairperson shall preside at all meetings of the Board of Directors and all general meetings of members 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 Chairperson shall act in his stead, or failing the Vice Chairperson, a Chairperson appointed by the meeting.

29. POWERS OF DIRECTORS

- 29.1. Subject to the provisions hereof, the Directors shall manage and control the business and affairs of the Company, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent, may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by this Memorandum of Incorporation of the Company required to be exercised or done by the Company in general meeting, subject however to such rules as may have been made by the Company in general meeting or as may be made by the Directors from time to time.
- 29.2. Save as specifically provided herein, the Directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, advocates, architects, engineers, a managing agent or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors and on such terms as the Directors shall decide, and the Directors may delegate any or all of their powers to the said managing agent as they may determine, subject to any restriction imposed or direction given at any general meeting of the Company.
- 29.3. The Directors shall further have power to –

- 29.3.1. require that any works being constructed within the scheme shall be supervised to ensure that the provisions of this Memorandum of Incorporation of the Company and the Rules are complied with and that all work is performed in a proper and workmanlike manner;
- 29.3.2. issue an architectural and environmental design and maintenance manual in respect of the scheme.
- 29.4. The Board of Directors shall have the right to co-opt onto the Board any person or persons, which persons need not be members of the Company.
- 29.5. The Board of Directors shall be entitled to appoint committees consisting of such number of Directors and such outsiders, including the managing agent, as the board may deem fit and to delegate to such committees such of their functions, powers and duties as the board may deem fit, together with the further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 29.6. The Directors shall appoint an Architectural Review Committee which shall consist of:
 - 29.6.1. a practicing professional architect duly qualified to practice as such on his own account in the Republic of South Africa;
 - 29.6.2. 2 (two) Directors, one of which shall be appointed by the Developer during the Development Period;
 - 29.6.3. such number of members as the Directors may determine.
- 29.7. Subject to 29.6.3 above, Members of the Architectural Review Committee shall not be required to be members of the Company.
- 29.8. All plans for buildings, outbuildings, structures, additions, alterations and all plans for all works shall be submitted by the Directors to the Architectural Review Committee and the Directors shall not approve any plan unless such plan shall first have been approved by the Architectural Review Committee. The Directors may, if they deem fit, delegate to the Architectural Review Committee their functions and powers.

- 29.9. The provisions of 29.8 above shall not apply to the Developer during the Development Period.
- 29.10. The Directors shall cause to be kept such accounting records as are prescribed by the Act and in particular such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.
- 29.11. The Company's records shall be kept at the office or such other place or places as the Directors think fit and shall at all reasonable times be open to inspection by the Directors and by past Directors but, in the case of the latter, only in respect of the period during which they held office as Directors.
- 29.12. The Directors shall from time to time determine whether, to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them may be open for inspection by Members not being Directors and no Member (not being a Director) shall have any right to inspect any accounting record or document of the Company except as conferred by the Act or authorised by the Directors or by the Company in general meeting.
- 29.13. The Directors shall from time to time and in accordance with the provisions of the Act, cause the annual financial statements, group annual financial statements to be prepared and laid before the Members in general meeting.
- 29.14. A copy of any annual financial statements which are to be laid before the Members at the annual general meeting shall not less than 21 (twenty one) days before the date of that meeting, be sent to every Member and every holder of debentures of the Company and, where required by the Act, also to the Registrar. The provisions of this Article shall not require a copy of those documents to be sent to any person who has not furnished an address to the Company.
- 29.15. An auditor shall be appointed in accordance with the provisions of the Act.

30. PROCEEDINGS OF DIRECTORS

- 30.1. The Directors may, subject to the provisions herein, meet to attend to their business, adjourn and otherwise regulate their meetings as they think fit.

- 30.2. Subject to the provisions of the Act, the quorum for the holding of any meeting of the Directors shall be one-half of the total number of Directors then in office (reduced, if the total number of Directors then in office is an uneven number, to the nearest whole number) plus one Director; provided that during the Development Period the presence of at least two nominees of the Developer shall be necessary at all meetings of the Directors in order to form a quorum, and provided further that one of the said nominees shall, if the Developer exercises its right in terms of 26.1, be the Director so appointed by the DDeveloper. Any resolution passed by the Board of Directors shall be carried on a simple majority of all votes cast. Should there be an equality of votes for and against any resolution the resolution shall be deemed to have been defeated.
- 30.3. The Directors shall cause the minutes of each meeting to be kept in accordance with the Act, which minutes shall be reduced to writing and certified as correct by the Chairperson as soon as is reasonably possible after such meeting. All minutes of meetings of the Board of Directors shall, after certification, be placed in Directors' Minute Book which shall be kept in accordance with the applicable provisions of the Act. The Directors' Minute Book shall be open for inspection at all reasonable times by any Director, the auditors, the Members and the managing agents.
- 30.4. Subject to the provisions herein, the proceedings of any meeting of the Board of Directors shall be conducted in such reasonable manner and form, as the Chairperson of the meeting shall direct.

31. BOARD OF DIRECTORS MEETING

- 31.1. In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors, provided that this election is exercised by at least 66.66% of the Directors.
- 31.2. The Board has the power to –
- 31.2.1. consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the written consent of a majority of the

Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided;

- 31.2.2. conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 31.2.3. determine the manner and form of providing notice of its meetings as set out in section 73(4); and
- 31.2.4. subject to clause 31.3.1, proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5),

and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.

- 31.3. The quorum requirement for a Directors' meeting (including an adjourned meeting), the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to clauses 31.3.1 and 31.3.5, and accordingly –

- 31.3.1. if the Company has failed to give the required notice for the convening of any meeting of the Board or there is any other defect in the giving of such notice the meeting may, subject to any quorum requirements, proceed provided that each Director (whether or not in attendance at the meeting) in writing acknowledges actual receipt of the notice and in writing waives any rights he or she might otherwise have enjoyed as a result of such short or defective notice;
- 31.3.2. a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors;
- 31.3.3. each Director has 1 (one) vote on a matter before the Board;
- 31.3.4. a majority of the votes cast on a resolution is sufficient to approve that resolution;

- 31.3.5. in the case of a tied vote –
 - 31.3.5.1. the chair may not cast a deciding vote in addition to any deliberative vote; and
 - 31.3.5.2. the matter being voted on fails.
- 31.4. Resolutions adopted by the Board –
 - 31.4.1. must be dated and sequentially numbered; and
 - 31.4.2. are effective as of the date of the resolution, unless any resolution states otherwise.
- 31.5. Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

32. INDEMNIFICATION OF DIRECTORS

- 32.1. The Company may –
 - 32.1.1. advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);
 - 32.1.2. indemnify a Director in respect of liability as set out in section 78(5); and/or
 - 32.1.3. purchase insurance to protect the Company or a Director as set out in section 78(7),

and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.
- 32.2. The provisions of clause 32.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee, if any.
- 32.3. Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Directors. Save as aforesaid, Directors shall not be entitled to any remuneration for the performance of their duties in terms hereof, unless the Company in a general meeting decides otherwise by special resolution.

33. COMMITTEES OF THE BOARD

- 33.1. The Board may –
 - 33.1.1. appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or
 - 33.1.2. include in any such committee persons who are not Directors, as set out in section 72(2)(a), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.
 - 33.1.3. The authority of a committee appointed by the Board as set out in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation

34. DETERMINATION OF DISPUTES

- 34.1. In the event of any dispute arising between a Member and the Directors (as the representative of the Company) as to the construction, meaning or interpretation of any of the provisions of this Memorandum of Incorporation or as to the rights, obligations or liabilities of the Company or any Member in terms of this Memorandum of Incorporation the parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 (fourteen) days, then such dispute or difference shall be submitted to and decided by summary arbitration.
- 34.2. The arbitration shall be held -
 - 34.2.1. In the Jurisdiction of the scheme;
 - 34.2.2. in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures as prescribed by the Arbitration Act or the Strict rules of Evidence;
 - 34.2.3. as soon as reasonably practicable in the circumstances and with a view to it being contemplated within 21 (twenty one) business days after it is demanded;
- 34.3. The Arbitrator shall be a person agreed to between the parties to the dispute and failing agreement, a person nominated for such purpose by the president (or failing

him, the secretary) for the time being of the Law Society of the Northern Provinces (or its successors in title).

- 34.4. The Arbitrator shall determine -
 - 34.4.1. the issues submitted to him according to what he considers just and equitable in the circumstances and accordingly shall not be obliged to adhere to the strict rules of the Law;
 - 34.4.2. which party shall pay the costs of and incidental to the arbitration or, if each is to contribute, the ratio of their respective contributions.
- 34.5. The Arbitrator shall be deemed to act as an expert and not as an Arbitrator.
- 34.6. The decision of the Arbitrator shall be -
 - 34.6.1. final and binding on all parties;
 - 34.6.2. carried into effect; and
 - 34.6.3. capable of being made an order of any Court of competent jurisdiction.

35. ASSOCIATION CLAUSE

- 35.1. We, the several persons whose full names, occupations, residential, business and postal addresses are subscribed are desirous of being formed into a Company in pursuance of this Memorandum of Incorporation and we respectively agree to become members of the Company.