

**MEMORANDUM OF INCORPORATION**  
**OF**  
**HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION NPC (2007/020719/08)**

which is referred to in the rest of this **MEMORANDUM OF INCORPORATION** and the Rules as 'the Company' or the 'Home Owners Association' ("HOA").

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

- I) To promote the common interests of its Members.
- II) To preserve the high quality lifestyle of its members
- III) To enforce the provisions of the Companies Act, 2008, this Memorandum and the Rules.
- IV) To impose levies, special levies and other charges on the Members as are necessary for the preservation, maintenance and upkeep of the Complex.
- V) To promote harmonious living conditions for the Members and to provide, regulate and enforce this Memorandum, Rules and the Act.
- VI) To regulate the use of the common areas by members, the members of their households, their guests, and lessees.
- VII) To regulate and oversee the conduct of builders or any other contractors employed by members in the Complex.
- VIII) To regulate the conduct of members of their households, their guests, and lessees relating to any other activity concerning the Complex.
- IX) To regulate the conduct of Members, members of their households, their guests, and lessees in respect of the use, enjoyment, maintenance to or improvements of Dwellings in the Complex.

In this **MEMORANDUM OF INCORPORATION** a reference to a section by number refers to the corresponding section of the Companies Act, 2008.

## 1.DEFINITIONS

- 1.1 In this Memorandum the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

WORDS	MEANINGS
“the Act”	the Companies Act 2008, including any amendments, consolidation or re-enactment thereof;
“Annual General Meeting”	means the meeting of the company required by Article 14;
“the Auditors”	the Auditors of the Company, as appointed from time to time in terms hereof;
“Building Works”	means construction work of any sort including, but not limited to: the erection of new structures, repairs, maintenance or alterations to existing structures, within the Complex;
“the Chairperson”	the Chairperson of the Board of Directors;
“common areas”	the roads, the pavements, as well as all areas within the Complex which do not form part of the individual erven registered in the Members’ names;
“Complex”	means all dwellings situated within the Homes Haven Extension 11 Township and registered in the names of its members and all other common areas and streets within the walled off area known as Heritage Heights;
“deliver” or “delivery”	If any notice or document other than court process is required or permitted to be given to a Member in terms hereof or in terms of the Act or the Rules, it will be regarded as sufficient if the notice or document is sent in any manner as provided for in Article 12.2 and it will be deemed to have been delivered as provided for therein.

“the Director/s”	means a Member of the board of the Company, as contemplated in section 66, or an alternate Director of the Company and includes any person occupying the position of a Director or alternate Director, by whatever name designated;
“Dwelling”	an erf registered in the Deeds Office in the name of a Member with or without improvements thereon and situated within the Complex.
“electronic communication”	has the meaning set out in section 1 of the Electronic Communications and Transactions Act (Act 25 of 2002);
“file”	when used as a verb, means to deliver a document to the Commission for Companies and Intellectual Properties in the manner and form, if any, prescribed for that document;
“juristic person”	includes- <ul style="list-style-type: none"> <li>(a) a foreign Company; and</li> <li>(b) a trust, irrespective of whether or not it was established within or outside the Republic.</li> </ul>
“levy”	levies payable by Members to the Company and where the context allows it includes special levies;
“Member”	means a person who is the registered owner of a Dwelling in the Complex and thereby holds Membership in the Company;
“ordinary resolution”	means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution at a Members’ meeting or by Members acting other than at a meeting, as contemplated by section 60;
“person”	without limiting the generality hereof, any natural person, Company, close corporation, partnership firm association or any other juristic person or entity;
“the Rules”	the Rules attached hereto as Annexure “A” which shall apply to the Company, its Members and Directors and as amended from time to time by the Directors in accordance herewith;

“Record Date” means a date fixed by the directors of the company, prior to the holding of any general meeting to determine entitlement to participate in meetings and only those members registered as such on the record date shall be entitled to participate in the particular meeting or as otherwise computed in terms of Article 18.

“special resolution” means a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution at a Members meeting or by the Members of the Company acting other than at a meeting, as contemplated in section 60.

“in writing” written, printed, e-mailed or lithographed or telefacsimile partly one and partly another, and other modes or representing or producing this in a visible form;

1.2 Unless the context otherwise requires, any words importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other gender.

1.3 Subject to the aforesaid, any words or expressions defined in the Act or any statutory modifications of such Act, in force at the date on which this Memorandum become binding on the Company shall, if not inconsistent with the subject or context, bear the same meaning in this Memorandum.

## **2. Incorporation**

2.1 The Company is incorporated as a Non-profit Company as defined in the Act.

2.2 The Company shall henceforth be governed by –

(a) The provisions of this MEMORANDUM OF INCORPORATION; and

(b) the alterable provisions of the Act that are applicable to Non-profit companies that have not been altered by the Memorandum; and

- (c) the unalterable provisions of the Act that are applicable to Non-profit companies, subject to the limitations and / or extensions set out in the Memorandum.

### **3. Objects and Powers of the Company**

- 3.1 The objects of the Company are set out above and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are subject to the restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii), as set out in Part A of Schedule 1 except for Item 4(b).
- 3.2 The Company must apply all of its assets and income, however derived, to advance its stated objects, as set out herein and may not pay any dividends to its Members.
- 3.3 The Company may not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the company, or who is a member or director, or person appointing a director, of the company, except-
  - (a) as reasonable-
    - (i) remuneration for goods delivered or services rendered to, or at the direction of, the company; or
    - (ii) reimbursement for, expenses incurred to advance a stated object of the company;
  - (b) as a payment of an amount due and payable by the company in terms of a bona fide agreement between the company and that person or another;
  - (c) 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
  - (d) in respect of any legal obligation binding on the company.
- 3.4 The Company is not subject to any provision contemplated in section 15(2)(b) or (c), which means that there are no restrictive conditions applicable to the manner in which this Memorandum may be amended and there is no prohibition to the amendment of any particular provision of the MEMORANDUM OF INCORPORATION.

#### 4. **MEMORANDUM OF INCORPORATION AND COMPANY RULES**

- 4.1 This **MEMORANDUM OF INCORPORATION** of the Company may be altered or amended only in the manner set out in terms hereof read together with sections 16 or 17 of the Act.
- 4.2 Subject to any restriction imposed or direction given at a General Meeting of the Company, the directors may make alterations or additions to the Rules and their rights as contemplated in section 15(3) – (5) of the Act are not otherwise limited or restricted in any manner by this **MEMORANDUM OF INCORPORATION**.
- 4.3 The Rules, attached hereto as **Annexure “A”** shall, subject to 4.4 hereunder, apply with immediate effect but changes or additions must comply with this **MEMORANDUM OF INCORPORATION** and shall apply to the next Annual General Meeting, and thereafter, unless expressly repealed at such meeting.
- 4.4 Any alterations, additions or amendments to the Rules may be made by the Board of Directors for purposes of achieving the objects herein set out or relating to any other activity concerning the Complex, which amendments, alterations or additions to the Rules, shall be delivered to members in terms of this Memorandum of Incorporation and which alterations, additions or amendments shall be enforceable against a particular Member, ten days after filing thereof at the Commissioner for Intellectual Properties and Companies or ten days after delivery thereof to the Member concerned, whichever is the latter and regardless of whether it came to the actual notice of the Member in question.

#### 5. **Optional provisions of Companies Act, 2008 do apply**

The Company elects, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008, except Parts B and D thereof.

#### 6. **Members of the Company**

- 6.1 Membership of the Company shall be limited to any person, who is in terms of the Deeds Registries Act, reflected in the records of the office of the Registrar of Deeds as the registered owner of any Dwelling in the Complex.
- 6.2 Where any Dwelling is owned by more than one person, all the registered owners of that Dwelling shall together be deemed to be one Member of the Company and have the rights and obligations of one Member of the Company; provided however that all co-owners of any

Dwelling shall be jointly and severally liable for the due performance of any obligations to the Company.

- 6.3 When any Person becomes the registered owner of a Dwelling, he shall *ipso facto* become a Member of the Company, and when he ceases to be the owner of any Dwelling in the Complex, he shall *ipso facto* cease to be a Member of the Company.
- 6.4 No Member shall let or otherwise part with occupation of his Dwelling, or part thereof, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier or tenant of such Dwelling as a *stipulatio alteri* in favour of the Company that such occupier or tenant shall be bound by all the terms and conditions of this Memorandum and any Rules made pursuant thereto.
- 6.5 A registered owner of a Dwelling may not resign as a Member of the Company.
- 6.6 The rights and obligations of a Member shall not be transferable and every Member shall:
- 6.6.1 Further to the best of his ability the objects and interests of the Company; and
- 6.6.2 Observe the provisions hereof and all Rules made by the Company or the Directors, provided that nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms hereof as security to the mortgagee of that Member's Dwelling.
- 6.7 The address of the Dwelling of each Member shall be the *domicilium citandi et executandi* for the Member in respect of all legal processes, - proceedings and - notices. Any Member can change his *domicilium* address, in writing to another physical address which is not a postal box or *restante* within the Republic of South Africa and such new address will be effective only when the Company receives written notice thereof at its registered address.
- 6.8 The Company has Members, who are all in a single class, being voting Members, each of whom has an equal vote in any matter to be decided by the Members of the Company.

## 7. LEVIES

- 7.1 The Directors by resolution or the Members in general meeting may, from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Company has incurred, or which the Directors reasonably anticipate the Company will incur or provision for future unexpected expenses.
- 7.2 The levy payable in terms of Article 7.1 by each Member shall be based on the principle that all Dwellings attract an equal contribution.
- 7.3 The Levies payable by Members shall become due and payable on the passing of a resolution to that effect, as referred to in Article 7.1, by the Directors or Members, in respect of Members who were owners of Dwellings at the time the resolution was passed, provided that upon a change of ownership of a Dwelling the successor becomes liable for the *pro rata* payment of such contributions from the date of change of ownership.
- 7.4 The Directors shall, as soon as possible after the imposition of the levy in terms hereof, advise each Member in writing of the amount payable by him. An invoice or statement sent to a member and depicting the amount payable shall comply with this requirement. The failure of the Directors to so advise a Member of the imposition or change in levies shall however not affect the enforceability or validity thereof.
- 7.5 Levies and other amounts imposed shall be payable in monthly instalments (unless expressly stated to be payable otherwise) and shall be payable monthly in advance, on the first day of each month, without deduction or set- off.
- 7.6 The Directors, by resolution, may from time to time make special levies upon the Members or call upon them to make special contributions in respect of expenses which were not included in the approved estimate of income and expenditure and such levies and contributions may be made payable in one sum or by such instalments (with or without interest and if with interest at such rate as may be determined by the Directors) and at such time or times as the Directors shall think fit.
- 7.7 The Special levies shall be payable by Members who were owners of Dwellings at the time the resolution was passed and shall become due and payable on the passing of a resolution to that effect.
- 7.8 The Directors may, from time to time, make special levies upon any Member or Members undertaking Building Works or call upon such Members to pay a deposit or make special contributions in respect of all such expenses as are incurred or might be incurred by the



Company pursuant to the building operations conducted by the Member in question. Such levies and/or contributions may be made payable in one sum or by such instalments (with or without interest and if with interest at such rate as may be determined by the Directors) and at such time or times as the Directors shall think fit.

- 7.9 The Special levies payable by Members who were owners of Dwellings at the time the resolution was passed, shall become due and payable on the passing of a resolution to that effect by the Directors,
  
- 7.10 Interest shall be payable on arrear levies and any other amounts due in terms hereof or the Rules at 20,5 % per annum or such rate as may from time to time be determined by the Directors. The interest charged by the Company, at whichever rate, shall be compounded and capitalised monthly in arrears.
  
- 7.11 The amount of any Member's indebtedness to the Company at any time, the interest rates applicable from time to time and any other factor relating to the determination of such indebtedness as well as the due date for payment of such amount, may at the option of the Directors be proved in any legal or arbitration proceedings and at any stage by a certificate signed by any Director of the Company. It shall not be necessary to prove the appointment and authority of the person signing such certificate, which certificate shall be binding on any Member/s it relates to as *prima facie* proof of the facts contained therein. This includes any amount/s due by a Member, by way of a levy, special levy, interest thereon, other payments due in terms hereof or the Rules or costs and shall be regarded as debt due by the Member to the Company.
  
- 7.12 Upon becoming a member of the Company and on registration of transfer of the Dwelling into his name, the transferee / new member shall become liable for any debt that the transferor owes to the Company in respect of levies, legal costs and interest thereon and from any related cause, that was not settled on transfer, and which debt shall become due and payable by the transferee / new Member on date of registration of transfer in his name and which debt shall be recoverable by the Company from the new member in any court with competent jurisdiction as if it was a debt incurred by such new member.
  
- 7.13 A member shall be liable for and pay all legal costs, on the attorney and client scale, collection commission, expenses, administration fees and any other charges incurred by the Company in obtaining the recovery of any arrear amounts owing by such member to the Company.

## 8. RULES

- 8.1 For the enforcement of this MEMORANDUM OF INCORPORATION and the Rules or additions / variations / amendments thereto in accordance with article 4 above, the Directors may-
- 8.1.1 take or cause to be taken such steps as they may consider necessary to remedy the breach which any Member may be guilty of, and debit the costs, including all costs referred to in Article 7.13, to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the Company;
  - 8.1.2 take such other action, including arbitration or court proceedings (as provided for herein or in the Rules) as they may deem fit in which event the Member in question shall similarly be liable for costs and fees incurred by the Company.
  - 8.1.3 Impose a system of fines and penalties.
- 8.2 It is the obligation of every member to comply with this MEMORANDUM OF INCORPORATION, the Rules and the Act and it shall be the duty of every Member to ensure compliance with the above by his occupant/s, employees, guest/s and any member of his family or his lessee. This is without prejudice to the Directors' right to take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 8.3 In the event of any Member disputing the fact that he has committed a breach of any of the Rules, Memorandum or Act, aforesaid a committee of three Directors may be appointed by the Chairman of the Board of Directors for that purpose, whom shall attempt to mediate upon the issue at such times and in such manner and according to such procedure as the Chairman may direct in his/her sole and absolute discretion.
- 8.4 Notwithstanding the foregoing, the Directors may, in the name of the Company enforce the provisions of any Rule, the Memorandum or the Act as they deem appropriate and expedient and without complying with article 8.3.
- 8.5 Each Member undertake to the Company that he shall comply with this Memorandum and any Rules made in terms hereof and no Member shall be entitled to any of the privileges of Membership such as voting rights and directorship unless and until he has complied fully herewith or rectified his breach.

## 9. Requirement to hold meetings

The Company is not required to hold any Members' meetings other than those specifically required by this Memorandum and the Companies Act, 2008.

## 10. Members' right to requisition a meeting

The right of Members to requisition a meeting, as set out in section 61(3), may be exercised by at least 10% of the voting Members, as provided for in that section.

**[In terms of section 61(4) A company's MEMORANDUM OF INCORPORATION may specify a lower percentage in substitution for that set out above but not higher – this is a form of Member protection]**

## 11. Location of members' meetings

The authority of the Company's Board of Directors to determine the location of any Members' meeting, and the authority of the Company to hold any such meeting in the Republic as set out in section 61(9) is limited and restricted by this **MEMORANDUM OF INCORPORATION** In that the Board of Directors may only convene Member's meetings within a radius of 20 kilometers from the Complex.

## 12. Notice of Members' meetings

12.1 The minimum number of days for the Company to deliver a notice of a Members' meeting to the Members, as required by section 62 is 10 (ten) calendar days before the meeting is to begin and 21 (twenty one) calendar days before any meeting requiring special notice and where special resolution/s are to be considered. The notice of a meeting shall be deemed to be received by a member as per the schedule set out in 12.2 hereunder.

### 12.2 Deemed delivery:

Nature of Person to whom the document is	Method of Delivery	Date and Time of Deemed delivery
<b>ANY PERSON</b>	By faxing the notice or a certified copy of the document to the person, if the person has a fax Number; or	On the date and at the time recorded by the fax receiver, unless there is conclusive Evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the person has an address for Receiving electronic mail; or	On the date and at the time recorded by the Computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the person's last-	On the 7th day following the day on which the notice or document was posted as recorded by a post office, unless there is

	known address; or  By any other means authorised by the High Court; or By physically delivering the notice to the Dwelling registered in the Member's name.	Conclusive evidence that it was delivered on a different day. In accordance with the order of the High Court. On the date of delivery.
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12.3 A notice that is delivered by fax must include a cover page and a notice that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out -

- (a) The name, address, and telephone number of the sender;
- (b) The name of the person to whom it is addressed;
- (c) The date and time of the transmission;
- (d) The total number of pages sent, including the cover page; and
- (e) The name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful.

### **13 Electronic participation in Members' meetings**

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not allowed.

### **14. Notice of Members' meetings and requirements therefore**

14.1 The Company shall within 6 (six) months after the end of each financial year hold an Annual General Meeting in addition to any other general meetings during that year.

14.2 All Annual General Meetings shall be held at such time and place as the Directors shall decide from time to time, subject to Article 11.

14.3 All meetings other than Annual General Meetings shall be called general meetings.

- 14.4 The Directors may, whenever they think fit, convene a general meeting, and a general meeting shall also be convened on the requisition made in terms of Article 14.5 hereunder.
- 14.5 The Board of Directors of the Company must call a general meeting if one or more written and signed demands for such a meeting are delivered to the Company, and-
  - (a) each such demand describes the specific purpose for which the meeting is proposed; and
  - (b) in aggregate, demands for substantially the same purpose are made and signed by the members, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 14.6 The Company, or any Member of the Company, may apply to a court for an order setting aside a demand made in terms of Article 14.5 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.
- 14.7 At any time before the start of a Members' meeting contemplated in 14.5 above the Member, who submitted a demand for that meeting may withdraw that demand and the Company must cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.
- 14.8 An Annual General Meeting must, at a minimum, provide for the following business to be transacted:
  - 14.8.1 Any matters raised by Members, with advance notice to the company; and
  - 14.8.2 the consideration of the directors' report and the financial statements for the immediately preceding financial year; and
  - 14.8.3 the appointment of an auditor for the ensuing financial year; and
  - 14.8.4 the appointment of directors for the ensuing financial year; and
  - 14.8.5 the presentation and approval of the budget (estimated income and expenditure) for the ensuing financial year.

- 14.9 If the Company is unable to convene a meeting as required in terms of this Article because it has no directors, or because all of its directors are incapacitated, the Companies Tribunal, on a request by any Member may issue an administrative order for a meeting to be convened on a date and subject to any terms that the Tribunal considers appropriate in the circumstances.
- 14.10 The failure to hold a meeting as required by this Article or the Act does not affect the existence of the company, or the validity of any action by the Directors or the Company.
- 14.11 A notice of a Members' meeting must be in writing (whether electronic or otherwise), and must include-
- (a) the date, time and place for the meeting, and where applicable the Record Date for the meeting;
  - (b) the general purpose of the meeting, and any specific purpose if the meeting was called per Article 14.5;
  - (c) a copy of any proposed resolution of which the company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
  - (d) in the case of an Annual General Meeting of a company, the financial statements to be presented or a summarised form thereof or directions for obtaining a copy of the complete annual financial statements for the preceding financial year;
  - (e) a reasonably prominent statement that a Member is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;
- 14.12 If there is a material defect in the giving of the notice of a Members' meeting, the meeting may proceed, subject only to every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to approve the rectification of the defective notice;
- 14.13 If a material defect in the form or manner of giving notice of a meeting relates only to one or more particular matters on the agenda for the meeting, any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda;

- 14.14 An immaterial defect in the form or manner of giving notice of a Members' meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member/s to whom it was addressed, does not invalidate any action taken at the meeting.
- 14.15 A Member who is present at a meeting, either in person or by proxy is regarded as having received or waived notice of the meeting, if at least the required minimum notice was given.

## **15. Conduct at Members' meetings**

- 15.1 Before any person may attend or participate in a Members' meeting that person may be requested to provide reasonably satisfactory identification and the person presiding at the meeting must be reasonably satisfied that the right of that person to participate and vote, either as a Member, or as a proxy for a Member, has been reasonably verified.
- 15.2 If voting is by a show of hands, any person who is present at the meeting, whether as a Member or as proxy for a Member and entitled to exercise voting rights, has one vote, irrespective of the number of voting rights that that person would otherwise be entitled to exercise.
- 15.3 If voting on a particular matter is by polling, any person who is present at the meeting, whether as a Member or as proxy for a Member, has the number of votes determined in accordance with the voting rights associated with the proxies held by that person. For the avoidance of doubt a person will have one vote for every Dwelling that he represents and where any Dwelling is owned by more than one person all such owners shall have one vote only.
- 15.4 A polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by-
  - (a) at least five persons having the right to vote on that matter, either as a Member or a proxy representing a Member; or
  - (b) a person who is, or persons who together are, entitled, as a Member or proxy representing Members, to exercise at least 10% of the voting rights entitled to be voted on that matter.
- 15.5 The quorum requirement for a Members' meeting to begin or for a matter to be considered is at least 10 (ten) Members, personally present.

- 15.6 The time periods allowed in section 64(4) and (5) apply to the Company which determine that:
- (a) If, within half an hour after the appointed time for a meeting to begin, the requirements of article 15.5 have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week.
  - (b) if there is other business on the agenda of the meeting, consideration of that matter may be postponed without motion, vote or further notice, for one week.
- 15.7 The authority of a meeting to continue to consider a matter, as set out in section 64(9) is not limited or restricted by this MEMORANDUM OF INCORPORATION which means that, after a quorum has been established at the commencement of a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least one Member with voting rights entitled to be exercised at the meeting, or on that matter, remain present at the meeting.
- 15.8 A meeting may not be adjourned beyond 60 business days after the date on which the adjournment occurred.
- 15.9 The Company is not required to give further notice of a meeting that is postponed or adjourned, unless the location for the meeting is different from the location of the postponed or adjourned meeting.
- 15.10 If, at the time appointed in terms of this Article for a postponed meeting to begin, or for an adjourned meeting to resume, there are still no quorum, the Members of the company present in person or by proxy will be deemed to constitute a quorum at that meeting.
- 15.11 A Members' meeting, or the consideration of any matter being debated at the meeting, may be adjourned from time to time without further notice, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be.
- 15.12 An adjournment of a meeting or of consideration of a matter being debated at the meeting, in terms of Article 15.11 may be either to a fixed time and place or until further notice as agreed at the meeting. A further notice should be given to Members only if the meeting determined that the adjournment was 'until further notice', as contemplated above.



## **16. Members' resolutions**

16.1 Every resolution of Members is either an ordinary resolution or a special resolution.

16.2 A special resolution adopted at a Members' meeting is not required for any matter to be determined by the Company, except those matters set out in section 65(11) which are the following:

- (a) to amend the Company's MEMORANDUM OF INCORPORATION to the extent required by section 16 (1) (c) and section 36 (2) (a);
- (b) to ratify a consolidated revision of the Company's MEMORANDUM OF INCORPORATION, as contemplated in section 18 (1) (b);
- (c) to ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20 (2);
- (d) to approve the voluntary winding up of the Company, as contemplated in section 80 (1);
- (j) to approve the winding up of the Company in the circumstances contemplated in section 81 (1);
- (k) to revoke a resolution contemplated in section 164 (9) (c).

16.3 The board may propose any resolution to be considered by Members, and may determine whether that resolution will be considered at a meeting, or by vote or written consent in terms of section 60.

16.4 Any three Members of the Company may propose a resolution concerning any matter in respect of which they are each entitled to exercise voting rights.

16.5 A proposed resolution by Members as envisaged by Article 16.4 must be-

- (a) In writing; and
- (b) handed to the Chairman at least 10 (ten) days prior to the notice calling the meeting.

16.6 Any proposed resolution must be incorporated into the notice calling the meeting and -

- (a) expressed with sufficient clarity and specificity; and
- (b) accompanied by sufficient information or explanatory material to enable a Member who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution.

## **17. Requirements regarding proxies**

- 17.1 A Member may be represented at a General Meeting by a proxy, who must also be a Member of the Company or the spouse of a Member. The instrument appointing a proxy shall be in writing and signed by the Member concerned or his agent, duly authorised in writing, but need not be in a particular form, provided that, where a Member is more than 1 (one) person, a majority of those persons shall sign the instrument appointing a proxy on such Member's behalf.
- 17.2 The Member or proxy appointed must deliver a copy of the instrument appointing the proxy to the Chairman of the meeting, 48 hours prior to the commencement of the meeting, failing which the proxy may not exercise the Member's rights at the particular Members' meeting.
- 17.3 No instrument appointing a proxy shall be valid after the expiration of the meeting for which the proxy was provided for.

## **18. Record date for exercise of Member rights**

If, at any time, the Company's Board of Directors fails to determine a record date, the record date for the relevant matter is, the latest date by which the company is required to give Members notice of that meeting.

## **19. Election of Directors**

- 19.1 Subject to Article 19.4, each Director other than the first Directors of the Company must be elected by the Members to serve until the next Annual General Meeting.
- 19.2 Should the Members omit to elect new Directors at any Annual General Meeting or should the Members omit to re-affirm the present Directors they will hold office until the next annual general meeting where the same principal will apply and thereafter *ad infinitum*.

19.3 The election of Directors will be conducted at an annual or special general meeting as follows:

- (a) The Board shall decide, prior to the meeting, on the number of Directors required which shall always be equal or more than the minimum required in terms hereof but equal or less than the maximum permissible and failing their decision Article 20.1 shall apply.
- (b) The nominations by Members for the election of Directors at any general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicile of the Company not later than 48 hours before the meeting: Provided that present Directors are automatically eligible for re-election and Members are also capable of being elected by way of nominations, with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply the Act and this Memorandum.
- (c) In each vote to fill a vacancy-
  - (i) each voting right entitled to be exercised may be exercised once; and
  - (ii) the vacancy is filled only if a majority of the voting rights exercised support the candidate; and
  - (iii) If there are more candidates than vacancies the candidates with the most votes shall be appointed.

19.4 The board of Directors may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the company on a temporary basis until the vacancy has been filled by election in terms of Article 19.3 and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities of a Director of the Company.

## **20. Composition of the Board of Directors**

20.1 The Board of Directors of the Company shall consist of not less than 3 (three) with a maximum of 12 (twelve) Members.

20.2 Every Director must be a Member of the Company.

20.3 Any act performed by the Directors shall, notwithstanding that after the performance of the act it is discovered that there was some defect in the appointment or continuance in office of

any Director/s, be valid against members as if such Director/s had been duly appointed or had duly continued in office.

## **21. Removal of Directors**

- 21.1 Each Director shall continue to hold office as such from the date of his appointment to office until the general meeting next following his said appointment, subject to Articles 19.2 and 21.2.
- 21.2 A Director shall be deemed to have vacated his office as such upon:
  - 21.2.1 Him having become disqualified to act as Director in terms of the provisions of the Act;
  - 21.2.2 Him being removed from office as provided for in the Act;
  - 21.2.3 Him being convicted of any fraudulent act;
  - 21.2.4 Him being declared insane;
  - 21.2.5 Him ceasing to be a Member or his spouse ceasing to be a Member, as the case may be;
  - 21.2.6 His non compliance with the objectives of the Company or failure to adhere to 3 (three) written warnings from the majority of the remaining Directors;
  - 21.2.7 His failure to settle any amounts owed to the Company within 7 (seven) days of receipt of a written demand to do so;
  - 21.2.8 His written resignation.

## **22. Chairperson and Vice Chairperson**

- 22.1 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 Annual General Meeting next 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 offices at any time, the Board of Directors shall appoint one of their number as a replacement in such office.
- 22.2 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 him/her not being present within 5 (five) minutes of the scheduled time for the start of the meeting or in the event of his/her inability or unwillingness to act, the Vice Chairperson shall act in his/her stead, or failing the Vice Chairperson, a Chairperson appointed by the meeting.

### **23. Directors' Expenses and Remuneration**

- 23 .1 Directors shall be entitled to be paid reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as Directors as approved by the Members in General Meeting.

### **24. Directors' Powers and Authority**

- 24 .1 Subject to the express provisions of this Memorandum, 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 a Managing Agent and 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 required to be exercised or done by the Company in general meeting, subject however to such directions or rules as may have been made by the Company in general meeting or as may be made from time to time.
- 24.2 Save as specifically provided for in this Memorandum, 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, managing agents and any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors.
- 24.3 The Directors shall, subject to Article 4, be entitled to make / amend the Rules with regard to any issue, including Building Works. Such Rules may deal with the prior approval and thereafter supervision of all Building Works, the procedures to be adopted by Members prior to commencement and the time periods within which Building Works should be completed and any penalties payable by Members in the event of non or late compliance therewith.
- 24.4 For purposes of Article 24.3 above, the Directors shall be entitled but not obliged to appoint an architectural review committee which shall consist of:
- 24.4.1 a practising professional architect duly qualified to practise as such on his own account in the Republic of South Africa; and
- 24.4.2 As many Directors as they deem appropriate who shall have the authority to approve or decline construction plans in respect of any Building Works within the Complex.
- 24.5 The Directors shall be entitled to appoint committees consisting of such number of their

Members and such outsiders, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

- 24.6 Save as provided in this Memorandum, the proceedings of any Directors' meeting shall be conducted in such reasonable manner and form as the Chairperson of the meeting shall decide.
- 24.7 In addition to the appointed Directors there are no appointed or *ex officio* Directors of the Company, as contemplated in section 66(4).

## **25. Directors' Meetings**

- 25.1 The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this **MEMORANDUM OF INCORPORATION**.
- 25.2 A decision that could be voted on at a meeting of the board of Directors may instead be adopted by written consent of a majority of the Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided.
- 25.3 A decision made in the manner contemplated in this Article (25.2) is of the same effect as if it had been approved by voting at a meeting.
- 25.4 The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised by any two Directors, despite the provisions of that section.
- 25.5 The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(4) is not limited or restricted by this **MEMORANDUM OF INCORPORATION**.
- 25.6 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this **MEMORANDUM OF INCORPORATION**
- 25.7 The Company's Board of Directors may proceed with a meeting, despite a failure or defect in giving notice of the meeting as long as a quorum is present.
- 25.8 The quorum requirement for a Directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are as follows:

- a) a majority of the Directors must be present before a vote may be called at a meeting of the Directors;
  - (c) each Director has one vote on a matter before the Board;
  - (d) a majority of the votes cast on a resolution is sufficient to approve that resolution;
  - (e) in the case of a tied vote-
    - (i) the Chairman may cast a deciding vote, if he did not initially have or cast a vote; or
    - (ii) the matter being voted on fails, in any other case, subject to the variations set out in Part F of Schedule 4.
- 25.9 Notwithstanding Article 25.2, a decision that could be voted on at a meeting of the Board of Directors may be adopted by way of a round robin resolution.

## **26. Indemnification of Directors**

- 26.1 The Company shall not directly or indirectly pay any fine that may be imposed on a director of the Company or on a director of a related company as a consequence of that director having been convicted of an offence, unless the conviction was based on strict liability (no fault liability).
- 26.2 The Company may only indemnify a director or directors in respect of liabilities other than:
  - 26.2.1 A director acting in the name of the Company, signed anything on behalf of the Company, or purported to bind the Company or authorizing the taking of any action by or on behalf of the Company, despite knowing that the director lacked the authority to do.
  - 26.2.2 A director acquiescing in the carrying on of the Company's business despite knowing that it was being conducted in a reckless manner, with gross negligence, with intent to defraud any person or for any fraudulent purpose.
  - 26.2.3 A director who had been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or member of the company, or had another fraudulent purpose.
  - 26.2.4 Liabilities arising from willful misconduct or willful breach of trust on the part of the director/s.
  - 26.2.5 A fine contemplated in subsection Article 26.1.
- 26.3 The company hereby indemnifies the director for all acts done in good faith and other than those specified in Article 26.2.

- 26.4 The authority of the Company to purchase insurance to protect the Company, or the director is not limited by this Memorandum.

**27. Officers and Committees**

- 27.1 Subject to Articles 19 and 20 the authority of the Directors to appoint committees of Directors, and to delegate to any such committee any authority of the Board, as set out in section 72(1), and to include in any such committee persons who are not Directors, as set out in section 73(2)(a) is not limited or restricted by this **MEMORANDUM OF INCORPORATION**.
- 27.2 The authority of a committee appointed by the Company's Board of Directors, as set out in section 72(2)(b) and (c) is not limited or restricted by this **MEMORANDUM OF INCORPORATION**

**28. Restriction on transfer of land**

- 28.1 Unless the Company, under the hand of two Directors (or the Managing Agent if duly appointed), has certified in writing that the Member has fulfilled all his financial obligations to the Company and has settled his indebtedness to the Company, from any cause whatsoever and howsoever arising (including but not limited to levies, special levies, interest, penalties and any other indebtedness which arose prior to transfer of his Dwelling into the name of the new Member), in respect of the period up to and including the date specified in such notice, such Member may not transfer his Dwelling.
- 28.2 No Member shall transfer his Dwelling unless the proposed transferee has undertaken, in writing to comply with this Memorandum of Incorporation and the Rules.

**29. Binding Force**

This MEMORANDUM OF INCORPORATION, and the Rules are binding-

- (a) between the Company and each Member.
- (b) between or among the Members of the Company.
- (c) between the Company and each director or prescribed officer of the Company.
- (d) between the Company and any other person serving the Company as a member of a committee of the Board,



30. **Exclusion of liability**

The Company shall not be liable in respect of any damages suffered by a Member from any cause whatsoever and howsoever arising, except for the gross negligence or wilful conduct of the Directors in which event specific recourse against the latter is not hereby excluded.