

February 2020



**MEMORANDUM OF INCORPORATION OF A
NON-PROFIT COMPANY WITH VOTING
MEMBERS INCORPORATED AND
REGISTERED NOT FOR GAIN**

EAGLE CANYON GOLF ESTATE HOME OWNERS' ASSOCIATION NPC

Registration number
2003/012328/08

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INTRODUCTION

1. Definitions and Interpretation

1.1. The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

Access Erven means the *Common Property Erven* registered in the name of the *Company* and over which *Members* have a right of way and free access to afford them access to an internal road, being Erven 309, 311, 375, 376, 377, 378, and 381 Honeydew Manor Extension 5, Erf 1257 Honeydew Manor Extension 7, Erven 618, 619, and 620 Honeydew Manor Extension 8, Erven 726, 727, 728, 730 Honeydew Manor Extension 9, Erven 514, 515, and 516 Honeydew Manor Extension 10, Erf 748 Honeydew Manor Extension 22, Erven 1201 and 1202 Honeydew Manor Extension 24, and Erf 1525 Honeydew Manor Extension 42.

Act means the Companies Act 71 of 2008, its schedules and the regulations promulgated in terms thereof, as amended.

Annual General Meeting means the Annual Meeting of the *Members* of the *Company* as required in terms of the *Act*, and 'AGM' shall have a similar meaning

Architectural, Building and Landscaping Requirements means the Architectural, Building and Landscaping Requirements to be followed by *Members* of the *Company* in relation to all improvements to be erected on any *Erf* or any

Unit situated within the *Estate*, which may be amended from time to time by the *Board* in accordance with the provisions of the *Act*, Municipal by-laws and this *Memorandum of Incorporation*.

Auditors	means the auditors of the <i>Company</i> .
Board	means the <i>Directors</i> of the <i>Company</i> as defined in the <i>Act</i> .
Business Day	means any day except a Saturday, Sunday or South African public holiday
Chairperson	means the Chairperson of the <i>Board</i> and of any <i>Meeting of Members</i> of the <i>Company</i> .
CIPC	means the Companies and Intellectual Property Commission
Common Property Erven	means those <i>Erven</i> in the <i>Estate</i> used for purposes of <i>Access Erven</i> , security, internal roads and/or <i>Private Open Spaces</i> and upon which are situated servitude areas containing Township Engineering Services.
Company	means Eagle Canyon Golf Estate Home Owners Association NPC, duly registered and incorporated in terms of the <i>Act</i> with <i>CIPC</i> and which carries registration number 2003/012328/08, and being the holder of all the issued shares in Eagle Canyon Golf and

Country Club (Pty) Ltd registration number
2005/006726/07

Country Club means Erven 979 Extension 32 which *Erven* is owned by the *Company*.

CSOS means the Community Scheme Ombud Service established in terms of the Community Schemes Ombud Service Act, Act 9 of 2011.

Director/s means a *Member* or *Members* of the *Board*, duly elected or appointed in accordance with the provisions of this *Memorandum of Incorporation* and includes any person occupying the position of director or *Officer* by whatever name designated.

Erf or Erven means any of the freeholding properties forming part of the *Estate* whether zoned for residential purposes or otherwise, developed or not.

Estate means *Access Erven, Common Property Erven, Country Club, Golf Course, Other Company Erven, Body Corporate*, as developed on the Eagle Canyon Golf Estate and situated:

- a. Honeydew Manor Extension 5 Township (more fully demarcated on General Plan SG No 4320/2003),
- b. Honeydew Manor Extension 7 Township (more fully demarcated on General Plan SG No 167/2007),

- c. Honeydew Manor Extension 8 Township (more fully demarcated on General Plan SG No 960/2003),
- d. Honeydew Manor Extension 9 Township (more fully demarcated on General Plan SG No 8466/2004),
- e. Honeydew Manor Extension 10 Township (more fully demarcated on General Plan SG No 10399/2003),
- f. Honeydew Manor Extension 22 Township (more fully demarcated on General Plan SG No 3235/2004),
- g. Honeydew Manor Extension 24 Township (more fully demarcated on General Plan SG No 3365/2003),
- h. Honeydew Manor Extension 32 Township (more fully demarcated on General Plan SG No 1615/2005),
- i. Including any other Sectional Title Development pursuant to the Sectional Titles Act 95 of 1986 and/or Sectional Title Schemes Management Act 8 of 2011 or any similar development which incorporates an association,

including all improvements, structures and infrastructure thereon from time to time.

Golf Course	means Erven 1258, 1259 and 1260 Honeydew manor Extension 7 Township, which Erven are owned by the <i>Company</i>
Meeting of Members	means any meeting of <i>Members</i> of the <i>Company</i> , including the <i>Annual General Meeting</i> .
Member/s	means a registered owner or registered owners of an <i>Erf</i> or a <i>Unit</i> , and who is, as a result of such ownership, a member of the <i>Company</i> and for the purposes of voting rights shall be a fully paid up member.
Memorandum of Incorporation	means this memorandum of incorporation or as amended from time to time.
Municipal Owned Entities	means any department, division, or duly authorised contractor of the City of Johannesburg that maintains the City of Johannesburg's installations and provides municipal services to the <i>Resident</i> .
Notice	means written communication to <i>Members</i> of the <i>Company</i> sent in terms of 17 hereof, and includes any written communication via electronic mail.
Officer/s	means any natural person who exercises general executive control over, and management of the whole or significant portion of the business and activities of the <i>Company</i> , or regularly participates to a material degree therein, irrespective of any

particular title given to an office held or function performed.

Ordinary Resolution means a resolution adopted with the support of more than 50% (fifty per centum) of the voting rights exercised by eligible *Members* in person or by proxy on the resolution at a duly constituted *Meeting of Members* or by *Members* acting other than at a meeting as contemplated in section 60 of the *Act*.

Other Company Erven means Erven 980 Honeydew Manor Extension 32, upon which Erven the tennis club and Erven 621 Honeydew Manor Extension 8, upon which Erven the Home Owners Association Administration Offices facilities have been established, and which Erven are owned by the *Company*.

Person means any natural person, *Member*, company, close corporation, trust, partnership or other entity, whether or not having separate legal personality.

Private Open Spaces means the *Common Property Erven* registered in the name of the *Company* and to which *Members* shall have free entrance and usage, being Erven 379 and 380 Honeydew Manor Extension 5, Erven 1257 Honeydew Manor Extension 7, and 622 Honeydew Manor Extension 8, Erf 729 Honeydew Manor Extension 9, Erf 749 Honeydew Extension 22, Erven 1203, 1204, 1205 and 1206 Honeydew

Extension 24, and the soccer field facilities on Erven 981 Honeydew Manor Extension 32.

**Replacement
Reserve**

means any reserve of funds held by the *Company* to provide for the maintenance and/or replacement of its assets, and the maintenance of its immovable property, the meeting of its objectives pursuant to the main business of the *Company*, the requirements of which are encompassed in a schedule of the *Company's* assets detailing the indicative replacement value and the projected replacement date of such assets.

Reserved Matter

means any commitment to, or implementation, amendment, termination or cancellation by the *Company* of any resolutions, transactions, agreements or other matters set out in Appendix A attached to this *Memorandum of Incorporation* shall be deemed to be a reserved matter.

Resident/s

means all *Members* and any and all other *Persons* who reside on the *Estate* including the lawful tenant of any *Member*, irrespective of whether such *Person* is a *Member* or not.

**Rules and
Regulations**

means the rules and regulations of the *Company*, which may be amended from time to time in accordance with the provisions of this *Memorandum of Incorporation*, and which are available to the *Members* on the Eagle Canyon Golf Estate website, and also on request from the *Company*, and includes, but

is not limited to, the *Architectural, Building and Landscaping Requirements*, the Estate Rules and Regulations, levy and penalty schedules.

Special Resolution means a resolution adopted with the support of at least 75% (seventy five per centum) of the voting rights exercised by eligible *Members* in person or by proxy on the resolution at a duly constituted *Meeting of Members* or by *Members* acting other than at a meeting as contemplated in section 60 of the *Act*.

Unit means a sectional title unit as defined in the Sectional Titles Schemes Management Act, Act 8 of 2011 and duly demarcated on a sectional title plan approved by the Surveyor General and being capable of registration in the name of any *Person* in terms of the Deeds Registry Act 37 of 1947 and intended for Residential purposes located within the *Estate*.

- 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 genders.
- 1.3. Any references to sections shall be those in the *Act*, unless specified otherwise.

- 1.4. For purposes of this *Memorandum of Incorporation*, a reference in the *Act* to “a shareholder”, or “a holder of voting rights entitled to be voted”, is a reference to the *Members*.
- 1.5. This *Memorandum of Incorporation* is applicable to *Members* and/or *Residents* including all Body Corporates and owners of *Units* or any future sectional title developments or any residential or commercial developments, which are to be governed by the *Rules and Regulations* of the *Estate* and subject to such additional rules contained in the Regulations of the Sectional Titles Management Act, as amended.
- 1.6. The *Company* may elect, in terms of section 34(2) of the *Act*, to comply voluntarily with the extended accountability provisions of Chapter 3.

2. Formation and Name

- 2.1. The *Company* having the name, objects and powers set out herein was originally established and incorporated on 30 May 2003.
- 2.2. The name of the *Company* is “Eagle Canyon Golf Estate Home Owners’ Association NPC”.

THE COMPANY AND MEMBERS

3. Purpose and Objects Describing the Main Business

- 3.1. The main object of the *Company* is to promote, advance and protect the communal interests and security of *Members*, *Residents* and other users of the *Estate*.

- 3.2. The main business of the *Company* is to act as the Home Owners' Association on behalf of the *Members* and any other related and ancillary business, which includes but is not limited to:
- 3.2.1. controlling the character and architectural standards of buildings and other structures erected or to be erected in the *Estate*; approving building plans to ensure all buildings meet the approved guidelines of the *Company*;
 - 3.2.2. owning, managing and developing the *Common Property Erven* and the *Other Company Erven*;
 - 3.2.3. owning and carrying on the business, through the wholly owned subsidiary of the *Country Club*, golf club, *Golf Course*, letting and hiring of property on the *Estate*, including all functions associated therewith; and
 - 3.2.4. devising, issuing and enforcing *Rules and Regulations* pertaining to:
 - 3.2.4.1. the good governance and orderly administration of the *Company* and *the Estate*;
 - 3.2.4.2. the *Erven* and *Units*;
 - 3.2.4.3. the conduct of *Members*, *Residents* and other users on the *Estate*;
 - 3.2.4.4. the use and maintenance of streets, sidewalks, walkways, communal property and *Private Open Spaces* in the *Estate*;
 - 3.2.4.5. the movement of vehicular traffic in the *Estate*;
 - 3.2.4.6. for the completion of the erection of homes and other structures on *Erven* in the *Estate* within prescribed periods; and

- 3.2.4.7. any other internal matters which the *Board* deems appropriate to be regulated.
- 3.2.5. acquiring (by any causa) and holding and/or leasing or letting out or disposing of immovable property;
- 3.2.6. maintaining all fixed assets of the *Company*;
- 3.2.7. advancing and implementing reasonable security and safety measures for the welfare of the *Members* and *Residents*;
- 3.2.8. promoting and advancing the communal interests of its *Members* on an equitable basis;
- 3.2.9. imposing and collecting levies, special levies and penalties from the *Members* of the *Company* as empowered in this *Memorandum of Incorporation, Rules and Regulations* as determined by the *Board*, from time to time;
- 3.2.10. attending to all administrative and statutory obligations and services of the *Company* inclusive of consent to or not of the consolidation, rezoning of any *Erf* on the *Estate*;
- 3.2.11. administering the provision, administration and control of communication networks for security;
- 3.2.12. taking action, including the imposing of penalties, or the institution of legal proceedings in relation to the non-compliance by any *Member* of any *Rule and Regulation* or the non-payment of levies or any amount legally due by the *Member* to the *Company*;
- 3.2.13. ensuring that all Emergency Services of the Local Authority or similar emergency services have 24 (twenty four) hour access to the *Estate*;
- 3.2.14. enforcing any Title Deed Conditions in favour of the *Company*;

- 3.2.15. properly and clearly displaying and subsequently maintaining the street names and ensure the enforcement of street numbers by *Residents* clearly displayed on the individual Erven in the *Estate* to the satisfaction of the City of Johannesburg;
- 3.2.16. rezoning *Company* owned *Erven* for the mutual benefit of *Members*;
- 3.2.17. requiring that all works constructed or maintained within the *Estate*, be supervised to ensure that the *Company's Rules and Regulations* are complied with and that all work is performed in a professional and workmanlike manner’
- 3.2.18. issuing architectural design guidelines in respect of any construction to be conducted within the *Estate*, or any amendments thereto from time to time; and
- 3.2.19. owning, via shareholding, any subsidiary company.

4. Powers of the *Company*

- 4.1. Except to the extent necessarily implied by the *Company's* stated objects and business as well as this *Memorandum of Incorporation*, and the *Rules and Regulations*, the purposes and powers of the *Company* are not subject to any restriction, limitation or qualification of the legal powers and capacity of the *Company*, as contemplated in section 19(1)(b)(ii) of the *Act*.
- 4.2. The *Company* is not subject to any restrictive conditions as contemplated in section 15(2)(b) or (c) of the *Act*, or to any prohibitive conditions (as envisaged in section 16 of the *Act*) in respect of the amendment or addition to the requirements and provisions contained in this *Memorandum of Incorporation*.

5. Membership

- 5.1. Every owner who receives transfer of an *Erf* or a *Unit*, shall, upon registration of transfer automatically become a *Member* and be bound to the *Memorandum of Incorporation, Rules and Regulations* and *Architectural, Building and Landscaping Requirements* promulgated by the *Company*.
- 5.2. Membership of the *Company* shall be limited to any *Person* who in terms of the Deeds Registries Act No 37 of 1947, as amended, is reflected in the records of the Deeds Office concerned as the registered owner of any *Erf* or the registered owner of any *Unit*.
- 5.3. Every *Person* who shall have become a *Member* shall automatically cease being a *Member* as soon as such *Person* ceases being the registered owner of an *Erf* or *Unit* in the *Estate*.
- 5.4. Where an *Erf* or *Unit* is owned by more than one *Person*, all the registered owners shall together be deemed to be one *Member* of the *Company* and shall together have the rights of one *Member* of the *Company*, but shall jointly and severally be liable for the *Member's* obligations and shall together exercise one vote at meetings of the *Company*.
- 5.5. If the *Person* taking transfer of an *Erf* or *Unit* is not a natural person, it will be obliged prior to transfer, to nominate a natural person to represent it for the purposes of communication from the *Company* and to notify the *Company* of the full names, street address, postal address, email address and contact number of the said representative, failing which the *Company* may choose the identity of the representative from amongst the directors, members, trustees, partners or other similar office bearers of the registered owner.

5.6. No *Member* shall let or otherwise part with occupation of such *Member's Erf* or *Unit*, whether temporarily or otherwise, unless such *Member* has agreed with the proposed occupier of such *Erf* or *Unit*, as a stipulatio alteri in favour of the *Company*, that such occupier shall be bound by the provisions of this *Memorandum of Incorporation* of the *Company* and all the *Rules and Regulations* of the *Company*.

6. Rights and Obligations of Members

6.1. The rights and obligations of a *Member* shall not be transferable, and every *Member* shall:

6.1.1. to the best of such *Member's* ability further the business, objects and interests of the *Company*;

6.1.2. pay all levies, special levies, penalties and charges due and payable as may be determined by the *Board* from time to time and ensure that the *Members'* account remains fully paid up at all times; and

6.1.3. be bound by, abide by and observe all the requirements and obligations imposed by the *Memorandum of Incorporation* and *Rules and Regulations* including the *Architectural, Building and Landscaping Requirements* of the *Company*.

6.2. A *Member* may not resign as a *Member* for so long as such *Member* is the registered owner of an *Erf* or *Unit*.

6.3. In order for a *Member* to vote at a *Meeting of Members*, whether in person or by proxy, all outstanding amounts due to the *Company* has to be fully settled and paid up in full prior to the *Meeting of Members*.

- 6.4. Every *Member* shall ensure that a credit and background check is conducted to the satisfaction of the *Board* in the event that the *Member* shall let to a tenant or occupant such *Member's Erf* or *Unit*, whether temporarily or otherwise.
- 6.5. Subject to the *Rules and Regulations* of the *Company*, each and every *Member* of the *Company* shall have free access over the *Access Erven* to afford them access to an internal road.
- 6.6. Subject to the *Rules and Regulations* of the *Company*, each and every *Member* shall have free entrance and usage of *Private Open Spaces*.

7. The Rights of The City of Johannesburg

- 7.1. The *Company* shall have full responsibility for the functioning and proper maintenance of the *Access Erven* as well as *Private Open Spaces* to the satisfaction of the City of Johannesburg, failing which such maintenance shall be done by the City of Johannesburg at the cost of the *Company*.
- 7.2. The *Company* is obliged to grant *Municipal Owned Entities* and emergency services of the City of Johannesburg guaranteed 24 hour access to the *Access Erven* and *Private Open Spaces* or any other *Erven* where essential engineering township services are located.
- 7.3. The *Company* will be obliged, to the satisfaction of the City of Johannesburg, to properly and clearly display and maintain the street names and street numbers allocated to individual *Erven*.
- 7.4. The *Company* is precluded from alienating or transferring or mortgaging the *Access Erven* or *Private Open Spaces*, which *Erven* have been transferred to the *Company*, or *Erf 310* without the written consent of the

City of Johannesburg first being had and obtained. Such written consent is likewise required for any alienation, transfer, or cession of any interest in such *Erven*.

- 7.5. The *Company* is precluded from rezoning or filing an application to rezone the *Access Erven* or *Private Open Spaces* transferred to the *Company* without the written consent of the City of Johannesburg first being had and obtained.
- 7.6. The *Memorandum of Incorporation* of the *Company* shall not be implemented and/or amended as far as such amendment relates to paragraphs 7.1 to 7.5 above and including this paragraph, without the written consent of the City of Johannesburg first being had and obtained.

8. Rules and Regulations

- 8.1. In addition to the restrictions imposed by any relevant approving authorities, the title conditions of each *Erf* or *Unit* and the approved town planning conditions of the *Estate* and, subject to any restriction imposed or direction given at a *Meeting of Members* of the *Company*, the *Board* may, from time to time, make *Rules and Regulations* to enable the *Company* to maintain, promote and accomplish its objectives.
- 8.2. The *Board* may, subject to section 15(4) of the *Act* make, amend or repeal any necessary or incidental *Rules and Regulations* relating to the governance of the *Company* in respect of matters that are not addressed in the *Act* or this *Memorandum of Incorporation*.
- 8.3. In this regard, the *Board* shall, from time to time, notify the *Members* in writing of any proposed change to the *Rules and Regulations* of the *Company* and afford the *Members* 10 (ten) *Business Days* in which to object to the proposed amendment. If less than 100 (one hundred) *Members* object

in writing to the proposed amendment to the *Rules and Regulations*, the proposed amendment shall be deemed effected. If at least 100 (one hundred) *Members* object in writing to the proposed amendment to the *Rules and Regulations*, the *Board* shall be obliged to refer the proposed amendment to a *Meeting of Members*, whether such meeting be called specifically to address the proposed amendment to the *Rules and Regulations*, or whether the proposed amendment is deferred to the agenda of the next *Meeting of Members* to be called in due course.

8.4. The *Company* shall publish a copy of the *Rules and Regulations* and a *Notice* of any alteration by delivering a copy thereof to each *Member* in accordance with clause 8.3 hereof or in such other manner as may be required by the *Rules and Regulations*.

8.5. For the enforcement of any of the *Rules and Regulations*, the *Board* may:

8.5.1. give *Notice* to the *Member* concerned requiring him to perform such obligation or to remedy such breach within such period as the *Board* may determine;

8.5.2. take or cause to be taken such steps as they may consider necessary to perform such obligation, or remedy the breach of the *Rules and Regulations*, of which the *Member* or tenants of the *Member*, visitors or contractors may be liable and, debit the cost of so doing to the *Member* concerned, which amount shall be deemed to be a debt owing by the *Member* concerned to the *Company*; and/or

8.5.3. in its sole discretion, impose a system of penalties. The amounts of such penalties shall be reviewed and confirmed at each *Annual General Meeting* of the *Company*; and/or

8.5.4. take any other action, as they deem fit.

- 8.6. Notwithstanding anything to the contrary herein contained, the *Board* may, in the name of the *Company*, enforce the provisions of any rules and regulations 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.
- 8.7. In the event of the *Board* instituting any legal proceedings against any *Member* or *Resident* within the *Estate* for the enforcement of any of the rights of the *Company* in terms hereof, or the collection of any outstanding amount due and payable to the *Company*, the *Company* shall be entitled to recover all disbursements, expenses as well as legal costs so incurred from the *Member* or *Resident* concerned, calculated as between attorney and own client.
- 8.8. In the event of any breach of the *Rules and Regulations* by the *Members* or any *Member's* household or his guests or lessees, such breach shall be deemed to have been committed by the *Member* himself. Without prejudice to the foregoing, the *Board* may take or cause to be taken such steps against the *Person* actually committing the breach as the *Board*, in its discretion, may deem fit.
- 8.9. A penalty imposed upon any *Member* shall be deemed to be a debt due by the *Member* to the *Company* and shall be recoverable by ordinary civil process.
- 8.10. In the event of any *Member* or *Resident* disputing the fact that he / she has committed a breach of any of the *Rules and Regulations* of the *Company*, which dispute must be raised in writing within 7 (seven) calendar days after transmittal of the *Notice* of the breach, the Chief Executive Officer of the *Company*, or his duly appointed delegate shall adjudicate summarily upon

the dispute and shall deliver a *Notice* to such *Member* with the outcome of the adjudication within 7 (seven) days thereafter.

- 8.11. Nothing contained in this *Memorandum of Incorporation* shall preclude a *Member* or *Resident* approaching the *CSOS* for a further adjudication on the matter.

THE *BOARD* AND COMMITTEES

9. Appointment and Composition of the *Board* and *Officers* of the *Company*

- 9.1. The *Board* shall consist of not less than 6 (six) and not more than 10 (ten) *persons* inclusive of the Chief Executive Officer appointed ex officio, by virtue of his appointment by the *Board*. Other than the Chief Executive Officer, the other *Directors* shall be elected by *Ordinary Resolution* at a *Meeting of Members*.
- 9.2. A nominee to the *Board* shall consist of suitably qualified natural *persons* to serve on the *Board* and limiting External Non-Executive *Directors* to 3 (three) *Members* of the *Board*.
- 9.3. A *Director* appointed by *Members* at an *Annual General Meeting* shall hold office until the conclusion of the third *Annual General Meeting* following his appointment.
- 9.3.1. in the event that a *Member* is not a natural *person*, an authorised representative of the *Member*, which authorisation shall be in writing, provided that such representative is ordinarily Resident in the *Estate*;
- 9.3.2. in the event that an *Erf* or *Unit* is owned by more than one *Person*, a representative of those *Persons*, provided that the representative has been authorised in writing;
provided that all amounts due and payable to the *Company* have been paid in respect of the *Erven* or *Units* of which the nominated *Person* is representative relating to clause 9.4.
- 9.4. The *Board* shall have the power to appoint any *person* who satisfies the requirements for election as a *Director* as provided for in clause 9. hereof

to either fill any vacancy in their number or to *Act* as an additional *Director* provided that the total number of *Directors* shall not, at any time, exceed the maximum number fixed by or in accordance with this *Memorandum of Incorporation*. The authority of the *Board* in this regard shall not be limited or restricted by this *Memorandum of Incorporation*. The appointment of any *Director* so appointed in terms of this clause 9.4, shall cease at the conclusion of the next *Annual General Meeting*, but nothing shall preclude such *person* from standing for election as *Director* at such *Annual General Meeting*, provided that the provisions of clauses 9.1 to 9.14 hereof are complied with.

9.5. The *Board* may *Act*, notwithstanding any vacancy in their number, but if and for so long as their number is reduced below the minimum number of *Directors* required to *Act* as such for the time being, the *Board* may *Act* only to:

9.5.1. increase the number of *Directors* to the required minimum; or

9.5.2. summon a *Meeting of Members*, as provided for in the *Act* for that purpose, provided that if there is no *Director* able or willing to *Act*, then any *Member* may convene a *Meeting of Members* as provided for in the *Act* for that purpose.

9.6. No *Member* shall have the right to affect the direct appointment of one or more *Directors* as contemplated in section 66(4)(a)(i) of the *Act*.

9.7. The *Board* may appoint, from time to time, one or more of the *Directors* or any *person* as Chief Executive Officer of the *Company*, on such terms and conditions as may be determined from time to time by the *Board*, provided that if such a *person* was a *Director* before being appointed as such Chief Executive Officer, his appointment as such shall cease, if for any reason he ceases to be a *Director*, unless otherwise resolved by the *Board*.

- 9.8. The Chief Executive Officer of the *Company*, by virtue of the appointment as such by the *Board*, shall be a *Director* of the *Company* for as long as he holds office as Chief Executive Officer.
- 9.9. Each *Director* shall continue to hold office as such, from the date of his election or appointment to office until the next AGM following the expiration of the term. Upon expiration of the term, such *Director* shall be deemed to have retired from office but shall be eligible for re-election to the *Board* at the AGM, subject always to the proviso in Clauses 9.9 to 9.13.
- 9.10. At least one third of the *Directors* who served on the *Board* must resign annually. Any such *Director* is eligible for re-election. Should there be no *Directors* willing to resign, one-third of the *Directors*, calculated based on increased length of service, must resign annually. Any such *Director* is eligible for re-election subject to clauses 9.9 to 9.13.
- 9.11. A *Director* shall be eligible to be nominated and re-elected for a period of no longer than 6 (six) consecutive years. In the event of a *Director* being nominated and appointed for a consecutive period of 6 (six) years as aforementioned, a minimum period of 2 (two) years shall elapse before the *Director* becomes eligible for his re-election to the *Board* or a Committee.
- 9.12. There is no limit to the number of times a *Director* may be re-elected to the *Board*, provided always that the provisions of clauses 9.9 to 9.12 hereof shall apply to each such re-election.
- 9.13. The *Company* may not permit a *Person* to serve as *Director* if that *person* is ineligible or disqualified in terms of section 69 of the *Act*.

9.14. A *Director* ceases to be a *Director* and shall be deemed to have vacated his office as such upon:

- 9.14.1. having become disqualified to *Act* as *Director* in terms of the provisions of section 69 of the *Act*;
- 9.14.2. any basis as referred to in section 70(1) of the *Act*;
- 9.14.3. being removed from office by the Board or Members as provided in section 71 of the *Act*; and
- 9.14.4. being declared a delinquent *Director* in terms of Section 162 of the *Act* or who is disqualified from taking part in the management of a close corporation in terms of Section 47 of the Close Corporation Act, 69 of 1984; or
- 9.14.5. ceasing to be a Member, or in the event that the relevant Member is not a natural person, a representative of that Member ceasing to be a Member;
- 9.14.6. the *Director* ceases to be the spouse of a *Member*; or
- 9.14.7. in the event of a Member being a corporate entity or a trust, the *Director* in question ceasing to be a representative of such Member; or
- 9.14.8. in the event of the *Director* in question representing the joint owners of any Erf or Unit in terms of clause 9.3.2 hereof, the *Director* in question ceasing to be a representative of such joint owners;

9.14.9. the Director in question or the Member he represents falling into arrears with any amount that is due and payable to the Company and same is not remedied within 7 (seven) days after receiving a Notice calling on such Director or Member to remedy the breach; or

9.14.10. a Director shall cease to be eligible to continue to Act as a Director if he absents himself from 2 (two) consecutive meetings of the Board without the leave of the Chairman.

9.15 The *Company* shall file a *Notice* writing 10 (ten) *Business Days* with *CIPC* after a *Director* becomes ineligible or ceases to be a *Director* of the *Company*.

9.16 The *Directors* shall not be paid any remuneration for their services as such.

9.17 The *Directors* may be reimbursed in respect of any travelling, subsistence and other expenses properly incurred by them in the execution of their duties in or about the business of the *Company* and which are authorised or ratified by the *Board* or *Officers* of the *Company*.

10. Authority of the *Board*

10.1. The business and affairs of the *Company* shall be managed under the direction of the *Board* who shall have the authority to exercise all of the powers and perform all of the functions of the *Company*, except to the extent that the *Act* or this *Memorandum of Incorporation* provides otherwise.

10.2. Subject to any limitation imposed by this *Memorandum of Incorporation*, the management of the business and the control of the *Company* shall be vested in the *Board*, who may exercise or delegate to any one or more

persons all such powers and or delegate to any one or more persons the doing of all such acts (including the right to sub-delegate), as may be exercised or done by the *Company*, and are not in terms of the *Act* or by this *Memorandum of Incorporation* expressly directed or required to be exercised or done by a *Meeting of Members* of the *Company*, subject, nevertheless, to that management and control:

- 10.2.1. not being inconsistent with; and
- 10.2.2. being in compliance with any resolution passed by a *Meeting of Members* of the *Company*. No such resolution passed by a *Meeting of Members* shall invalidate the *Company* and prior acts of the *Board* or any delegate.
- 10.3. Any commitment to, or implementation, amendment, termination or cancellation by the *Company* of any resolutions, transactions, agreements or other matters set out in Appendix A attached to this *Memorandum of Incorporation* shall be deemed to be a "*Reserved Matter*" and subject to the restrictions in clause 10.4 of this *Memorandum of Incorporation*.
- 10.4. The *Board* shall not have the power or authority to effect a *Reserved Matter* unless that *Reserved Matter* has been approved by a *Special Resolution* at a duly constituted *Meeting of Members* or the *Special Resolution* is adopted in accordance with section 60 of the *Act* and the powers of the *Board* shall be limited accordingly in terms of section 66 of the *Act*.
- 10.5. The *Board* shall at all times have the right to engage on behalf of the *Company*, services of accountants, attorneys, advocates, architects, engineers, managing agents and any other professional firm or person or other employees whatsoever in their own discretion.

- 10.6. A *Director* shall not be liable (in the absence of any agreement to the contrary) to account to the *Company* for any profit or other benefit arising out of any contract entered into by the *Company* in which he/she is directly or indirectly interested, provided he has disclosed his interest upfront. A disclosure register shall be kept and maintained, and *Directors* shall be required to declare any and all interests or potential conflicts of interest at every *Board* meeting.
- 10.7. Even if he has disclosed his interest in the relevant contract or arrangement, a *Director* shall not:
- 10.7.1. be counted in a quorum for the purpose of a meeting of the *Board* at which he is present to consider any matter relating to any existing or proposed contract or arrangement in which he is interested, and
- 10.7.2. be entitled to vote in regard to any matter relating to any existing or proposed contract or arrangement in which he is interested.

11. *Chairperson and Vice-Chairperson*

- 11.1. The *Board* shall within 14 (fourteen) days after every *Annual General Meeting*, appoint from their ranks a *Chairperson* and *Vice-Chairperson*, who shall hold their respective offices until the next *Annual General Meeting*, provided that these offices shall ipso facto be vacated by the *Director* holding such office upon him ceasing to be *Director* for any reason.
- 11.2. Except as otherwise provided, the *Chairperson* shall preside at all meetings of the *Board* and all *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 that, any *Director* elected by

the *Board*, failing that, any third party to act as *Chairperson* elected by the *Board*.

- 11.3. The *Chairperson* shall have a casting vote in the event of a deadlock in a *Meeting of Members* meeting or *Board* meeting.

12. Proceedings of the *Board*

- 12.1. The authority of the *Board* to consider a matter other than at a meeting as set out in section 74 of the *Act*, is not limited or restricted by this *Memorandum of Incorporation*. The *Board* may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 12.2. The right of the *Board* to requisition a meeting of the *Board*, as set out in section 73(1) of the *Act*, may be exercised by any *Director* at any time and the *Board* shall be obliged to call a meeting, should same be requested by at least 2 (two) of the *Directors*.
- 12.3. Subject to clause 12.4 of this *Memorandum of Incorporation*, any resolution of the *Board* shall be carried on a simple majority of all votes cast.
- 12.4. The quorum for meetings of the *Board* shall be a majority of the *Directors* and further provided that:
- 12.4.1. if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the *Board*, that meeting shall automatically be postponed without motion or vote to a date within 14 (fourteen) days as agreed between the *Directors*, at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed; and

- 12.4.2. if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting then, the *Directors* present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting, provided that such resolution shall be passed only if the majority of the *Directors* present vote in favour thereof; and
 - 12.4.3. if a meeting of the *Board* is postponed or adjourned, whether in terms hereof or otherwise, the *Company* must, within forty eight hours thereafter, send *Notice* of the postponement or adjournment to all *Directors* who are entitled to receive *Notice* of the meeting (excluding those of the *Directors* who have agreed not to receive such *Notice* of postponement or adjournment or agreed that the meeting may proceed without them) and that *Notice* must contain the time and date of, and the location for, the holding or continuation of the meeting and the business to be dealt with thereat. If *Notice* is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh *Notice* must be given in accordance with this *Memorandum of Incorporation*.
- 12.5. If every *Director* of the *Company*:
- 12.5.1. acknowledges actual receipt of the *Notice* and agrees that the meeting should proceed;
 - 12.5.2. is present at a meeting; and
 - 12.5.3. waives short or no *Notice* of the meeting,
- the meeting may proceed even if the *Company* failed to give the required *Notice* of that meeting, or there was a defect in the giving of the *Notice*.

12.6. The *Board*:

12.6.1. may provide for a meeting of the *Board* to be conducted in whole or in part by Electronic Communication; and

12.6.2. shall always make provision for any *Director* to participate by electronic communication in every meeting of the *Board* that is held in person at any place other than the registered office of the *Company*, and any electronic communication facility so employed must ordinarily enable all persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, with or without an intermediary. The authority of the *Board* in this regard is not limited or restricted by this *Memorandum of Incorporation*.

12.7. The *Company* shall keep minutes of all the meetings of the *Board* and any of its Committees, and include in those minutes:

12.7.1. any Declaration or Disclosure of Interests given or made by a *Director* or Committee member, as required by section 75 of the *Act*; and

12.7.2. every Resolution adopted by the *Board*.

12.8. Resolutions adopted by the *Board* shall be:

12.8.1. dated and sequentially numbered; and

12.8.2. effective as of the date of the resolution, unless the resolution otherwise states.

12.9. Any minutes of a *Board* meeting, or a *Board* resolution, signed by the *Chairperson* of the meeting, or by the *Chairperson* of the next meeting of the *Board*, is prima facie evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

13. Written Resolutions of the *Board*

13.1. A decision that could be voted on at a meeting of the *Board* may instead be adopted by a written resolution (or round robin resolution) that has been submitted to all of the *Directors* and signed by at least that number of the *Board* having a majority of the voting rights that could be exercised upon that resolution if it were considered by a meeting of the *Board* and those signatories constitute a quorum referred to in clause 12.4 hereof.

13.2. Any such resolution shall be as valid and effective as if it had been adopted by a duly convened and constituted meeting of the *Board*.

13.3. Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been passed on the date on which it was signed by or on behalf of the *Director* who signed it last.

13.4. The resolution may consist of one or more counterpart documents, each signed by one or more *Directors*.

14. Appointment of *Officers* and *Committees*

14.1. The *Board* may appoint any *Officers* it considers necessary to better achieve the objects and business of the *Company*.

- 14.2. The *Board* has the authority to appoint *Board* committees and to delegate to any such committees any of the authority of the *Board* as set out in section 72(1) of the *Act*. The *Board* may include in any such committee persons who are not *Directors* or *Members* as set out in section 73(2)(a) of the *Act*, except to the extent that this *Memorandum of Incorporation*, or a resolution establishing such a committee, provides otherwise and provided that any such person must not be ineligible or disqualified to be a *Director* in terms of section 69 of the *Act*.
- 14.3. The authority of a Committee appointed by the *Board*, as set out in section 72(2)(b) or (c) of the *Act*, is not limited or restricted by this *Memorandum of Incorporation*. The committee may consult with or receive advice from any *Person* and has the full authority of the *Board* in respect of a matter referred to it.

15. Indemnification and Insurance for *Directors*

15.1. For the purposes of this Clause 15, a *Director* includes:

15.1.1. a former *Director*;

15.1.2. a prescribed *Officer*; and

15.1.3. a person who is a member of a committee of the *Board*, irrespective of whether or not the person is a *Director*.

15.2. The *Board* may, on behalf of the *Company*, in addition to those expenses and indemnities as contemplated in sections 78(4), 78(5) and 78(7) of the *Act* also:

- 15.2.1. indemnify a *Director* against any liability arising from the conduct of that *Director*, other than a liability set out in section 78(6) of the *Act*; and
- 15.2.2. purchase insurance to protect:
 - 15.2.2.1. a *Director* against any liability or expense for which the *Company* is permitted to indemnify the *Director* in accordance with clause 15.2 hereof;
 - 15.2.2.2. the *Company* against any contingency, including:
 - 15.2.2.2.1. any expenses that the *Company* is permitted to advance in accordance with section 78(4)(b) of the *Act*; or
 - 15.2.2.2.2. any expense for which the *Company* is permitted to indemnify a *Director* in accordance with this clause 15; or
 - 15.2.2.2.3. any liability for which the *Company* is permitted to indemnify a *Director* in accordance with this clause 15.

and the authority of the *Board* in this regard is not limited or restricted by this *Memorandum of Incorporation*.

- 15.3. The *Company* shall and is hereby obliged to indemnify each *Director* against, and pay to each *Director*, on demand by that *Director*, the amount of any loss, liability, damage, cost including all legal costs reasonably incurred by the *Director* in dealing with, or defending any claim or expense ("**Loss**") which that *Director* may suffer as a result of any act or omission of that *Director* in his capacity as a *Director*, provided that this indemnity shall not extend to any Loss:

- 15.3.1. against which the *Company* is not permitted to indemnify a *Director* by section 78(6) of the *Act*; or
- 15.3.2. arising from any gross negligence or recklessness on the part of that *Director*; or
- 15.3.3. any loss of or damage to reputation; or
- 15.3.4. in the event and to the extent that the *Director* has recovered or is entitled and able to recover the amount of that Loss in terms of any insurance policy (whether taken out or paid for by the *Company* or otherwise);

and shall not be entitled to recover the Losses referred to in clause 15.3 hereof from the *Company*. All losses other than those referred to in clause 15.3 hereof are referred to herein as "***Indemnified Losses***".

- 15.4. Each *Director's* right to be indemnified by the *Company* in terms of this indemnity shall exist automatically upon his becoming a *Director* and shall endure even after he/she ceases to be a *Director* until he/she can no longer suffer or incur any Indemnified Loss.
- 15.5. If any claim is made against a *Director* in respect of any Indemnified Loss, then:
 - 15.5.1. the *Director* shall not admit any liability in respect thereof and the *Director* shall notify the *Company* of any such claim within a reasonable time after the *Director* becomes aware of such claim, in order to enable the *Company* to contest such claim. Notwithstanding the foregoing provisions of this clause 15, the *Company's* liability in terms of this indemnity shall not be affected by any failure of the *Director* to comply with this clause 15.5.1, save in the event and to the extent that the

Company proves that such failure has resulted in the Indemnified Loss being greater than it would have been had the *Director* complied with this clause 15.5.1;

- 15.5.2. the *Company* shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the *Director* until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the proceedings in regard thereto, provided that:
 - 15.5.2.1. the *Director* shall (at the expense of the *Company* and, if the *Director* so requires, with the involvement of the *Director's* own legal advisers) render to the *Company* such assistance as the *Company* may reasonably require of the *Director* in order to contest such claim;
 - 15.5.2.2. the *Company* shall regularly, and in any event on demand by the *Director*, inform the *Director* fully of the status of the contested claim and furnish the *Director* with all documents and information relating thereto which may reasonably be requested by the *Director*;
 - 15.5.2.3. the *Company* shall consult with the *Director* prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim;
 - 15.5.2.4. to the extent that any Loss consists of or arises from a claim or potential claim that the *Company* might otherwise have had against the *Director*, then the effect of this indemnity shall be to prevent the *Company* from making such claim against the *Director*, who shall be immune to such claim, and such claim shall therefore be deemed not to arise.

- 15.6. If this clause 15 is amended at any time, no such amendment shall detract from the rights of the *Board* in terms of this paragraph in respect of any period prior to the date on which the resolution effecting such amendment is adopted by the *Members*.
- 15.7. All provisions of this clause 15 are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other.
- 15.8. Any provision of this clause 15 which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this clause 15 shall remain of full force and effect.
- 15.9. This indemnity shall not detract from any separate indemnity that the *Company* may sign in favour of the *Board*.

MEETINGS OF MEMBERS

16. *Meetings of the Members of the Company*

- 16.1. The *Company* shall not be required to hold any *Meetings of Members* other than those required by the *Act*, provided that the *Company* shall hold an *Annual General Meeting* and such *Annual General Meeting* shall be held no more than 6 (six) calendar months after the end of each ensuing financial year.
- 16.2. The *Company* shall hold a *Meeting of Members* in the circumstances contemplated in section 61(2) of the *Act*:

- 16.2.1. at any time that the *Board* is required by the *Act* or this *Memorandum of Incorporation* to refer a matter to *Members* for a decision; and
 - 16.2.2. within six months of the vacancy occurring or at the next *Annual General Meeting* whenever required in terms of section 70(3) of the *Act* to fill a vacancy on the *Board*; and
 - 16.2.3. under any other circumstances as may be contemplated in the *Act* or in terms of this *Memorandum of Incorporation*.
- 16.3. The *Board* or the *Chairperson* shall convene a *Meeting of Members* if one or more written and signed demands by *Members* for such a meeting are delivered to the *Company*, and:
- 16.3.1. each such demand describes the specific purpose for which the meeting is proposed; and
 - 16.3.2. in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earlier time specified in any of those demands, of at least 100 *Persons* eligible to vote in relation to the matter proposed to be considered at the meeting; or
 - 16.3.3. in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earlier time specified in any of those demands, of less than 100 *Persons* eligible to vote in relation to the matter proposed to be considered at the meeting, and the *Board* deem the specific purpose for which the meeting is proposed significant enough to warrant a meeting to be convened, or for the issue to be placed on the agenda of the next *Meeting of Members*.

16.4. The *Board* shall determine the location for any *Meeting of Members* of the *Company* and the *Company* may hold any such meeting in the Republic or any such other place and the authority of the *Board*, as contemplated in section 61(9) of the *Act*, is not limited or restricted by this *Memorandum of Incorporation*.

17. Notices

17.1. Any *Notice* that is required to be given by the *Company* to *Members* or *Directors* as the case may be, may be given in any manner prescribed as methods and times for delivery as set out in the Table CR3 to the Regulations of the *Act* and the manner shall be resolved upon by the *Board* and that *Notice* shall be deemed to have been duly delivered if the manner, method and time as provided for in Table CR3 of the regulations to the *Act* has been met.

17.2. Each *Member* and *Director* as the case may be, shall notify the *Company* in writing of:

17.2.1. an electronic email address, which address shall be his registered address for the purposes of receiving electronic *Notices* from the *Company* and if he has not named such an electronic address, he shall be deemed to have waived his right to be so served with electronic *Notices*; and

17.2.2. notify the *Company* in writing of a physical address, which address shall be his registered address for the purposes of receiving *Notices* from the *Company* by hand and, if he has not named such an address, he shall be deemed to have waived his right to be so served with *Notices* by hand.

18. Proxy Representation

- 18.1. A *Member* may in terms of section 58 of the *Act*, at any time by a dated and signed written proxy appointment, appoint any individual, including an individual who is not a *Member* of the *Company*, as a proxy to:
 - 18.1.1. participate in, and speak and vote at a *Meeting of Members* on behalf of the *Member*; or
 - 18.1.2. give or withhold written consent on behalf of the *Member* to a decision contemplated in this *Memorandum of Incorporation*;
 - 18.1.3. and any such proxy appointment (and any invitation by the *Company* to appoint a proxy and any form supplied by the *Company* for the appointment of a proxy) shall be governed by section 58 of the *Act* and this clause 18.
- 18.2. The *Board* may determine a standard form of proxy appointment and make it available to *Members* on request.
- 18.3. A *Member* may not appoint more than one person concurrently as proxy and may not appoint more than one proxy to exercise voting rights attached to different rights and interests of the *Member*.
- 18.4. A proxy may not delegate the proxy's authority to act on behalf of the *Member* to another person, unless the right to delegate is specifically contained in the proxy appointment and the delegation occurs by way of a further proxy appointment which itself complies with the requirements and this *Memorandum of Incorporation* for a proxy appointment.
- 18.5. A proxy shall, as contemplated in section 58(7) of the *Act*, be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any voting right of the *Member*, provided that if the instrument appointing the proxy

specifically provides otherwise, then the specific provisions of the proxy appointment shall prevail.

18.6. The *Board* may at its own discretion implement an electronic voting mechanism.

19. Record Dates

19.1. Subject to clause 19.2 hereof, the *Board* may, in accordance with section 59 of the *Act* and the Regulations to the *Act*, determine and publish a record date for the purposes of determining which *Members* are entitled to:

19.1.1. receive a *Notice of a Meeting of Members*; and

19.1.2. participate in and vote at a *Meeting of Members*; and

19.1.3. decide any matter by written consent or by Electronic Communication;
or

19.1.4. be awarded or exercise any other rights.

19.2. If the *Board* does not determine a record date for any action or event, as contemplated in this clause 19, the record date shall be as determined in accordance with section 59(3) of the *Act*:

19.2.1. in the case of a meeting, the latest date by which the *Company* is required to give *Members Notice* of that meeting; or

19.2.2. the date of the action or event, in any either case.

20. ***Notice of Meetings of Members***

- 20.1. The *Company* must deliver *Notice* of each *Meeting of Members* to all *Members* as of the Record Date for receiving *Notice* of that meeting at least 15 (Fifteen) *Business Days* (or such shorter period as may be agreed to in writing by all of the *Members* at the time of that meeting) before that *Meeting of Members* is to begin. The *Business Days* shall be calculated excluding the day of the *Notice* is disseminated and including the date upon which the *Meeting of Members* is to be held.
- 20.2. The *Notice* of a *Meeting of Members* shall be in writing and shall include the items set out in section 62(3) of the *Act*.
- 20.3. The *Notice* of a *Meeting of Members* must be delivered in accordance with the provisions of clause 17 hereof.
- 20.4. The *Notice* shall specify the following:
- 20.4.1. the venue, the date, and the time of the meeting;
- 20.4.2. in the case of special business, in addition to any other requirements contained in this *Memorandum of Incorporation*, the general nature of the business; and
- 20.4.3. in the case of a proposed *Special Resolution*, the terms, effects, and reasons therefore.

21. **Conduct of Meetings**

- 21.1. Before any *Person* may attend or participate in a *Meeting of Members*, that *Person* must present identification in order to reasonably identify that *Person* as a *Member* or proxy or representative of a *Member*;

21.2. the *Chairperson* of the *Meeting of Members* must be reasonably satisfied that the right of that *Person* to participate and vote, either as *Member* or as proxy for a *Member*, has been reasonably verified.

21.3. The *Chairperson* may take reasonable steps necessary to verify the identity of any *Person* which attends, votes or speaks at a *Meeting of Members*.

21.4. The *Company*:

21.4.1. may, as contemplated in section 63 of the *Act*, provide for a *Meeting of Members* to be conducted in whole or in part by electronic communication; and

21.4.2. may make provision for any *Member* or proxy for a *Member*, to participate by electronic communication in every *Meeting of Members* that is being held at any place other than the registered office of the *Company*,

and any electronic communication facility so employed must ordinarily enable all *Persons* participating in the *Meeting of Members* to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, with or without an intermediary.

21.5. The responsibility for, and any expense of, gaining access to the medium or means of electronic communication employed for any *Meeting of Members* may be borne by the *Member* or proxy. If a provision has been made for participation in a *Meeting of Members* electronic communication and the medium or means of such is available and functioning, then the *Meeting of Members* shall be entitled to proceed even if a *Member* or proxy is not able

to gain access to the medium or means of electronic communication so employed.

- 21.6. The *Company* shall ensure that any *Notice* of any *Meeting of Members* at which it will be possible for *Members* to participate by way of electronic communication, shall inform *Members* of that form of participation and shall provide any necessary information to enable *Members* or their proxies to access the available medium or means of electronic communication.
- 21.7. A resolution passed at any meeting that employs electronic communication shall, notwithstanding that the *Members* are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of clauses 22 to 24 hereof shall apply to these meetings.
- 21.8. At a *Meeting of Members*, voting shall be conducted by either a way of a poll, in which event the provisions of section 63(6) of the *Act* shall apply , or on a show of hands, in which event the provisions of section 63(5) of the *Act* shall apply. The voting shall be conducted in such manner as the Chairman of the meeting directs.

22. Quorum of Meetings of Members and Adjournment

- 22.1. The quorum requirements for *Meetings of Members* shall, subject to clauses 20.1, 21.1 and 21.2 hereof, be that such a meeting shall not begin unless 100 (one hundred) *Members* are present in person or by proxy and eligible to vote in respect of at least one matter to be decided at the meeting.
- 22.2. Notwithstanding the provisions of section 64(4) of the *Act* and clause 22.1 hereof, if, within 30 (thirty) minutes after the appointed time for a meeting:

- 22.2.1. the quorum requirements for a meeting to begin have not been satisfied, the meeting shall automatically be postponed without motion or vote to a date within 14 (Fourteen) days as decided by the *Board* at the same time and place.
- 22.3. If at the adjourned meeting under clause 22.2.1 hereof a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the *Members* present in person or by proxy at that adjourned meeting shall constitute a quorum.
- 22.4. The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- 22.5. The *Chairperson* of the meeting shall be entitled to extend the 30 (thirty) minute limit referred to in clause 22.3 hereof in the circumstances contemplated in section 64(5) of the *Act*.
- 22.6. After a quorum has been established for such an adjourned meeting, or for a matter to be considered at such an adjourned 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, is present at the meeting.
- 22.7. Subject to clause 22.9 hereof, a *Meeting of Members*, or the consideration of any matter being debated at a *Meeting of Members*, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the *Act*, it being recorded that the periods of adjournment set out in section 64(12) of the *Act* shall apply without variation.
- 22.8. The *Board* may, at any time after *Notice* of a *Meeting of Members* (other than a *Meeting of Members* required to be held in terms of clause 16.3 hereof

has been given but prior to the commencement of that meeting, postpone that meeting to such later date as may be determined by the *Board* at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the *Board* at a later stage, provided that the *Board* may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the *Act* or this *Memorandum of Incorporation* to be held.

22.9. If a *Meeting of Members* is postponed or adjourned, the *Company* must, within forty-eight hours thereafter, send *Notice* to all *Members* who were entitled to receive *Notice* of the meeting of the postponement or adjournment and that *Notice* must contain the time and date of, and the location for, the continuation or resumption of the meeting, the business to be dealt with thereat and any other information which the *Board* may decide to include therein. If *Notice* is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh *Notice* has been given in accordance with this *Memorandum of Incorporation*.

22.10. The *Chairperson* of a *Meeting of Members* shall, subject to the *Act* and this *Memorandum of Incorporation* and any *Rules and Regulations*, determine the procedure to be followed at that meeting.

23. Members' Resolutions

23.1. Every resolution of *Members* is either an *Ordinary Resolutions* or a *Special Resolution*.

23.2. The provisions of sections 65(3) and 65(4) of the *Act* shall apply with regard to any resolutions proposed by *Members*.

- 23.3. At any *Meeting of Members*, any *Person* who is present at the meeting, whether as a *Member* or as a proxy for a *Member*, shall be entitled to exercise the number of voting rights held by such *Member*, which voting rights shall be determined in accordance with the rights, limitations and other terms of his or her proprietary rights, as set out in this *Memorandum of Incorporation*.
- 23.4. If any *Member* abstains from voting in respect of any resolution, that *Member* shall, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.
- 23.5. Except for those matters which require the approval or authority of a *Special Resolution* in terms of section 65(11) of the *Act* any other section of the *Act* or any provision of the Regulations or this *Memorandum of Incorporation*, no other matters which the *Company* may undertake require the approval or authority of a *Special Resolution* of the *Members*.

24. Written Resolutions by Members

- 24.1. A resolution that could be voted on at a *Meeting of Members* may instead be adopted by written vote of the *Members*, as contemplated in section 60 of the *Act*, if it is supported by *Persons* entitled to exercise sufficient voting rights for it to have been adopted as an *Ordinary* or *Special Resolution*, as the case may be, at a properly constituted *Meeting of Members*.
- 24.2. Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the date on which the *Company* received the written vote of the *Member* or the proxy of the *Member* whose vote resulted in the resolution by being supported by sufficient votes for its adoption.

25. Agenda of Meetings

25.1. In addition to any other matters required by the *Act* or this *Memorandum of Incorporation* or the *Rules and Regulations* to be dealt with at an *Annual General Meeting* of the *Members*, the following matters shall be dealt with at every *Annual General Meeting*:

25.1.1. the consideration of the *Chairperson's* report;

25.1.2. the election of *Directors*;

25.1.3. the consideration of any other matters raised at the *Annual General Meeting*, including any resolutions proposed for adoption by such meeting and voting upon any such resolutions;

25.1.4. the consideration of the books and records of accounts and annual financial statements and reports for the preceding financial year; and

25.1.5. the consideration of the *Auditors'* report, their terms of engagement and appointment for the next financial year, as well as approval of their remuneration.

26. Voting at *Meetings of Members*

26.1. Every *Member*, in person or represented by proxy and entitled to vote, shall have 1 (one) vote for each *Erf* or *Unit* registered in his name.

26.2. Where an *Erf* or a *Unit* is registered in the name of more than 1 (one) *Person*, all such co-owners shall jointly have 1 (one) vote.

26.3. Unless any *Member* present in person or by proxy at a *Meeting of Members* shall, before the closure of the *Meeting of Members*, have objected to any

declaration made by the *Chairperson* of the Meeting in respect of the result of any voting at the *Meeting of Members*, whether by show of hands or otherwise, or to the propriety or validity of the procedure of such *Meeting of Members*, the *Chairperson's* declaration shall be deemed to be a true and correct statement of the voting result, and the *Meeting of Members* shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the Minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such a motion, shall be *prima facie* evidence of the votes so recorded.

LEVIES

27. Levies Payable by *Members*

- 27.1. The *Company* through its *Board* shall 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 *Board* reasonably anticipate the *Company* will be put in the attainment of its objects or the pursuit of its business.
- 27.2. The *Board* is empowered when determining the levies to allocate expenses which are not common to the *Estate* but which are for the maintenance and upkeep of certain allocated areas of the *Estate* and which only benefit a certain group of the *Members*, to allocate those expenses to those *Members*.
- 27.3. The monthly amount levied upon each *Member* of the *Company* in relation to each *Erf* or *Unit* owned by such *Member* as that *Member's* share of the *Company's* expenses in relation to such *Erf* or *Unit*, will be calculated by using the following formula:

$$ML = 1 / TE \times AME$$

Where:

- ML = Monthly Levy per *Erf* or *Unit*
- TE = Aggregate number of *Erven* and *Units* within the *Estate*, liable for the payment of levies
- AME = Actual or estimated aggregated monthly expenses and capital expenses of the *Company* and a monthly amount deemed appropriate by the *Board* referred to in clause 27.2 hereof to satisfy the requirements of the *Replacement Reserve*.

- 27.4. The *Board* shall, not less than 1 (one) calendar month prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every *Member* at the address chosen by him/her an estimate in reasonable detail of the amount which shall be required by the *Company* to meet the expenses and capital expenses during the ensuing financial year, and shall specify separately such estimated deficiency, if any, as a result from the preceding year. The *Board* may include in such estimate an amount to be held in *Replacement Reserve* to meet anticipated future expenditure of an annual nature.
- 27.5. Each *Notice* to each *Member* shall specify the contribution payable by that *Member* towards such expenses.
- 27.6. Levies shall be payable in equal monthly contributions, due in advance on the first day of each and every month of each financial year.
- 27.7. In the event of the *Board*, for any reason whatsoever, failing to prepare and timeously serve the estimate referred to in clause 27.4 hereof, every *Member* shall, until served with such estimate, continue to pay the levy as previously imposed and shall, after such service, pay such levy change as well as any levies that are entitled to be charged to *Members* but have not been due to

circumstances beyond the control of the *Board*, as may be specified in the *Notice*.

27.8. The *Board* may from time to time impose special levies upon the *Members* in respect of all expenses as are mentioned in clause 27.1 hereof, which are not included in any estimate made in terms of clause 27.4 hereof and may in imposing such service charges determine the terms of payment thereof.

27.9. The *Board* shall be empowered, and 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; provided that such rate of interest shall not exceed the maximum statutory legislated rate at the time.

27.10. Any amount due by a *Member* by way of levy, special levy, interest, penalties, and any other amount contemplated in the *Rules and Regulations* shall be a debt due by such *Member* to the *Company*. The obligation of a *Member* to pay a levy, special levy, interest and penalties shall cease upon him/her ceasing to be a *Member*, without prejudice to the *Company's* right to recover arrear levy charges, interest, and penalties. No levy charges, interest, or penalties paid by a *Member* shall under any circumstances be repayable by the *Company* upon him/her ceasing to be a *Member*. A *Member's* successor in title to any *Erf* or *Unit* in the *Estate* shall be liable as from the date upon which he/she becomes a *Member* pursuant to the transfer of that *Erf* or *Unit* to pay the levy charge, interest, and penalties attributable to that *Erf* or *Unit*.

27.11. No *Erf* or *Unit* in the *Estate* shall be capable of being transferred without a certificate first being obtained from the *Company* confirming that all levy charges, interest, penalties, and any other amount contemplated in the *Rules and Regulations* have been paid up to and including the date of registration of transfer of such property.

27.12. No *Erf* or any *Unit* or any undivided share therein, shall be transferred to any *Person* who has not bound himself to the satisfaction of the *Company* to become a *Member*.

GENERAL

28. Financial Statements and Access to *Company* Information

28.1. The *Company* shall prepare annual financial statements and reports in accordance with the *Act* and the Regulations and shall have those annual financial statements audited.

28.2. A copy of the audited annual financial statements and reports of the *Company* shall be delivered to all *Members* in the *Notice* convening the *Annual General Meeting* of the *Company*.

28.3. Except as set out in this clause 28, no information rights are established by this *Memorandum of Incorporation* in favour of a *Person* who holds or has a beneficial interest in any of the *Company's* rights in addition to those rights created by section 26 of the *Act*.

29. Architectural, Building and Landscape Requirements

29.1. No construction of any nature, whether internal or external, may be commenced on any *Erf* or *Unit*, without the prior written approval of the *Company* first being obtained and such improvement must be in accordance with the provisions of the applicable *Architectural, Building and Landscaping Requirements* of the *Company*.

29.2. The *Board* has the authority and duty to adopt, add, vary, amend and retract rules and requirements relating to the *Architectural, Building and Landscape Requirements* necessary for the necessary compliance with Local Authority, good governance and orderly administration of the *Company* and the *Estate*.

30. Amendment of the *Memorandum of Incorporation*

30.1. This *Memorandum of Incorporation* may only be altered or amended:

30.1.1. by means of a *Special Resolution* of the *Members* passed in accordance with section 16(1)(c) of the *Act*;

30.1.2. in compliance with a court order in terms of section 16(1)(a) of the *Act*, or on application to the Companies Tribunal in accordance with Section 17 of the *Act*; and

30.1.3. in compliance with section 152(6)(b) of the *Act*, dealing with Business Rescue proceedings.

30.2. This *Memorandum of Incorporation* is not capable of amendment by any other method, save as provided for in clause 30.1 hereof. Accordingly, the provisions of section 16(1)(b) of the *Act* shall not apply, nor shall any other alterable provision that allows for a method for the alteration or amendment of the *Memorandum of Incorporation* other than the method and approvals contemplated in this clause 30.1.

30.3. The *Board* must publish a *Notice* of any alteration made to this *Memorandum of Incorporation* in order to alter this *Memorandum of Incorporation* in accordance with section 17(1) of the *Act* by delivering *Notice* thereof to the *Members* in accordance with clause 30 hereof.

31. Winding Up and Deregistration

31.1. Upon the winding-up or dissolution of the Company, its net assets must be distributed in the manner determined in accordance with section 1(4)(b) of Schedule 1 to the *Act*:-

31.1.1. the entire net value of the Company shall be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts having objects similar to its main object. No part of the income or property of the *Company* shall be distributed to its *Members*, and same shall be applied solely towards the pursuit of the *Company's* objects, provided that this clause shall not be construed as prohibiting the payment of expenses to *Directors* and *Officers* as provided for herein; and

31.1.2. as determined:

31.1.2.1. in terms of the *Company's Memorandum of Incorporation*;

31.1.2.2. by its *Members*, if any, or its *Directors*, at or immediately before the time of its dissolution; or

31.1.2.3. by the Court, if the *Memorandum of Incorporation*, or *Members* or *Directors* fail to make such a determination.

31.2. The Company will not be wound up or de-registered at *CIPC* without the written consent of the City of Johannesburg first having been had and obtained.

APPENDIX 1

Decisions to be determined by *Special Resolution* of *Members* of the *Company* in *Meeting of Members*:

1. Decisions requiring a *Special Resolution* under the *Act*

- 1.1. Amending the *Memorandum of Incorporation* as contemplated in section 16(1)(c) and section 36(2)(a) read with section 65(11) of the *Act*;
- 1.2. Ratifying an action by the *Company* or the *Directors* outside the authority of the *Memorandum of Incorporation* as contemplated in section 20(2) of the *Act*;
- 1.3. Approval of the voluntary winding up of the *Company*, as contemplated in section 80(1) of the *Act*; and
- 1.4. Winding up of a solvent *Company* by court order as contemplated in section 81(1) of the *Act*.

2. Additional matters requiring a *Special Resolution* related to the *threshold*:

The term “threshold” shall mean an amount equal to or greater than R500,000 (five hundred thousand rand) escalating annually from date of acceptance of this *Memorandum of Incorporation* as per the Consumer Price Index: for the area of the registered address of the *Company*:

- 2.1. Any capital expenditure in any one financial year of the *Company* in excess of the threshold, except where such capital expenditure is part of the normal operational requirements and or expenses of the *Company* as budgeted annually by the *Company*

- 2.2. The purchase, sale, or hiring, of any immovable property where the annual value is in excess of the threshold;
- 2.3. The commencement of action or application proceedings in a civil court where the legal costs for one financial year are reasonably foreseen to be in excess of the threshold;
- 2.4. The settling of any claim against the *Company* where the quantum of the settlement amount is in excess of the threshold;
- 2.5. The establishment or the acquisition and purchase of other businesses, either directly or indirectly by means of purchasing shares in or assets of the *Company* to which such business may belong, if such establishment, acquisition or purchase shall cost the *Company* an amount in excess of the threshold;
- 2.6. The issue or giving of any guarantees or suretyships, letters of comfort, indemnities or other similar undertakings of any nature whatsoever where such undertaking shall result in a potential exposure of the *Company* to an amount exceeding the threshold, except where doing so forms part of the normal operational expenses of the *Company* as budgeted annually by the *Company*
- 2.7. The creation or modification of mortgages, liens or other charges on the *Company's* assets, except where such creation or modification form part of the normal operational expenses of the *Company* as budgeted annually by the *Company*;
- 2.8. The pledging, mortgaging, hypothecating or encumbering of any assets of the *Company* in any manner whatsoever, where such pledging, mortgaging, hypothecating or encumbering results in an exposure of the *Company* to an amount exceeding the threshold, except where such pledging, mortgaging, hypothecating or encumbering of assets form part of the normal operational expenses of the *Company* as budgeted annually by the *Company*;

- 2.9. The authorisation of foreign exchange commitments involving an individual amount in excess of the threshold, where such expenditure or commitments relate to capital expenditure. Except where such expenditure or commitment is part of the normal operational requirements and or expenses of the *Company* as budgeted annually by the *Company*.

3. Other Additional Matters Requiring a *Special Resolution*

- 3.1. Any decision of a speculative nature not to cover forward any amounts payable in a currency other than South African Rands
 - 3.2. The liquidation, winding-up, de-registration or the discontinuance of the business activities, of the *Company*
 - 3.3. The making of any loan to any party other than in the ordinary course of business of the *Company*
 - 3.4. The conclusion of any contract outside the *Company's* main objects and business as defined in clause 3 of the *Memorandum of Incorporation*;
 - 3.5. Changing the nature of or discontinuing, or expansion of the business of the *Company* or causing the *Company* to become engaged in any business other than its objects and business as set out in the *Memorandum of Incorporation*;
 - 3.6. Selling or disposing of, by one or more transactions or series of transactions (whether related or not), the whole or any part of the *Company's* business (including intangible assets); and
 - 3.7. Compromising generally with the *Company's* creditors.
4. Notwithstanding that the matters referred to in Paragraph 2 of this Appendix A are referred to as "*Special Resolutions*", such resolutions shall not require to be filed and/or registered with and/or by *CIPC* unless required by the *Act*.