

Memorandum of Incorporation unique to

WATERLAKE FARM HOME OWNERS' ASSOCIATION (RF) NPC

Registration number 2007/020202/08

1 Interpretation

1.1 Definitions

In this Memorandum of Incorporation, and, unless the context requires otherwise, the followings words and expressions shall have the meaning assigned to them hereunder -

- 1.1.1 **"Act"** means the Companies Act, 71 of 2008, as amended;
- 1.1.2 **"Architectural Committee"** means the panel consisting of the Directors acting in this capacity, together with any other persons nominated by the Directors to assist them in exercising the functions of an Architectural Committee;
- 1.1.3 **"Articles"** means the clauses in the Memorandum for the time being of the Company;
- 1.1.4 **"Board"** means the Board of Directors of the Company;
- 1.1.5 **"Chapter"** a reference to a Chapter by number refers to the corresponding Chapter of the Act;
- 1.1.6 **"Common Property"** means such part of the development that is indicated on a General Plan or is being utilised by the Company as a street, road, thoroughfare, sanitary passage, square, open space or servitudes in favour of all even in the development and all land other than stands the control and/or ownership of which is vested in the Developer and/or the Company and to which the owners of the stands in the development have a common right;
- 1.1.7 **"Company"** means Waterlake Farm Home Owners' Association (RF) NPC, registration number 2007/020202/08;
- 1.1.8 **"The Developer"** means Blue Horizon Properties 4 (Proprietary) Limited, registration number 2003/029401/07;
- 1.1.9 **"Development"** means the development of a private residential estate on the Property;
- 1.1.10 **"Development Period"** means the period from the establishment of the Company until all stands of Waterlake Farm have been transferred to purchasers and the transfer of all Common Property to the Company; alternatively until the Developer notifies the Company that it waives the rights herein conferred upon it during the development period;
- 1.1.11 **"Managing Agent"** means any person or body appointed by the Company as an independent contractor to undertake any of the functions of the Company;
- 1.1.12 **"Member"** means a member of the Company as referred to in article 2.6;
- 1.1.13 **"Memorandum or MOI"** means this Memorandum of Incorporation of the Company;
- 1.1.14 **"Property"** means Portion 337 of the Farm Boschkop 369, (Registration Division J.R., Gauteng Province on which the Developer has established a land development area for purposes of a private residential estate in terms of The Development Facilitation Act No. 67/1995;
- 1.1.15 **"Regulation"** a reference to a regulation by number refers to the corresponding regulation of the Companies Regulations, 2011, as amended;
- 1.1.16 **"Rules"** means rules made in terms of this MOI; and
- 1.1.17 **"Section"** a reference to a section by number refers to the corresponding section of the Act.

- 1.1.18 **“Sectional Scheme”** means a scheme in terms of the Sectional Act 95 of 1986, which has been developed on a stand, or more than one stand in the Development and includes a sectional scheme in phases where all phases are incorporated under the same management structure;
- 1.1.19 **“Services”** means the shared services required on the Development, which can include, but is not limited to, security facilities, communal gatehouses, roads, streetlights, bridges, fencing, the dam and storm water drainage; whether such services are regulated by way of registered servitude or not;
- 1.1.20 **“The stand”** means portions of Portion 337 of the Farm Boschkop 369, (Registration Division J R., Gauteng Province);
- 1.2 Words and expressions used and not otherwise defined in this Memorandum shall have the meaning assigned to them by the Act.
- 1.3 Words importing the singular shall include the plural, and words importing the masculine, feminine and neuter shall include the others of such genders; and words importing Persons shall include Bodies Corporate, and vice versa in each instance.
- 1.4 The heading above any of the articles is intended for reference purposes only and shall not influence the interpretation of the Memorandum

2 Incorporation and Nature of the Company

2.1 Incorporation

- 2.1.1 The Company is incorporated as a non profit company, as defined in the Act with the following objects:
- 2.1.2 To promote and to protect the common interests of the owners and occupants of Portion 337 of the Farm Boschkop 369, (Registration Division J.R., Gauteng Province), ("the Property") and in particular, in promoting such common interests, to ensure that acceptable esthetical, architectural and environmental standards and norms be upheld on the Property, to provide for the maintenance of all communal services, to establish and maintain a residential township scheme within a security environment system for the benefit of the residents on the Property;
- 2.1.3 To provide for the management, maintenance and upkeep of the land and services on the Property and other areas of the Development for which owners of stands may be responsible;
- 2.1.4 To do all such other things as are incidental or conducive to the attainment of the foregoing objects or any of them which may be conveniently carried on and done in connection therewith which may be calculated directly or indirectly to enhance the value of or render profitable any activity, project or property of the Company;
- 2.1.5 to own and maintain the private roads, private open space and communal services (Portion 666, 667, 668, 669 & 670) and the right-of-way servitude area over Portion 662, and any essential services contained therein. This includes the right to construct and maintain over the servitude area and common property, any construction equipment, security system, electric fencing, lighting systems, electronic surveillance systems, communication system or anything ancillary thereto; and
- 2.1.6 to own and utilize the private open space (Portion 668 to 670) for the communal private open space purposes, including *inter alia* equestrian activities, hiking trails, recreational use, non-motorised water-related sports/recreation, game/bird viewing facilities and all associated/ancillary resort-related functions/activities, including agriculture and related activities.
- 2.1.7 The Company is incorporated in accordance with, and governed by -
- 2.1.8 the unalterable provisions of the Act, that are applicable to Non Profit companies;
- 2.1.9 the alterable provisions of the Act that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
- 2.1.10 the provisions of this Memorandum.

2.2 **Objects and Powers of the Company**

- 2.2.1 The Objects of the Company are as set out in article 2.1.2 and further, except to the extent necessarily implied by the stated objects, the purposes and the powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in Section 19(1)(b)(ii).
- 2.2.2 The Company is not subject to any restrictive conditions on changing the Memorandum, as contemplated in Section 15(2)(b), but is prohibited from amending a particular provision of the Memorandum, as contemplated in Section 15(2)(c) namely those aspects referred to in Article 2.4.21 hereof.
- 2.2.3 The Company— (in terms of Schedule 1 of the Act concerning non-profit companies)
- 2.2.4 must apply all of its assets and income, however derived, to advance its stated objects, as set out in the Memorandum; and
- 2.2.5 subject to article 2.2.4, may—
- 2.2.6 acquire and hold securities issued by a profit company; or
- 2.2.7 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 2.2.8 The Company must 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—
- 2.2.9 as reasonable—
- 2.2.10 remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
- 2.2.11 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
- 2.2.12 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;
- 2.2.13 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
- 2.2.14 in respect of any legal obligation binding on the Company.
- 2.2.15 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company—
- 2.2.16 no past or present Member or director of the Company, or person appointing a director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 2.2.17 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts—
- 2.2.18 having objects similar to the Company's main object; and
- 2.2.19 as determined—
- 2.2.20 in terms of the Company's Memorandum; or
- by its Members at or immediately before the time of its dissolution; or
- by the court, if the Memorandum, or the Members fail to make such a determination.
- 2.2.21 The Company may not—
- 2.2.22 amalgamate or merge with, or convert to, a profit company; or

- 2.2.23 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- 2.2.24 Any proposal to—
- 2.2.25 dispose of all or the greater party of the Company's assets or undertaking; or
- 2.2.26 amalgamate or merge with another non profit company,
 must be submitted to the voting Members for approval, in a manner comparable to that required of profit companies in accordance with Sections 112 and 113, respectively.
- 2.2.27 Sections 115 and 116, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in article 2.2.24.
- 2.2.28 The Company may grant loans only to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.29 The Company may only invest funds available for investment with a registered financial institution as described in section 1 of the Financial Institutions Act of 1984, as amended, and in a security listed on a licensed Stock Exchange as defined in the Stock Exchange Control Act, No 1 of 1985, as amended.
- 2.2.30 The Company may enter into indemnities, guarantees and suretyships and secure payment thereunder in any way only with one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object.
- 2.2.31 The Company may –
 make donations provided that no donations may be made to present or former incorporators, Members or directors; and
 pay gratuities and pensions and establish pension schemes and incentive schemes in respect of its employees

2.3 **Memorandum and Company Rules**

- 2.3.1 This Memorandum of the Company may be altered or amended only
- 2.3.2 in compliance with a court order in the manner contemplated in Section 16(4);
- 2.3.3 at any other time if a special resolution to amend it—
- 2.3.4 is proposed by—
 the Board of the Company; or
 Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution; and
- 2.3.5 is adopted at a Members meeting, or in accordance with Section 60;
- 2.3.6 by the Board of the Company, or an individual authorised by the Board, in accordance with Section 17, to alter the Company's Rules, or its Memorandum, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by—
- 2.3.7 publishing a notice of the alteration, in any manner required or permitted by the Memorandum or the Rules of the Company; and
- 2.3.8 filing a notice of the alteration; and

- 2.3.9 in implementing a business rescue plan pursuant to Section 152(6)(b).
- 2.3.10 Company Rules;
- 2.3.11 The Board of the Company may make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of matters that are not addressed in the Act or the Memorandum, by—
- 2.3.12 publishing a copy of those Rules, in any manner required or permitted by the Memorandum, or the Rules of the Company; and
- 2.3.13 filing a copy of those Rules.
- 2.3.14 A Rule contemplated in article 2.3.11—
- 2.3.15 must be consistent with the Act and the Company's Memorandum, and any such Rule that is inconsistent with the Act or the Company's Memorandum is void to the extent of the inconsistency;
- 2.3.16 takes effect on a date that is the later of—
- 2.3.17 10 (ten) business days after the Rule is filed in terms of article 2.3.13; or
- 2.3.18 the date, if any, specified in the Rule; and
- 2.3.19 is binding as of that date, until again amended, retracted to or varied in terms hereof.
- 2.3.20 The Board must publish any Rules by delivering a copy of those Rules to each Director, the Managing Agent, also using any of the delivery methods contemplated in Section 6 of the Act; and to publish it on the website of the Company.
- 2.3.21 The Company must publish a notice of any alteration of the Memorandum or the Rules, made in terms hereof by delivering a copy of those alterations or Rules to each Director the Managing Agent, also using any of the delivery methods contemplated in Section 6 of the Act; and to publish it on the website of the Company.

2.4 **Rules**

GENERAL

- 2.4.1 Subject to any restriction imposed or direction given at a general meeting of the Company, the Board may from time to time make Rules, vary or alter or retract or add to those rules with regard to:
- 2.4.2 the architectural design, construction, quality and building materials of any Proposed building to be erected on any stand in the Property;
- 2.4.3 determine from time to time Rules with regard to the security, vegetation, landscaping, parking, use of street, signage and advertising, exterior finishes and maintenance of any stand or building or fences thereupon or on the Property itself; Also rules with regard to good neighbourliness, common property, letting and reselling of stands and accreditation of estate agents;
- 2.4.4 the furtherance and promotion of any of the objects of the Company's and/or for the better management of the affairs of the Company's and/or for the advancement of the interest of Members and/or lessees of the stands;
- 2.4.5 the maintenance of all buildings, outbuildings, structures, electricity, water and sewerage reticulation, improvements of any nature and landscaping on the stand;
- 2.4.6 the right of reasonable access to any stand in order to effect the maintenance of any matters referred to in Articles 2.4.5. above;
- 2.4.7 determine from time to time Rules (also House Rules) with regard to the general behaviour and conduct of Members of the Company, occupants, lessees and their guests, encompassing *inter alia* all the above;

ENFORCEMENT

- 2.4.8 For the enforcement of any of the Rules or the terms and conditions of this Memorandum, the Board may:
- 2.4.9 take or cause to be taken such steps as they may consider necessary to remedy the breach of the Rule/Memorandum of which the Member may be guilty, and debit the costs of so doing to the Member concerned which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or
- 2.4.10 impose a system of fines or other penalties payable on demand; and/or
- 2.4.11 refuse traversing rights over the common property and streets in the development to any Member or such Members, employees, invites or visitors while such Member is in breach of any of the terms and conditions of this Memorandum or the Rules, all of which are deemed to be material; and/or
- 2.4.12 whenever any of the National Building Regulations and/or the requirements of the Agricultural committee are being contravened by Member, serve notice on such Member to take such steps as may be specified in a notice to remedy such contravention. In the event of the Member failing within a reasonable time, to be specified in such notice, to comply therewith, the Board may enter upon the property concerned and take such steps as may be necessary to rectify the contravention and recover the costs thereof from the Member concerned. These costs will be deemed to be a debt owing to the Company; and/or
- 2.4.13 take such other action including proceedings in Court, as they may deem fit.
- 2.4.14 In the event of the Board instituting any legal proceedings against any Member or resident or occupant of a stand for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client.
- 2.4.15 In the event of any breach of the Rules/Memorandum 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 afore going, the Board may take or cause to be taken steps against the person actually committing the breach as they in their discretion may deem fit.
- 2.4.16 In the event of any Member disputing the fact that he has committed a breach of any of the Rules/Memorandum or that the steps taken or penalties imposed are not reasonable, then a committee of three Board members appointed by the chairperson for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that the Rules of natural justice shall be observed as the chairperson may direct. The decision will be final and binding.)
- 2.4.17 Any fine impose upon any Member shall be deemed to be debt due by the Member to the Company and shall be recoverable by ordinary civil process.
- 2.4.18 Notwithstanding anything to the contrary herein contained, the Board may in the name of the Company enforce the provisions of any Rules/Memorandum by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and council as they may deem fit.

2.4.19 AMENDMENTS

Subject to article 2.4.21, and to the provisions contained in this Memorandum, the Memorandum and Rules may only be amended in terms of the relevant provisions of this Memorandum and/or where applicable the Companies Act 2008. The Members of the Company may from time to time vary or alter or retract or add to these Rules and Memorandum and shall do so at the Annual or an Extraordinary General Meeting of the Members. Provided that any such variation, alteration, retraction or addition of:

- 2.4.20 the Rules, shall only be done by at least 66% of the voting rights exercised on the Resolution. It is thus Members entitled to vote, as are present in person or by proxy; and
- 2.4.21 the Memorandum, shall only be done by at least 80% of the voting rights exercised on the Resolution. It is thus Members entitled to vote, as are present in person or by proxy;

Notwithstanding Article 2.4.19 to 2.4.21 the following Rules/Provision in the Memorandum, may not be at all varied, altered, retracted or added to:

Rule 3.11 Pets

As the Estate has been developed to protect the wildlife and special bird breeding areas on the Estate and as pets usually become a bone of contention between owners no pets will be allowed on the Estate.

Rule 3.12 Exclusive use areas

Certain exclusive use areas or usage servitudes are excluded from the common property and is reserved for the exclusive use of the owner of the specific stand being stand 422-437; 498-509; 602-623. These areas are the open areas between the dams and the boundary nearest to the dam in the case of stand 422-437; 498-509 and between the start of the steep incline of the ridge towards the nearest boundary of stand 602-623. The owners of these stands may not erect any structure on the said exclusive use areas except when approved by the Company in advance in its sole discretion.

2.4.22 Furthermore no grass, trees or shrubs may be removed or planted or garden made on these exclusive areas, without written consent having been obtained from the Board in advanced which consent will be in the absolute discretion of the Board.

2.5 Optional Provisions of the Act

2.5.1 In terms of Sections 34(2) and 84(1)(c)(ii) of the Act, the Company elects voluntary to appoint an auditor and to have its annual financial statements audited by such auditor.

2.5.2 The Company may voluntary elect to appoint a company secretary.

2.5.3 As the Company will be audited voluntarily, the Company does not have to comply with the provisions of Chapter 3 of the Act. The appointment, remuneration and duties of the auditor shall be determined by the Board.

2.6 **Members of the Company**

2.6.1 The Company shall maintain at its registered office a register of Members of the Company as provided in Section 24(4)(a) of the Act. The register of Members shall be opened to inspection, as provided in Section 26 of the Act.

2.6.2 Members of the Company shall be limited to the Developer in its capacity as such and to any person, including the Developer who is in terms of the Deeds Registries Act reflected as the registered owner of any stand in the Development in the records of the Deeds Office concerned.

2.6.3 If the party taking transfer is not a natural person, it will be obliged prior to transfer to nominate a natural person to represent it and to furnish the Company with the full names, street address and postal address of the said representative and his acceptance of the nomination, 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 transferee.

2.6.4 Where any stand is owned by more than one person, all the registered owners of that stand 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 stands shall be jointly and severally liable for the due performance of any obligation to the Company.

2.6.5 When a Member becomes a registered owner he shall *ipso facto* become a Member of the Company and be bound by this Memorandum, and when he ceases to be the owner of any stand, he shall *ipso facto* cease to be a Member of the Company.

2.6.6 No Member shall let or otherwise part with occupation of his stand, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such stand as a *stipulation alteri* in favour of the Company that such occupier shall be bound by all terms and conditions of this Memorandum and Rules of the Company. No business of whatsoever nature shall be conducted on any stand unless the stand is zoned for that particular business and/or the necessary/relevant consent from the authorities have been obtained.

- 2.6.7 The owner of the portion or subdivision thereof shall automatically be and shall remain a Member of the Company, and shall not be entitled to transfer the portion except with a clearance certificate from the Company to the effect that all amounts owing by such Member to the Company have been paid and the Memorandum of the Company have been complied with.
- 2.6.8 The portion shall not be transferred to any person who has not bound himself/herself to be a Member of the Company, to the satisfaction of the Company.
- 2.6.9 **Resignation**
- 2.6.10 A registered owner of any stand may not resign as a Member of the Company.
- 2.6.11 Resignation by the nominees of the Developer can be effected by means of a notice in writing served at the registered office of the Company within 14 (fourteen) days after the Development Period, or, at the option of the nominee, as soon as 7 (seven) persons have become Members in terms of Article 2.6.2 above.
- 2.6.12 The rights and obligations of a Member shall not be transferable and every Member shall:
- 2.6.13 further the objects and interest of the Company to the best of his ability; and
- 2.6.14 observe all Rules made by the Company or the Board, provided that nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms of this Memorandum as security to the mortgagee of the Member's stand.

3 Rights of Members

3.1 Members' authority to act

If, at any time, a Member of the Company is also a director of the Company, as contemplated in Section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that Section is not limited or restricted by this Memorandum.

3.2 Members' right to Information

- 3.2.1 Pursuant to the provisions of Section 27(1), a person who is a Member the Company has a right to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Company:
- 3.2.2 the Company's Memorandum and any amendments to it, and any Rules made by the Company;
- 3.2.3 the records in respect of the Company's directors;
- 3.2.4 the reports to annual meetings, and annual financial statements;
- 3.2.5 the notices and minutes of annual meetings, and communications; and
- 3.2.6 the Members register of the Company.

3.3 Duties of Members

- 3.3.1 Each Member shall:-
- 3.3.2 Abide by the Memorandum and adhere to the Rules and by-laws proclaimed by the Board from time to time.
- 3.3.3 Pay the charges levied by the Directors in terms of Article 8 hereof on due date from time to time.
- 3.3.4 Obtain the consent of the Architectural Committee to any building plans before submitting these for approval to the Local Authority and before commencing with any building, walling, fencing and signage operations, exterior lightning, painting or repainting of exterior finishes. In the event of a Member being

aggrieved by a decision of the Architectural Committee, such dispute shall be referred to the Board of Directors. Their decision shall be final and binding on the parties.

- 3.3.5 Maintain his/her/its stand in a clean and tidy condition to the satisfaction of the Board. Should the Board be of the opinion that a Member is not complying with the Memorandum, the Board shall give such Member reasonable notice to comply, depending on the nature of the breach, falling which, where possible, the Board shall be entitled to perform the work or services which is required to be done or provided at the expense of Member, and shall be entitled to recover all expenditure in this connection from the Member, together with interest calculated thereon at prime bank rate, for the period from date of expenditure to date of repayment.
- 3.3.6 Not construct a building on the stand in a manner, which causes danger, nuisance or disturbance to the occupiers of the neighbouring stands, and where applicable, the Member shall cause suitable screens and/or barricades to be erected to reduce the emission of noise, dust, waste, effluent or other nuisance from the stand.
- 3.3.7 Not burn or permit to be burnt any materials or rubbish resulting from or in connection with construction on the stand and shall ensure that such materials or rubbish be removed from the stand.
- 3.3.8 Repair at his/her/its cost and expenses any damage to the infrastructure, sidewalls and road shoulders or any part of the common public areas in the Development caused by the Member or his/her/its agents during the course of the construction of the stand.
- 3.3.9 Not interfere with the convenience of the common or public areas within the Property during construction of any approved building.
- 3.3.10 Ensure that all reasonable means are used to prevent the roads leading to the stand from being damaged or injured by any act or omission of the building contractor engaged by the Member in respect of the construction on the stand and the subcontractors of the building contractor and the servants or agents of the Member whilst moving equipment and materials to and from the stand.
- 3.3.11 Indemnify and shall keep the Company indemnified in respect of all loss, damage, cost or expense which may be suffered by the Company as a result of any claim, demand, suit or proceedings which may be instituted against the Company as a result of any breach of any of the above obligations by the Member.
- 3.3.12 Prevent the accumulation of trash or garbage or other waste materials on the stand except in containers located in appropriate areas screened and concealed from the view so that odours do not emanate from such containers. Provided that such containers may not be placed on any common or public area or upon a thoroughfare for a period exceeding eight (8) hours.
- 3.3.13 Prevent the stand from being used for any purposes, which may be illegal, damaging or detrimental to the other stands in the Development.

3.4 **Proxies**

- 3.4.1 The right of a Member of the Company to appoint persons concurrently as proxies, as set out in Section 58(3)(a), is not limited, restricted or varied by this Memorandum.
- 3.4.2 The authority of a Member's proxy to delegate the proxy's powers to another person, as set out in Section 58(3)(b), is not limited or restricted by this Memorandum.
- 3.4.3 The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy ("the proxy form") before that proxy may exercise the Member's rights at a general meeting of Members, as set out in section 58(3)(c), is varied by this Memorandum as the proxy form must be delivered to the Company at least 2 (two) business days before the date on which the proxy may exercise the Member's rights.
- 3.4.4 The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in Section 58(7), is not limited or restricted by this Memorandum.
- 3.4.5 A Member (who is not in arrears with the payment of levies) may be represented at a general meeting by a proxy, who need not be a Member of the Company. The instrument appointing a proxy shall be in writing signed by the Member concerned or his agent, duly authorised in writing, but need not be in any 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.

3.4.6 The instruments appointing a proxy and the power of attorney or any other authority under which it is tabled at the meeting at which the person named in the instrument proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.

3.4.7 A vote in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation to the proxy, provided that no intimation in writing of the death or revocation shall have been received by the directors at any time before a vote is taken in respect of which the proxy exercises such vote.

3.4.8 **Record date for exercise of Member rights**

3.4.9 If the Board does not determine a record date for any action or event, the record date is—

3.4.10 in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or

3.4.11 the date of the action or event, in any other case, unless the Memorandum or Rules of the Company provide otherwise.

3.5 **Proxy form**

3.5.1 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

_____ NPC

PROXY FORM

A Member may appoint any individual, including an individual who is not a Member, as a proxy to participate in, and speak and vote at a general meeting of Members on behalf of the Member. A proxy form for the appointment of the proxy must be in writing, dated and signed by the Member and remains valid for 1 (one) year after the date on which it was signed; or any longer or shorter period expressly set out in the appointment unless it is revoked. A Member may appoint 2 (two) or more persons concurrently as proxies. A proxy may delegate the proxy's authority to act on behalf of the Member to another person. The duly signed and completed proxy form must be delivered to the Company at least 2 (two) business days before the day on which the general meeting will be held.

The proxy appointment is suspended at any time and to the extent that the Member chooses to act directly and in person in the exercise of any rights of a Member. The appointment is revocable unless the proxy appointment expressly states otherwise. If the appointment is revocable, a Member may revoke the proxy appointment by cancelling it in writing or making a later inconsistent appointment of a proxy and delivering the revocation instrument to the Company and a copy to the proxy.

The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the Member as of the later of the date stated in the revocation instrument, if any, or the date on which the revocation instrument was delivered to the Company and the proxy.

I, _____ of _____ being a Member of _____ NPC, hereby appoint, as a revocable appointment

_____ of _____ or failing him
 _____ of _____ or failing him
 _____ of _____, as my proxy to vote

for me and on my behalf at the annual general meeting or a general meeting of Members (as the case may be) of the Company to be held on the _____ day of _____ and at any adjournment thereof as follows:

	In favour of	Against	Abstain
Resolution to
Resolution to
Resolution to

(Indicate instruction to proxy by way of a cross in space provided above.)
Unless otherwise instructed, my proxy may vote as he thinks fit.

The appointment of the person(s) as my proxy remain valid until the conclusion of the annual general meeting or general meeting of Members (as the case may be) of the Company or, if such meeting is adjourned, until the conclusion of such adjourned meeting.

A copy of the identity document of each of the persons appointed as my proxy is attached.

Signed this _____ day of _____

Signature

4 Members Meetings

4.1 General meetings of the Company

4.1.1 The Company shall within 6 (six) months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other general meeting during that year, and shall specify the meeting as such in the notices in terms of Articles 4.1.3 below calling it.

4.1.2 Such annual general meeting shall be held at such time and place, as the Board shall decide from time to time.

4.1.3 All general meetings other than annual general meetings shall be called extra ordinary general meetings.

4.1.4 The Board may, whenever they think fit, convene an extra ordinary general meeting, and an extra ordinary general meeting shall also be convened on a requisition made in terms of Section 61(3) of the Act, or, in default, may be convened by the requisitionists as provided by and subject to the provisions of that Section.

4.2 Requirement to hold meetings

4.2.1 The Company is required to hold Members meetings in addition to those specifically required by the Act.

4.2.2 The Company must convene an annual general meeting of its Members—

4.2.3 initially, no more than 18 (eighteen) months after the Company's date of incorporation; and

4.2.4 thereafter, once in every calendar year within 6 (six) months after the end of its financial year, but no more than 15 (fifteen) months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.

4.2.5 An annual general meeting convened in terms of article 4.2.2 must, at a minimum, provide for the following business to be transacted:

4.2.6 presentation of the Directors' report;

4.2.7 presentation of the auditors' report;

4.2.8 presentation of the audited annual financial statements for the immediately preceding financial year;

4.2.9 election of Directors, to the extent required by the Act or the Company's Memorandum; and

4.2.10 any matters raised by Members/Directors, with or without advance notice to the Company.

4.3 Members' right to requisition a meeting

4.3.1 Pursuant to Section 61.3 and subject to article 4.2.2, the Board of the Company, or any other person specified in the Company's Memorandum or Rules, must call a Members meeting if one or more written and signed demands for such a meeting are delivered to the Company, and—

4.3.2 each such demand describes the specific purpose for which the meeting is proposed; and

4.3.3 in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

4.3.4 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 4.3.1 on the grounds that the demand is frivolous, calls for a meeting for no other purpose than to reconsider a matter that has already been decided by the Members, or is otherwise vexatious.

4.3.5 At any time before the start of a Members meeting contemplated in article 4.3.1—

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

- 4.4 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.
- 4.5 **Location of Members meetings**
- 4.5.1 The Company's Board may determine the location of any Members meeting provided any such meeting, if it will not be held at the registered address of the Company, shall be held in the Republic at an address which the Board deems to be the most convenient for Members.
- 4.6 **Notice of Members meetings**
- 4.6.1 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 15 (fifteen) business days before the meeting is to begin. A notice can be delivered to Members by using any of the delivery methods, including electronic mail, (fax or e-mail) contemplated by the provisions of Section 6(10) and 6(11) read with the provisions of Regulation 7.
- 4.6.2 A copy of the audited annual financial statements must be sent to each Member with the notice of the annual general meeting.
- 4.6.3 The failure to give notice to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Company.
- 4.7 **Electronic participation in Members meetings**
- 4.7.1 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 limited or restricted by this Memorandum.
- 4.8 **Quorum for Members meetings**
- 4.8.1 No business shall be transacted at any general meeting or extraordinary general meeting unless a quorum is present when the meeting proceeds with the business at hand. The quorum in these instances shall be at least 50% of all the voting rights that are entitled to be exercised.
- 4.8.2 If, within one hour after appointed time for a meeting to begin, a quorum has not been established, the meeting will be postponed without motion, vote or further notices, for at least one week, where after the business may be concluded.
- 4.9 **Members Resolutions**
- 4.9.1 For an Ordinary Resolution to be adopted at a Member's meeting, it must be supported by more than 50% of the voting rights exercised on the Resolution. It is thus members entitled to vote as are present in person or by proxy.
- 4.9.2 For a Special Resolution to be adopted at a Members meeting, it must be supported by at least 80% of the voting rights exercised on the Resolution. It is thus members entitled to vote as are present in person or by proxy.
- 4.9.3 For a Resolution to amend the rules, it must be supported by at least 66% of the voting rights exercised on the Resolution. It is thus members entitled to vote as are present in person or by proxy.
- 4.9.4 For the following matters a special resolution must be adopted at a Members meeting:.
- 4.9.5 amend the Company's Memorandum to the extent required by Section 16(1)(c) and Section 36(2)(a);
- 4.9.6 ratify a consolidated revision of the Company's Memorandum, as contemplated in Section 18(1)(b);
- 4.9.7 ratify actions by the Company or directors in excess of their authority, as contemplated in Section 20(2);
- 4.9.8 authorise the basis for compensation to directors of the Company, as required by Section 66(9);
- 4.9.9 approve the voluntary winding up of the Company, as contemplated in Section 80(1);

- 4.9.10 approve the winding up of the Company in the circumstances contemplated in Section 81(1);
- 4.9.11 approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in Section 82(5);
- 4.9.12 approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or
- 4.9.13 revoke a resolution contemplated in Section 164(9)(c).
- 4.9.14 **Proceedings at Members meetings**
- 4.9.15 Any individual with voting rights attending a general meeting shall, on request by the Chairperson, identify himself in the following manner
- 4.9.16 by presenting his identity book or valid driver's licence; and
- 4.9.17 if he is the representative of a juristic person who is a Member, a copy of the signed minutes of the juristic person in terms of which he is appointed the representative of the juristic person.
- 4.9.18 Any individual attending a general meeting as a proxy shall, on request by the Chairperson, identify himself in the following manner
- 4.9.19 if he is the proxy of another individual with voting rights, by presenting his identity book or valid driver's licence and a copy of the proxy form signed by the said other individual or
- 4.9.20 if he is the proxy of the representative of a juristic person, by presenting his identity book or valid driver's licence, a copy of the signed minutes of the juristic person in terms of which the person who appointed him as his proxy, is appointed the representative of the juristic person and a copy of the proxy form signed by the said representative.
- 4.9.21 The chairperson of the Board shall preside as chairperson at every Members meeting of the Company.
- 4.9.22 If there is no such chairperson, or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Members present shall elect one of the Directors as chairperson. If none of the Directors are present or all the Directors are unwilling to act as chairperson, the Members shall elect one of their number to be chairperson.
- 4.9.23 The chairperson may, with the consent of any general meetings at which a quorum is present, and shall if so directed by the meeting, adjourn a meeting from time to time and place but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 10 (ten) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid the Members shall not be entitled to any notice of adjournment of the business to be transacted at an adjourned meeting.
- 4.9.24 **Voting**
- 4.9.25 At every general meeting:
- 4.9.26 the Developer shall have 20 (twenty) votes in addition to the votes conferred upon it in terms of Article 4.9.27 below. This measure will only apply during the Development Period.
- 4.9.27 Every Member, including the Developer, present in person or by proxy and entitled to vote, shall have 1 (one) vote for each stand registered in his name.
- 4.9.28 Save as expressly provided for in this Memorandum, no person other than a Member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 4.9.29 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairperson or Members and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on show of hands, been carried or carried unanimously or by a particular majority or

negated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution, The demand for a poll may be withdrawn.

- 4.9.30 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be resolution of the meeting at which the poll was demanded. A scrutineer shall be elected to determine the result of the poll.
- 4.9.31 In the case of any equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote provided that during the Development Period such casting vote may only be cast by the Developer.
- 4.9.32 A poll demanded on the election of a chairperson or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 4.9.33 Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meetings, and if not so seconded, shall be deemed not to have been proposed.
- 4.9.34 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution shall be carried on a single majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated provided that during the Development Period the Developer shall have a second or casting vote.
- 4.9.35 Unless any Member present in person or by proxy at a general meeting shall, before closure of the meeting, have objected to any declaration made by the chairperson of the meeting, as to the result of any voting at the meeting, whether by shown of hand or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the chairperson shall be deemed to be true and correct statement of the voting, and the meeting 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 defeated, with or without a record or the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

5 Directors and Officers

5.1 Composition of the Board of Directors

5.1.1 Directors

- 5.1.2 There shall be a Board of Directors of the Company which shall consist of not less than 2 (two) nor more than 6 (six) persons.
- 5.1.3 A Director shall be an individual but need not himself be a Member of the Company. A Director, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this Memorandum.
- 5.1.4 The Board of Directors shall, during the Development Period, consist of not less than 3 (three) appointees of the Developer. Any other Directors to be appointed to office shall be elected by the Members in general meeting, the Developer being entitled in voting on the election of such Director, to exercise the voting rights conferred upon it by Article 4.9.26 and 4.9.27
- 5.1.5 The authority of the Company's Board to fill any vacancy on the Board on a temporary basis is not limited or restricted by this Memorandum.

5.2 Removal and Rotation of Directors

- 5.2.1 Save as set out in Article 5.2.2 below, and save for the 3 (three) Directors appointed by the Developer in terms of Article 5.1.4 above, each Director shall continue to hold office as such from the date of his commencement to office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such but be eligible for re-election to the Board of Directors at such meeting.

- 5.2.2 Upon any occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by the person nominated by those remaining for the time being on the Board of Directors, provided, however, that, if the Director who vacates his office as foresaid was a nominee of the Developer, the Developer shall be entitled to nominate a Director in his stead.
- 5.2.3 The office of Director, whether elected, appointed or *ex officio*, or prescribed officer shall be vacated if the Director or prescribed officer -
- 5.2.4 has been prohibited by a court to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
- 5.2.5 subject to sections 69(9) to 69(12), —
- is an unrehabilitated insolvent;
- is prohibited in terms of any public regulation to be a Director of the Company;
- has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—
- involving fraud, misrepresentation or dishonesty;
- in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
- 5.2.6 under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004); or
- 5.2.7 him being removed from office as provided in Section 71 of the Act; and
- 5.2.8 resigns his office by notice in writing to the Company; or
- 5.2.9 for more than six months is absent without permission of the Directors from meetings of Directors held during that period.

5.3 **Authority of the Board of Directors**

- 5.3.1 The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, except to the extent that the Act or the Company's Memorandum provides otherwise.
- 5.3.2 The Directors are hereby empowered, subject to the provisions of Articles 8 hereof, to establish for expenses, a fund sufficient in the opinion of the Directors for the maintenance, upkeep, control, management and administration of the Development required to be performed by the Directors in terms of this Memorandum. This includes the acquisition of such movables as may be required for purposes of providing the services to be rendered in terms hereof, or for the discharge of any duty imposed upon the Directors in terms hereof. Also to impose special levies and/or penalty levies as provided for in this Memorandum.
- 5.3.3 The Board of Directors shall have the right to co-opt on the Board any person/s chosen by it. A co-opted Director need not necessarily be a Member of the Company.

5.4 **Chairperson and Vice-Chairperson**

- 5.4.1 The Directors shall within 14 (fourteen) days after each annual general meeting appoint a chairperson and vice-chairperson, who shall hold their respective offices until the annual general meeting following 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. The chairperson or vice-chairperson shall be responsible

- 5.4.2
- 5.4.3 to ensure that Board members adhere to the provisions of this Memorandum:
- 5.4.4 to do all things reasonably necessary for the enforcement, management, control and administration devolving upon the directors in terms of this Memorandum, as more fully set out in the Memorandum with regard to the Rules.
- 5.4.5 **Board of Directors meetings**
- 5.4.6 The Board may meet for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit, subject to any provisions of these presents.
- 5.4.7 A decision that could be voted on at a meeting of the Board, 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. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.
- 5.4.8 A Director authorised by the Board —
- 5.4.9 may call a meeting of the Board at any time; and
- 5.4.10 must call such a meeting if required to do so by at least—
- 5.4.11 25% (twenty five percent) of the Directors if the Board has at least 12 (twelve) Members; or
- 5.4.12 2 (two) Directors, in any other case.
- 5.4.13 The authority of the Company's Board 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(3), is not limited or restricted by this Memorandum.
- 5.4.14 The Board may determine the form and time for giving notice of its meetings, but—
- 5.4.15 such a determination must comply with any requirements set out in the Memorandum or the Rules of the Company; and
- 5.4.16 no meeting of the Board may be convened without notice to all of the Directors, subject to article 5.4.6.
- 5.4.17 Except to the extent that the Company's Memorandum provides otherwise—
- 5.4.18 if all of the Directors of the Company—
- 5.4.19 acknowledge actual receipt of the notice;
- 5.4.20 are present at a meeting; or
- 5.4.21 waive notice of the meeting,
- 5.4.22 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;
- 5.4.23 the quorum necessary for the holding of any meetings of the Board shall be 2 (two) Directors present personally, provided however, that during the Development Period the presence of at least 2 (two) nominees of the Developer shall be necessary at all meetings of the Board in order to form a quorum;
- 5.4.24 a quorum of the Directors must be present at a meeting before a vote may be called at a meeting of the Directors;
- 5.4.25 each Director has one vote on a matter before the Board; and
- 5.4.26 any resolution of the Board of directors shall be carried on a simple majority of all votes cast. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated except during the Development Period during which the Developer shall have a casting vote.

- 5.4.27 If a Director of the Company, other than a company contemplated in section 75(2)(b) or 75(3), has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a related person has a personal financial interest in the matter, the Director—
- 5.4.28 must disclose the interest and its general nature before the matter is considered at the meeting;
- 5.4.29 must disclose to the meeting any material information relating to the matter, and known to the Director;
- 5.4.30 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- 5.4.31 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in articles 5.4.29 and 5.4.30;
- 5.4.32 must not take part in the consideration of the matter, except to the extent contemplated in articles 5.4.29 and 5.4.30;
- 5.4.33 while absent from the meeting in terms of this subsection—
- 5.4.34 is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and
- 5.4.35 is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
- 5.4.36 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 5.4.37 If a Director of a Company acquires a personal financial interest in an agreement or other matter in which the Company has a material interest, or knows that a related person has acquired a personal financial interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, or to the shareholders in the case of a company contemplated in section 75(3), the nature and extent of that interest, and the material circumstances relating to the Director or related person's acquisition of that interest.
- 5.4.38 The Board shall cause minutes to be kept of every Board meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairperson. All minutes of the Board meetings shall, after certification, be placed in a Board's minute book to be kept in accordance with the provisions of the Act relating to the keeping of minutes of Directors of companies. The Board's minute book shall be open for inspection at all reasonable times by any Directors, the auditors, the Members and the Managing Agent.
- 5.4.39 Save as provided in these present, the proceedings of any Board meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide

5.5 **Indemnification of Directors**

- 5.5.1 Except to the extent that the Company's Memorandum provides otherwise, the Company—
- 5.5.2 may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- 5.5.3 may directly or indirectly indemnify a Director for expenses contemplated irrespective of whether it has advanced those expenses, if the proceedings—
- 5.5.4 are abandoned or exculpate the Director; or
- 5.5.5 arise in respect of any liability for which the Company may indemnify the Director, in terms of article 5.5.2 and 5.5.3.
- 5.5.6 Except to the extent that the Memorandum provides otherwise, the Company may indemnify a Director in respect of any liability arising other than as contemplated in article 5.5.2 and 5.5.3.
- 5.5.7 The Company may not indemnify a Director in respect of—

- 5.5.8 any liability arising—
- 5.5.9 in terms of Section 77(3)(a), (b) or (c); or
- 5.5.10 from wilful misconduct or wilful breach of trust on the part of the director; or
- 5.5.11 any fine contemplated in article 5.5.12
- 5.5.12 The Company may not directly or indirectly pay any fine that may be imposed on the Director of the Company, or on a director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction was based on strict liability.
- 5.5.13 Except to the extent that the Memorandum of the Company provides otherwise, the Company may purchase insurance to protect—
- 5.5.14 a director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with article 5.5.3 or
- 5.5.15 the Company against any contingency including, but not limited to—
- 5.5.16 any expenses—
- 5.5.17 that the Company is permitted to advance in accordance with article 5.5.2; or
- 5.5.18 for which the Company is permitted to indemnify a director in accordance with article 5.5.3; or
- 5.5.19 any liability for which the Company is permitted to indemnify a Director in accordance with article 5.5.2.
- 5.5.20 The Company is entitled to claim restitution from a Director of the Company or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this article or Section 78 of the Act.
- 5.5.21 **Committees of the Board**
- 5.5.22 The Board shall be entitled to appoint committees consisting of such outsiders, including the Managing Agent, as they 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.
- 5.5.23 Except to the extent that the Memorandum of the Company provides otherwise, the Board may—
- 5.5.24 appoint any number of committees of Directors; and
- 5.5.25 delegate to any committee any of the authority of the Board.
- 5.5.26 Except to the extent that the Memorandum of the Company, or a resolution establishing a committee, provides otherwise, the committee—
- 5.5.27 may include persons who are not Directors of the Company, but—
- 5.5.28 any such person must not be ineligible or disqualified to be a director in terms of Section 69; and
- 5.5.29 no such person has a vote on a matter to be decided by the committee;
- 5.5.30 may consult with or receive advice from any person; and
- 5.5.31 has the full authority of the Board in respect of a matter.

6 Accounting Records

- 6.1 The directors shall cause such accounting records as are prescribed by the Act to be kept. Proper accounting records shall not be deemed to be kept if there are not kept such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transaction and financial position of the trade or business of the Company.
- 6.2 The accounting records shall be kept at the registered address of the Company or at such other place or places as the directors think fit, and shall always be open to inspection by the directors.
- 6.3 The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Members not being directors, and no Member (not being a director) shall have any right of inspecting any accounting records or documents of the Company except as conferred by the Act or authorised by the directors or by the Company in Members meeting.
- 6.4 The accounts and books of the Company shall be open to inspection of Members at all reasonable times during business hours.
- 6.5 Once in each financial year the accounts of the Company shall be examined and the correctness thereof ascertained by auditors. The duties of the auditors shall be regulated in accordance with Chapter 3 of the Act.

7 Annual Financial Statements

- 7.1 The end of the financial year of the Company is the last day of August.
- 7.2 Each year, the Company must prepare annual financial statements within six months after the end of its financial year.
- 7.3 The annual financial statements of the Company must
- 7.3.1 include an auditor's report;
- 7.3.2 include a report by the directors with respect to the state of affairs, the business and profit or loss of the Company including—
- 7.3.3 any matter material for the Members to appreciate the Company's state of affairs; and
- 7.3.4 any prescribed information;
- 7.3.5 be approved by the Board and signed by an authorised director; and
- 7.3.6 be presented to the first Members meeting after the statements have been approved by the Board.

8 Levies

- 8.1 The Directors may, from time to time impose levies, and special levies upon the Members:- for the purpose of meeting all the expenses which the Company has incurred or which the Board reasonably anticipate the Company will incur in the attainment of its objects or the pursuit of its business. It may further, from time to time impose penalty levies upon Members who are in breach of the Memorandum or Rules or who have not completed the building of their houses on a stand, within the time period imposed or agreed upon.
- 8.2 The Board shall prior to the end of each financial year, or so soon thereafter as reasonably possible, prepare and serve upon every Member at the address chosen by him, an estimate in reasonable detail (budget) of the amount which shall be required by the Company to meet the expenses during the following financial year, and shall specify separately such estimated deficit, if any, or surplus, as shall result from the preceding year. The Board may include in such budget an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 8.3 Each notice to each Member shall specify the contribution payable by that Member to such expense and reserve fund.

- 8.4 Every levy shall be payable in equal monthly instalments, due in advance on the first day of each and every month of each financial year. Any special levies or penalty levies shall be paid in accordance with the determination thereof by the Board.
- 8.5 Levies will be determined by dividing the budget of the Company by the number of stands sold.
- 8.6 In the event of the Board for any reason whatsoever failing to prepare and serve the budget referred to in Article 8.2 above timeously, every Member shall until service of such budget as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in Article 8.2.
- 8.7 The Board shall be empowered in addition to such other rights as the Company may have in law as 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 rate laid down in terms of the Limitation and Disclosure of Finance Charges Act No. 73 of 1968, as amended.
- 8.8 Any amount due by a Member by way of levy and interest shall be a debt due by him to the Company. The obligations of a Member to pay a levy and interest shall cease upon him ceasing to be a Member without prejudice to the Company's right to recover arrear levies and interest. No interest on levies paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member. A Member's successor in title to a stand shall be liable as from the date upon which he becomes a member pursuant to the transfer of that stand, to pay the levy and interest thereon attributable to that stand.
- 8.9 In calculating the levy payable by any Member, the Board shall as far as reasonably practicable:
- 8.9.1 Assign those cost directly attribute to a specific stand in the Development to the Member owning such stand.
- 8.9.2 Assign those costs which are not directly attributable to a stand such Development, generally to the owners of all stands in the Development in equal shares.
- 8.9.3 The Board may in any case where they consider it equitable to do so, assign to any Member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 8.9.4 The Board may enter into an agreement or agreements with the Developer for the provision of a capital sum and/or the transfer of land and/or equipment to the Company.
- 8.9.5 Notwithstanding anything to the contrary in this Memorandum, the Developer shall not pay any levies or charges neither in respect of unsold stands nor in respect of any portion of the Property which is registered in the name of the Developer, forming part of the development.

9 Insurance

- 9.1 At the first meeting of the Board or as so soon thereafter as is possible, and annually thereafter, shall take steps to insure as far as possible the buildings and all improvements on the access security stands and on all other buildings and improvements on the common property, to the full replacement value thereof against:
- 9.1.1 fire, lightning and explosion;
- 9.1.2 riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
- 9.1.3 storm, tempest, flood, excluding:
- 9.1.4 loss or damage caused by a rise in the underground water table or pressure caused thereby;
- 9.1.5 loss or damage to gates, fences, boundary walls, garden walls and retaining walls; and
- 9.1.6 loss or damage cause by subsidence or land slip;
- 9.1.7 earthquake;

- 9.1.8 aircraft and other aerial devices or articles dropped there from;
- 9.1.9 bursting or overflowing of water tanks, apparatus or pipes;
- 9.1.10 impact with any of the said buildings or improvements by any road vehicles, horses;
- 9.1.11 housebreaking or any attempt threat;
- 9.1.12 compensation for loss of occupation or loss of rent in respect of any of the above risks;
- 9.1.13 such other peril or damages as the Board may deem appropriate.
- 9.2 Before every annual general meeting, the Board shall cause to be prepared schedules reflecting their estimate of the replacement value of the buildings and all improvements to the common property.
- 9.3 At the first meeting of the Board or so soon thereafter as is possible, the Board shall take steps:
 - 9.3.1 to insure the owners and the Board and to keep them insured against liability in respect of:
 - death, bodily injury or illness, or
 - 9.3.2 loss of, or damaged to, property:
 - occurring in connection with the sections or access security stands for a sum of liability of not less than One Million Rand, which sum may be increased from time to time as directed by the owners in general meeting, and
 - 9.3.3 to procure a fidelity guarantee in terms of which any loss of monies belonging to the Company or for which it is responsible sustained as a result of act(s) of fraud or dishonesty committed by any insured person being any person in the service of the Company and all Directors and persons acting in the capacity of managing agents of the owner's Company, be made good up to a total sum of liability equal to total levies due and payable over six month period, plus the accumulated reserves which sum may be increased from time to time as directed by the owners in general meeting, and
 - 9.3.4 to procure a cash policy in terms of which there will be made good -
 - 9.3.5 loss of money in the course of business up to and including an amount equivalent to total levies due and payable in one month or such lesser amount as the Board from time to time may determine;
 - 9.3.6 loss of or damage to any receptacle for which the Company is responsible resulting from the theft or attempted theft of money.
- 9.4 The owners may by ordinary resolution direct the Board to insure against such other risks as the owners may determine.

10 Indemnity

Every Director, agent and employee of the Company and any Managing Agent, his employees, nominees or invitees, shall be indemnified by the Company against all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into or any act or deed done by such person or persons in the discharge of their respective duties. Including in the case of a Director, his duties as a chairperson or vice-chairperson, provided no gross negligence or intend was involved. Without prejudice to the generality of the foregoing, the Company shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of a *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.

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