



**MEMORANDUM OF INCORPORATION
OF
MOUNT HOREB OWNERS ASSOCIATION NPC
Registration Number 2006/031391/08
(as amended by resolution dated 22 October 2014)**

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("the Company")

- A. In this Memorandum of Incorporation –
- a) a reference to a section by number refers to the corresponding section of the Act;
 - b) words that are defined in the Act bear the same meaning in this Memorandum of Incorporation as in that Act;
 - c) the headings to the clauses of this Memorandum of Incorporation are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of this Memorandum of Incorporation nor any clause hereof.
- B. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- a) "**Act**" means the Companies Act, 71 of 2008;
 - b) "**Architectural and Building Rules**" means the Architectural and Building Rules incorporating the "Control of Building Activities" and "Rules of Conduct for Contractors" set out in Schedule B hereto;
 - c) "**Auditors**" means the auditors of the Company;
 - d) "**Alienate**" means to alienate any individual Erf, or part thereof or undivided share therein including by way of sale, exchange, deed, donation, intestacy,

will, cession, assignment, court order or insolvency, irrespective of whether such alienation shall have a corresponding meaning;

- e) **"Board"** means the board of directors of the Company appointed in terms of this Memorandum of Incorporation;
- f) **"Chairman"** means the chairman of the Board;
- g) **"Common Property"** means the areas used by the owners of all Erven within the Development including but not necessarily limited to roads, public walkways, access gates to the Development;
- h) **"Conditions of Establishment"** means the statement of conditions relating to the establishment of a township in terms of section 14(1) of the Townships Ordinance, Ordinance 9 of 1969 and published in the Provincial Gazette of 15 December 2005 and as will also appear on General Plan SG No. 145/2005 ;
- i) **"Council"** means the Dihlabeng Local Municipality;
- j) **"Developer"** means Zeranza 87 Proprietary Limited (Registration No. 2005/006581/07) and its successor-in-title or, should Zeranza 87 Proprietary Limited, no longer exist, reference to the Developer shall be reference to the Company;
- k) **"Development"** means the phased Clarens Mountain Estate comprising of all Erven located within the various phases to be developed by the Developer in the Township;
- l) **"Development Period"** means the period from the registration of first of the Erven in the Development in the name of a party other than the Developer until all of the Erven in the Development have been transferred from from the Developer (other than those retained for investment by the Developer) or, alternatively, until the Developer notifies the Company in writing that the Development Period has ceased, whichever is the earlier;
- m) **"EMP"** means the Environmental Management Plan submitted in relation to the Development;
- n) **"Erf"** means a property situated within the Development as designated on the general plan for the Township which is capable of being registered in the

name of any person. Any reference to **Erven** shall constitute a reference to the plural of Erf;

- o) **"Managing Agent"** means any person or body appointed by the Company as an independent contractor to undertake any of the management functions of the Company;
- p) **"Management Agreement"** means the management agreement to be concluded (from time to time) between the Company and the Managing Agent in terms of which, amongst other things, the Company shall appoint the Managing Agent to manage the Development;
- q) **"Management Rules"** means the Management Rules that apply to the use, enjoyment and management of the Development, including the Architectural and Building Rules set out in Schedule A hereto;
- r) **"Member"** means a person who has voting rights in the Company and is registered as such in the Company's members register;
- s) **"Members Meeting"** means with respect to any particular matter concerning the Company, a meeting of the Members of the Company who are entitled to exercise voting rights in relation to that matter;
- t) **"Objects"** means the main objects and ancillary objects of the Company as set out in clause 1.2;
- u) **"Office"** means the registered office of the Company;
- v) **"Owner"** means the registered owner of an Erf situated within the Development who automatically qualifies as a Member.
- w) **"Republic"** means the Republic of South Africa, as constituted from time to time;
- x) **"ROD"** means the Record of Decision issued by the relevant planning and environmental authorities at the time of granting approval for the Development;

- y) “**Statutes**” means the Act and any and every other statute or ordinance from time to time in force concerning companies and necessarily affecting the Company;
 - z) “**Township**” means the township of Clarens Extension 8 as established in terms of the Provincial Gazette of 15 December 2005 in terms of section 14(1) of the Townships Ordinance, Ordinance 9 of 1969 as will more fully appear from general plan Sg No. 145/2005;
 - aa) “**Voting rights**” means the rights of a member to vote in connection with any matter to be decided by the Company.
- C. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.
- D. Unless inconsistent with the context, an expression which denotes:
- a) any gender includes the other gender;
 - b) a natural person includes an artificial person and *vice versa*;
 - c) the singular includes the plural and *vice versa*.
- E. The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.
- F. When, in this Memorandum of Incorporation, a particular number of business days are provided for between the happening of one event and another, the number of days must be calculated by:
- a) excluding the day on which the first such event occurs;
 - b) including the day on or by which the second event is to occur; and
 - c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively.

- G. Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.

1 Clause 1 - Incorporation and Nature of the Company

1.1 Incorporation

- (1) The Company is incorporated as from the date on which the Commission of Intellectual Development and Companies ("CIPC"/"Commission") issues a registration certificate entitling the Company to operate as a non-profit company.
- (2) The Company is incorporated in accordance with and governed by:
 - (a) the unalterable provisions of the Act;
 - (b) the alterable provisions of the Act, subject to the limitations, extensions, restrictions, variations or substitutions set out in this Memorandum of Incorporation; and
 - (c) the provisions of this Memorandum of Incorporation.

1.2 Objects of the Company

- (1) Main Objects
 - (a) The main objects of the Company shall be:
 - (i) ***to promote, advance and protect the overall interests of all the Members;***
 - (ii) ***to act as a body for the representation, promotion and advancement of the communal interests of Members, owners, occupiers of properties located within the Development and to integrate those interests as far as***

possible for the benefit of the owners of Erven within the Development;

- (iii) to establish structures and committees to promote voluntary self-regulation of the activities of the Members; and***
- (iv) to contribute financially to the operation and maintenance of the common benefits and Objects of the Company and the Development.***

(2) Ancillary Objects

(a) The ancillary objects of the Company shall be:

- (i) to promote, support or oppose legislation or other official or unofficial measures affecting the Development as a whole, and, if necessary, represent the Members in dealings with government departments, other authorities and the public generally in regard to any matter which may be in the interest of the Members;***
- (ii) to ensure compliance by Members with the Conditions of Establishment and the Rules of the Company as contained herein, with particular reference to the conditions dealing with aesthetics, design and building restrictions and requirements, and where necessary, to ensure that itself, or the local or any other competent authority enforces any relevant conditions of establishment and Rules;***
- (iii) to, in conjunction with the Developer and the Managing Agent, formulate the Management Rules and bylaws for the control of buildings, walls, fences, exterior lighting, signage, aesthetic planning and landscaping of the Erven at all times having regard to the interest of the Members and to ensure compliance with any such Management Rules and bylaws by Members;***

- (iv) ***to implement, in conjunction with the Developer and the Managing Agent, best practice strategies for the Development as a whole relating to security, vegetation, parking, signage and exterior finishings;***
- (v) ***to ensure that all Members maintain their Erven in a clean and tidy condition and adhere to the specifications and Management Rules imposed from time to time by the Company, the Developer and the Managing Agent, relating to landscaping;***
- (vi) ***to undertake the maintenance of roads situated within the Development; and***
- (vii) ***to, in conjunction with the Developer and the Managing Agent, create, maintain and administer the general security arrangements of the Development in keeping with the needs of the Members, with particular reference to controlling access, and the nature and type of security to be provided from time to time.***

1.3 Powers of the Company

- (1) This Memorandum of Incorporation does not:
 - (a) contain any restrictive or procedural requirement in addition to the requirements set out in clause 1.4, impeding the amendment of any particular provision hereof; and
 - (b) prohibit the amendment of any particular provision hereof.
- (2) The Company has all of the legal powers and capacity of an individual, which are not subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

1.4 Memorandum of Incorporation and Company rules

- (1) This Memorandum of Incorporation of the Company may be altered or amended only:
 - (a) in compliance with a court order to be effected by a resolution of the Board;
 - (b) by a special resolution of the Members but subject to that special resolution having been proposed by:
 - (i) ***the Board, or***
 - (ii) ***by Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution.***
- (2) An amendment may take the form of:
 - (a) a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or
 - (b) one or more alterations to the existing Memorandum of Incorporation by:
 - (i) ***changing the name of the Company;***
 - (ii) ***deleting, altering or replacing any of its provisions;***
 - (iii) ***inserting any new provisions; or***
 - (iv) ***making any combination of such alterations.***
- (3) After amending its Memorandum of Incorporation, the Company shall file a Notice of Amendment with the Commission in accordance with the requirements contemplated in section 16(7) and (8) of the Act.
- (4) An amendment to this Memorandum of Incorporation shall take effect:
 - (a) in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or

- (b) in any other case, on the later of:
 - (i) ***the date on, and time at, which the Commission accepts the filing of the Notice of Amendment; or***
 - (ii) ***the date, if any, set out in the Notice of Amendment.***

- (5) The Board shall have authority to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in this Memorandum of Incorporation or the Act, by:
 - (a) delivering a copy of those rules, or any amendment or repeal thereof, to the Members by hand, by ordinary mail (at such Member's registered address) or by publishing in the press in a newspaper circulating in the area in which the Company's registered office is located. Alternatively, delivery may be by email, provided that the Member has given the Company an email address for the purposes of receiving communications; and
 - (b) filing a copy of those rules, or any amendment or repeal thereof, with the Commission.

- (6) Any necessary or incidental rules made, amended or repealed shall:
 - (a) take effect on the later of:
 - (i) ***10 business days after the rule is filed with the Commission; or***
 - (ii) ***the date, if any, specified in the rule; and***
 - (b) be binding:
 - (i) ***on an interim basis from the time it takes effect until it is put to a vote at the next general meeting of Members of the Company; and***
 - (ii) ***on a permanent basis only if it has been ratified by an ordinary resolution at a Members Meeting.***

1.5 Alterations of Memorandum of Incorporation and Company rules, translations and consolidations of Memorandum of Incorporation

- (1) The Board, or an individual authorised by the Board, may alter the Company's rules, or its Memorandum of Incorporation, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:
 - (a) delivering a notice of the alteration; and
 - (b) filing a notice of the alteration with the Commission.
- (2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations thereof, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation, as so translated.
- (3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission must be accompanied by:
 - (a) a sworn statement by a director; or
 - (b) a statement by an attorney or notary public.

1.6 Non-Profit company provisions

- (1) The Company is a non-profit; and
 - (a) must apply all of its assets and income, however derived, to advance its stated objects, as set out in this Memorandum of Incorporation and no portion thereof shall be paid or transferred, either directly or indirectly, by way of dividend, bonus or otherwise, to the members or directors of the Company, provided however that nothing in this Memorandum of Incorporation shall prevent the

payment in good faith the reasonable remuneration to any officer or servant of the Company or to any member, or the Developer, in return for any services or goods actually rendered to and for the benefit of the Company; and

- (b) subject to clause (a) may:
- (i) ***acquire and hold securities issued by a profit company; or***
 - (ii) ***directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to the Company's stated object(s).***

2 Clause 2 - Members

2.1 Membership

- (1) Membership of the Company shall be limited to the Developer and to any other person who is in terms of the Deeds Registries Act reflected in the records of the Deeds Office concerned as the registered owner of any Erf. No other person shall be entitled to be a Member of the Company.
- (2) Where any of the Erven are owned by more than one person, all the registered owners of that Erf 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 Erf shall be jointly and severally liable for the due performance of any obligation to the Company.
- (3) When a person becomes the registered owner of a Erf, as part of the conveyancing process, an application for membership in the Company shall be made to the Board, or a person appointed for this purpose by the Board (eg. the Managing Agent), giving such details as the Board may from time to time require.
- (4) No person shall be admitted as a Member unless such person has agreed in writing to be bound by the terms and conditions of this Memorandum of Incorporation.

- (5) No Member shall alienate or otherwise part with occupation of his or her Erf, whether temporarily or otherwise, unless he or she has agreed in writing with the proposed occupier of such Erf as a stipulatio alteri in favour of the Company that such an occupier shall be bound by the terms and conditions of this Memorandum of Incorporation.
- (6) A registered owner of a Erf may not resign as a Member of the Company and shall be liable for the due performance of its duties as owner of the Erf and as Member until such time as he or she ceases to be a registered owner of the Erf by virtue of transfer of ownership being passed in the deeds registry to another person.

2.2 **Rights and obligations of Members**

- (1) The rights and obligations of a Member shall not be transferable and every Member shall:
 - (a) further the Objects and interests of the Company to the best of his or her ability;
 - (b) observe all Management Rules made by the Developer and/or the Company and its directors;
 - (c) sign all documents and do all things necessary in order to implement the spirit and intent of the Memorandum of Incorporation and the Objects of the Company; and
 - (d) not cede or assign his or her rights and obligations in terms of this Memorandum of Incorporation to any person other than as security to the mortgagee of the Member's Erf.

2.3 **Cessation of Membership**

- (1) Should a Member cease to be a registered owner of a Erf, then such Member shall immediately and automatically cease to be a Member.
- (2) Upon the death, insanity or insolvency of any Member, such Member shall be represented by his or her executor, curator or trustee as the case may be from the date of death or issue of a certificate by a medical practitioner

certifying the insanity of such Member or the grant of a provisional order of sequestration or liquidation.

2.4 Register of Members

The Company shall maintain a register of members as required by section 24 of the Act.

2.5 Non-transferability of membership

Subject to clause 2.3, membership shall be personal to the Member concerned and may not be assigned or transferred to any other person, company or concern.

2.6 Members' right to information

Other than the rights to access information set out in section 26 and section 31 of the Act, a Member has no further rights to information pertaining to the Company.

2.7 Members Levies

- (1) The Directors 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 directors reasonably anticipate the Company will be put in the attainment of its Objects or the pursuit of its business.
- (2) It is specifically recorded that included in those expenses will be expenses that are necessary to achieve the requirements that are common to the Erven and relate to services, facilities and amenities that are for the benefit of or used by all of the Members whether or not such services, amenities and facilities are actually used by a Member.
- (3) Such common expenses shall include but not be limited to the maintenance and upkeep of the road network of the Development, general security of the Development, staff accommodation, common area gardens, sewerage plants, general water and electricity services, common communication services and general administration and management fees
- (4) Members, other than the Developer, shall be liable in respect of any levy determined by the directors from time to time in terms of 2.7(1), which levy shall be based on one levy per Erf, provided that the directors may after

direction of a Members Meeting of the Company give certain rebates or increase levies on cost items, the cost of which is directly related to usage.

- (5) The directors shall also recover through levies or direct charges, the cost of any metered services provided to a Member such as water and electricity services, and any other additional service charges including but not limited to housekeeping and laundry services, garden services and maintenance not separately metered.
- (6) The directors shall not less than 30 days prior to the end of each financial year, or as soon thereafter as is reasonably possible, prepare an itemised estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies to meet anticipated expenditure not of an annual nature) of the Company during the ensuing financial year, in respect of the Common Property and based thereon calculate the amount required to be levied upon the Members, other than the Developer, during such ensuing financial year and impose a levy on the Members in such estimated amount having regard to clause 2.7(3).
- (7) Members shall only be liable for levies as envisaged in 2.7(3) to 2.7(6) above so that any shortfall of costs relating to the Development, shall be borne and paid for by the Developer during the Development Period.
- (8) The directors shall, as soon as possible after the imposition of the levy in terms of, advise each Member in writing of the amount payable by him or her. Such amount shall be payable in equal monthly instalments due in advance on the first day of each month.
- (9) In the event of the directors for any reason whatsoever failing to prepare and serve the estimate referred to in clause 2.7(6) timeously, every Member shall until service of such estimate as aforesaid, continue to pay the levy previously imposed, and shall after such notice pay such levy as may be specified in the notice referred to in clause 2.7(6).
- (10) The directors may from time to time impose special levies upon the Members or call upon them to make special contributions in respect of all such expenses as are mentioned in clause 2.7(1) (which are not included in any estimate made in terms of clause 2.7(6) and such levies and

contributions may be made payable in one sum or by such instalments with or without interest and if with interest at such rate as may be determined by the directors, and at such time or times as the directors shall think fit.

- (11) Interest shall be payable on arrear levies and the directors shall be empowered in addition to such other rights as the Company may have in law against its Members, to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate prescribed by legislation from time to time.
- (12) Any amount due by a Member by way of levy and interest shall be a debt due by him or her to the Company. Notwithstanding that a Member ceases to be such, the Company shall have the right to recover arrear levies and interest from him or her. No levies or interest paid by a Member shall under any circumstances be repayable by the Company upon his or her ceasing to be a Member. Further, a Member on ceasing to be such, shall have no claims whatsoever on any other monies held by the Company, whether obtained by way of a sale of Company assets or otherwise. A Member's successor in title to a Erf shall be liable as from the date upon which he or she becomes a Member pursuant to the transfer of that Erf, to pay the levy and interest thereon attributable to that Erf.
- (13) A Member shall be liable for and pay all legal costs, (including costs as between attorney and client and collection commission), expenses and charges incurred by the Company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such Member to the Company.
- (14) No Member shall be entitled to any of the privileges of Membership unless and until he or she shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that Member to the Company, from whatsoever cause arising.
- (15) Save for an Erf being transferred from the Developer, no Erf shall be capable of being transferred without a certificate first being obtained from the Company confirming that all the levies and interest have been paid up to and including the date of registration of transfer of such Erf.

- (16) The directors may elect to levy a different levy upon any owner of a Erf depending upon the services available to that Erf.
- (17) The Developer shall not, during the Development Period, be liable for levies on the same basis as any other Member in respect of the Erven still registered in its name and during the Development Period, and for the purposes of this clause 2.7, "Member" shall exclude the Developer.
- (18) All Members hereby agree to sign debit orders in favour of the Company for payment of levies and other amounts due to the Company.

2.8 **Alienation**

- (1) A Member shall not in any manner Alienate or transfer an Erf or any undivided share therein without the prior consent of the Company. The Company is obliged to give such consent provided:
 - (a) the proposed transferee consents and agrees in such a manner as the Company may require to become and remain a Member of the Company for the duration of his or her ownership of the Erf;
 - (b) the selling Member pays to the Company, or its Managing Agent as the case may be, such administrative amount as may be applicable from time to time in order to obtain the requisite clearance certificate required for purposes of effecting transfer of ownership in the deeds registry;
 - (c) a clearance certificate has been issued by the Managing Agent on behalf of the Company, confirming that all monies due to the Company by the Member have been paid, or that provision has been made to the satisfaction of the Company for the payment thereof; and
 - (d) the Company has certified that the Member is not in breach of any provisions of this Memorandum of Incorporation or the Management Rules.

- (2) Should a Member be a body corporate, any change in ownership of such corporate body shall be notified in writing to the Company within 21 (twenty one) days of such change of ownership.
- (3) The registration of transfer of the Erf in the name of the transferee shall ipso facto constitute the transferee as a Member of the Company.
- (4) The provisions of 2.8(1) shall apply mutatis mutandis to any alienation of an undivided share of any Erf.
- (5) No Member shall let or otherwise part with the occupation of his or her Erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this Memorandum of Incorporation and the Management Rules.
- (6) The rights and obligations of a Member shall not be transferable.
- (7) The Company in issuing the certificate referred to in 2.8(1)(c) shall be entitled to charge a reasonable fee (as per clause 2.8(1)(b)) therefore to be determined by the Board from time to time, subject to approval by the Company in Members Meeting.
- (8) The provisions of 2.8(1) shall be registered as a condition of title of each Member's title deed. To the extent that the provisions of 2.8(1) is not included in any of the existing Members' title deeds, the Company shall be authorised to instruct a conveyancing attorney to attend to the endorsement of the relevant title deed to include such provisions.

2.9 **Votes of Members**

- (1) Subject to the Act, if voting on a particular matter is:
 - (a) by a show of hands, any Member present and entitled to exercise voting rights has one vote; and
 - (b) by polling, any Member who is present at the meeting, whether in person or by proxy and is entitled to exercise voting rights, has one vote for each Erf registered in their name.

- (2) For the duration of the Development Period and insofar as it is necessary to ensure that the Developer complies with its obligations under the ROD, and the Conditions of Establishment, the Developer shall have one vote more than the total votes of all Members present, in person or by proxy, at the Members Meeting.
- (3) If a Erf is registered in the name of more than one person, a body corporate or a share block company, then all such co-owners shall jointly have one vote.
- (4) No person other than a duly registered Member, whose levies and/or any other amounts which are due and payable to the Company in respect of or arising out of their membership to the Company are fully paid up, and who is not under suspension, shall be entitled to vote at a Members Meeting.
- (5) A polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by:
 - (a) at least five persons having the right to vote on that matter, either as a Member or a proxy; or
 - (b) a person who is, or persons who together are, entitled, as a Member or proxy, to exercise at least 10% of the voting rights entitled to be voted on that matter.
- (6) An objection to the admissibility of a vote on a poll must be raised at the Members Meeting at which that poll is to take place. The objection shall be determined by the chairman of that Members Meeting, and his decision thereon shall be final and binding. Accordingly any vote not disallowed at the meeting shall be valid for all purposes.
- (7) A resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the chairman of that meeting (whose decision thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely, a resolution shall not be invalid because a vote which should have been included has not been taken into account unless in the opinion of the chairman of that meeting (whose

decision thereon shall be final and binding) the inclusion of that vote would have altered the result of the voting on that resolution.

2.10 **Developer's rights and powers**

- (1) The Developer shall, during the Development Period, on behalf of the Company, appoint an architectural and aesthetic committee which shall consist of:
 - (a) the estate architect appointed from time to time by the Developer;
 - (b) a director of the Company;
 - (c) the Managing Agent of the Development;
 - (d) a representative of the Developer.
- (2) After the Development Period the Company shall appoint the architectural and aesthetics committee from the class of persons referred to in clause 2.10(1) should they still exist. Members of the architectural and aesthetic committee shall not be required to be Members.
- (3) All plans for buildings, outbuildings, structures, walls, fences, additions, alterations and signage within the Development shall be submitted in terms of the Architectural and Building Rules to the architectural and aesthetic committee and the Developer shall not sign off any plan unless such plan has first been approved by the architectural and aesthetic committee.
- (4) During the Development Period, the Developer shall have the sole and exclusive right, which it may exercise in its sole discretion as and when it so requires, to upgrade or alter facilities and amenities existing within the Development, and to erect other facilities within the Development, provided that any upgrading or alteration of the facilities shall require the prior approval of the architectural and aesthetic committee. After the Development Period, the Company will fulfil this function.
- (5) During the Development Period, the cost of any upgrade referred to in clause 2.10(4) above will be borne by the Developer. After the Development Period, such costs will be borne by the Company.

- (6) In the event of the Developer, or the Company (as the case may be) upgrading facilities and amenities within the Development, as referred to in clause 2.10(4) above, the Members acknowledge that during such upgrading they may suffer a certain degree of inconvenience. Provided that the Developer, or Company (as the case may be), at all times acts reasonably and does not act negligently, the Members shall have no right to claim any rebate of levies during the period in which the said work may be in progress nor shall the Members have any claim for any damages of whatsoever nature.
- (7) For the purposes of clause 2.10(6) the Developer, or the Company (as the case may be), shall be entitled at any time:
 - (a) to erect the building equipment required for the carrying out of that work, and such other equipment or devices as may be required by law or which the Developer's architect considers reasonably necessary for the protection of any person against injury arising out of that work; and
 - (b) to such right of access to the Development as is reasonably necessary for the carrying out of that work, provided that any security arrangements established by the Company are abided by and disrupted to the minimum extent possible.
- (8) In exercising its rights in terms of 2.10(6) and 2.10(7) the Developer shall:
 - (a) not unnecessarily or unreasonably interfere with the beneficial occupation of the Members;
 - (b) carry out such work as quickly as possible in the circumstances;
 - (c) not be responsible for any loss or damage to any person or Development arising out of the execution of that work; and
 - (d) not be liable to the Members for or in respect of loss of beneficial occupation or otherwise arising out of the execution of that work.

2.11 **Proxies and voting under power of attorney**

- (1) A Member may, at any time, appoint any individual, including an individual who is not a Member, as a proxy to:
 - (a) participate in, and speak and vote at, a Members Meetings on behalf of the Member; or
 - (b) give or withhold written consent on behalf of the Member to a decision contemplated in section 60.
- (2) The instrument that appoints a proxy shall:
 - (a) be in writing, dated and signed by the Member;
 - (b) be given by the person appointing such proxy or his attorney duly authorised in writing or, if the appointor be a corporation, given by an officer or attorney so authorised.
- (3) The holder of a power of attorney from a Member may, if so authorised by the power of attorney, vote for and represent such Member at any meeting of the Company.
- (4) Every instrument of proxy, whether for a specified meeting or otherwise, shall comply with section 58 and subject thereto be in the following format, or in such other form as the Company's Board may approve, and the Board may, if they think fit, send out with the notice of any meeting forms of instrument of proxy for use at the meeting:

"I/We

.....

...

of

.....

...

being a member/members of the above named Company do hereby appoint

.....of or
failing himof
..... or failing him the chairman of the
Company or failing him the chairman of the meeting as my / our
proxy to:

[participate in, and speak and vote for me / us at a meeting of
members of the Company to be held at
..... on 20..... at
(time appointed) and at any adjournment thereof.] /

[give or withhold written consent on my / our behalf to the written
resolutions to which this form of proxy is attached, as
contemplated in section 60 of the Act.] /

[participate in, and speak and vote for me / us at any meeting of
members held by the Company, or give or withhold written consent
on my / our behalf in respect of any decision contemplated in
section 60 of the Act, between the date of this proxy instrument
and 20.....]*

Dated this day of 20.....

Name (in full)

Address

.....

signature

* Delete as applicable

I / We desire to vote as follows:

For	Against	Abstain
-----	---------	---------

Resolution No. 1

Resolution No. 2

(Set out the numbers of the resolutions if more than 1)

*Mark with an X whichever is applicable."

2.12 Representation by concurrent proxies

The right of a Member to appoint two or more persons concurrently as proxies, is not restricted or varied by this Memorandum of Incorporation.

2.13 Authority of proxy to delegate

The authority of a Member's proxy to delegate that proxy's authority to act on behalf of the Member, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this Memorandum of Incorporation.

2.14 Requirement to deliver proxy instrument to the Company

The instrument of proxy or power of attorney appointing a proxy for any particular meeting shall be delivered to the Company at its Office not less than 24 (twenty four) hours (or such lesser period as the directors may determine in relation to any particular meeting) before such meeting is due to take place, failing which the instrument of proxy or power of attorney shall not be treated as valid.

2.15 Deliberative authority of proxy

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, except to the extent that the instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

2.16 Validity of appointment

(1) The proxy appointment remains valid only for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the

making of a later inconsistent appointment of another proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company.

- (2) The appointment of a proxy 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 as a Member.
- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the previous legal incapacity of the Member or revocation of the instrument or power of attorney unless notice in writing of such legal incapacity, or revocation shall have been received by or on behalf of the Company not less than forty-eight hours (or such lesser period as the Board may determine in relation to any particular meeting) before the time appointed for holding the meeting.

2.17 **Record date for exercise of Member's rights**

- (1) If, at any time, the Company's Board fails to determine a record date for any action or event, the record date for the relevant matter is:
 - (a) in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or
 - (b) in any other case, the date of the action or event.

3 **Clause 3 - Meetings of Members of the Company**

3.1 **Requirement to hold meetings**

The Company is not required to hold any general meetings other than those specifically required by section 61 of the Act and this clause, but may do so.

3.2 **Members' right to requisition a meeting**

The right of Members to requisition the Company's Board to call a Members Meeting may be exercised if, in aggregate, written and signed demands for substantially the same purpose are made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at

the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.

3.3 Location of Members Meetings

The authority of the Company's Board to determine the location of any meeting of Members and the authority of the Company to hold any such meeting in the Republic or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

3.4 Calling a Members Meeting

If the Company is unable to convene a Members Meeting because it has no directors or because all of its directors are incapacitated, any Member may convene a meeting.

3.5 Notice of Members Meetings

- (1) The minimum number of days for the Company to deliver a notice of a Members Meetings to the Members is at least 15 (fifteen) business days before the meeting is to begin or twenty four hours if agreed on in writing by Members holding not less than ninety percent of the votes exercisable at such meeting.
- (2) A notice of a meeting must be in writing and include the information set out in sections 62 (3) and 63 (3) of the Act.

3.6 Electronic participation in Members Meetings

The authority of the Company to conduct a meeting of Members entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.

3.7 Quorum for Members Meetings

- (1) Subject to the provisions of clause 3.7(2) to clause 3.7(5) (both inclusive), the quorum requirement for:

- (a) a meeting of Members to begin is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
 - (b) a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- (2) Notwithstanding clause 3.7(1), where the Company has more than two Members, a meeting may not begin, or a matter begin to be considered, unless at least three Members are present at the meeting and the requirements of clause (1) are satisfied.
- (3) If, within 30 minutes after the appointed time for a meeting to begin, the requirements of clause 3.7(1), or 3.7(2) if applicable:
- (a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, to a date not earlier than seven days and not later than twenty-one days after the date of the meeting;
 - (b) for consideration of a particular matter to begin have not been satisfied:
 - (i) ***if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or***
 - (ii) ***if there is no other business on the agenda of the meeting, the meeting is adjourned to a date not earlier than seven days and not later than twenty-one days after the date of the meeting, without motion or vote.***
 - (c) The person intended to preside at a meeting, where the quorum requirements in clause (1), or clause (2) if applicable, are not satisfied, may extend the 30 (thirty) minute limit allowed for a reasonable period on the grounds that:

- (i) ***exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Members to be present at the meeting; or***
 - (ii) ***one or more delayed Members have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the quorum requirements; or***
 - (iii) ***any other reason such person considers appropriate.***
- (4) After a quorum has been established for a meeting, or for a particular matter, 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.
- (5) If the quorum requirements in clause (1), or clause (2) if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Members present in person or by proxy shall be deemed to constitute a quorum.

3.8 Adjournment of Members Meetings

- (1) Subject to clauses 3.7(2) and 3.7(3), a meeting of Members or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- (2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms of clause 3.8(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- (3) A meeting may not be adjourned beyond the earlier of:

- (a) 120 business days after the record date determined in accordance with clause 2.17; or
- (b) 60 business days after the date on which the adjournment occurred;

3.9 **Members resolutions**

- (1) For an **ordinary resolution** to be approved by Members, it must be supported by the holders of **more than 50% of the voting rights** exercised on that resolution.
- (2) For a **special resolution** to be approved by Members, it must be supported by the holders of **at least 75 % of the voting rights** exercised on that resolution.

3.10 **Chairman of the Members Meetings**

- (1) In event of an equality of votes, the chairman of a Members Meeting shall not be entitled to a casting vote.
- (2) If the chairman of a Members Meeting is not present within ten minutes from the time appointed for a Members Meeting or in the event that the chairman is unwilling to act, then the vice-chairman shall act as chairman and failing the vice-chairman, a chairman appointed at the meeting.

3.11 **Annual General Meeting**

- (1) The Company shall be required to hold an annual general meeting:
 - (a) initially, no more than 18 months after its date of incorporation; and
 - (b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting.
- (2) The notice calling an annual general meeting shall include:
 - (a) the financial statements to be presented, or a summarised form thereof; and
 - (b) directions for obtaining a copy of the complete annual financial statements for the preceding financial year.

- (3) The agenda at an annual general meeting shall include but not be limited to:
 - (a) presentation of the directors' report and annual financial statements for the immediately preceding financial year;
 - (b) election of directors, to the extent required by the Act or this Memorandum of Incorporation; and
 - (c) any matters raised by Members, with or without advance notice to the Company.

4 Clause 4- Directors and Officers

4.1 **Composition of the Board**

- (1) The Company's Board shall comprise **not less than 3 (three) directors and not more than 8 (eight) directors**, to be elected by the Members.
- (2) Each incorporator of the Company is a first director, and serves until sufficient other directors to satisfy the minimum requirements of the Act and/or this Memorandum of Incorporation have been elected.
- (3) Subject to clause 4.1(8), each director, other than the first directors and any directors appointed in this Memorandum of Incorporation, must be elected by the persons entitled to exercise voting rights in such an election to serve for an indefinite period, or for a term as set out in this Memorandum of Incorporation.
- (4) Notwithstanding clause 4.1(3), the Developer shall until the Development Period has ended, have the right to appoint three directors and shall have the right to remove and replace such directors on written notice to the Company.
- (5) In any election of directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy.

- (6) In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised are in support of the candidate.
- (7) There are no ex officio directors in addition to any directors appointed in terms of this Memorandum of Incorporation and the elected directors.
- (8) The authority of the Board to fill any vacancy on the Board on a temporary basis, is not restricted or varied by this Memorandum of Incorporation, save that if the vacancy is created prior to the next annual general meeting by a director who was appointed by the Developer then the Developer shall be entitled to nominate a director to replace the aforesaid director.
- (9) A director appointed on a temporary basis has all the powers, functions and duties, and is subject to all the liabilities, of any other director.
- (10) To become or to continue to act as a director or a prescribed officer of the Company, a person must not be:
 - (a) a juristic person;
 - (b) an unemancipated minor, or a person under a similar legal disability;
 - (c) a person who has been declared a delinquent or placed under probation by a court in terms of section 47 of the Close Corporations Act, 1984 or section 162 of the Act, except to the extent permitted by the order of probation;
 - (d) an unrehabilitated insolvent;
 - (e) prohibited in terms of any public regulation to be a director;
 - (f) removed from an office of trust, on the grounds of misconduct involving dishonesty;
 - (g) a person who 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 any offence:
 - (i) ***involving fraud, misrepresentation or dishonesty;***

- (ii) ***in connection with the promotion, formation or management of a company, or having been appointed or elected as a director or acting as a director, or having been placed under probation by a court; or***
 - (iii) ***under the Act, the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, 1998, the Financial Intelligence Centre Act, 2001, the Securities Services Act, 2004, or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004.***
- (11) A person need not satisfy any further eligibility requirements or qualifications.
- (12) Save for the directors appointed by the Developer in terms of clause (4) each director will hold office from the date of their appointment to the date of the annual general meeting following their appointment, at which meeting each director shall be deemed to have retired from office. Each director shall be eligible for re-election to the Board.

4.2 **Alternate directors**

- (1) Each director may appoint and remove any person, including another director, to act as an alternate director in such director's place and during their absence, provided that such person has been approved for that purpose by a resolution of the Company's Board. Any appointment or removal of an alternate director shall be effected by a written notice to the Company signed by the person appointing or removing that alternate.
- (2) An alternate director shall, except as regards the power to appoint an alternate and to receive remuneration, be subject in all respects to the terms and conditions applicable to the other directors, and each alternate director shall be entitled:
 - (a) to receive notices of all meetings of the directors or of any committee of the directors of which the alternate's appointor is a Member;

- (b) to attend and vote at any such meetings at which the alternate's appointor is not personally present;
 - (c) to furnish written consent to adopt a decision which could be voted on at a Board meeting;
 - (d) to be appointed as an alternate to more than one director and shall have a vote for each director for whom such alternate acts, in addition to their own vote, if any; and
 - (e) generally, to exercise and discharge all the functions, powers and duties of the alternate's appointor in such appointor's absence as if such alternate were a director.
- (3) An alternate director shall cease to be an alternate director if the alternate's appointor ceases for any reason to be a director, provided that if any director retires but is re-elected at the same meeting, any appointment made by such director shall remain in force as though the director had not retired.

4.3 **Authority of the Board**

- (1) The authority of the Company's Board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, the Company has only one director, the authority of that director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.

4.4 **Directors' meetings and committees**

- (1) A director authorised by the Board of the Company:
 - (a) may call a meeting of the Board at any time; and
 - (b) must call such a meeting if required to do so by at least:

- (i) **25% of the directors, in the case of a Board that has at least 12 members; or**
 - (ii) **two directors, in any other case.**
- (2) Notwithstanding clause 4.4(1), any director may call a meeting of directors if such director considers there is good reason to do so.
- (3) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, provided that the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Board to adopt a decision which could be voted on at a Board meeting 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, is not restricted or varied by this Memorandum of Incorporation. Any decision made in the manner contemplated in this clause 4.4(4) has the same effect as if it had been approved by voting at a meeting.
- (5) The Board may determine the form and time for giving notice of its meetings but such a determination must comply with any requirements set out in this Memorandum of Incorporation or the Company's rules, provided that no meeting of the Board shall be convened without notice to all of the directors subject, however, to the provisions of clause 4.4(6).
- (6) The authority of the Board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (7) The quorum requirement for a meeting is 3 (three) directors and at least one of the three directors present must be a director appointed by the Developer.

- (8) If no quorum is present within thirty minutes of the time appointed for a meeting, the meeting shall stand adjourned to the same time and day the following week, or such other time and place as the Chairman may direct, and if a quorum is not present within thirty minutes of the time appointed for the adjourned meeting, then the persons present at the adjourned meeting shall constitute a quorum for that meeting.
- (9) For the duration of the Development Period, the directors appointed by the Developer shall, notwithstanding the number of directors present, have one vote more than the total votes of the other directors present at the meeting. After the expiry of the Development Period each director, including any directors appointed by the Developer, shall have only one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.
- (10) The Developer shall be entitled to appoint the first Chairman. Thereafter the Board shall be entitled to elect a chairman or vice-chairman from one of its number at the first director's meeting after the annual general meeting. The Chairman or vice-chairman shall hold office until the next annual general meeting provided that the office of the Chairman and/or vice-chairman shall be ipso facto vacated in the event that the director holding such office ceases, for whatever reason, to be a director. In the event of a vacancy occurring the Board shall immediately appoint one of its number as Chairman.
- (11) If the Chairman is not present within 10 minutes from the time appointed for a meeting of the Board or in the event that the Chairman is unwilling to act, then the vice-chairman shall act as chairman and failing the vice-chairman, a chairman appointed at the meeting.
- (12) In the case of a tied vote the chair shall not have a deciding vote and the resolution shall not pass.

4.5 **Directors' power to affect borrowing**

The directors shall not be entitled to borrow money and to mortgage or bind the undertaking and Development of the Company or any part thereof, and to issue debentures, and other securities whether outright or as security for any debt,

liability or obligation of the Company or of any third party, unless approved at an annual general meeting or a Members Meeting.

4.6 **Directors' powers**

- (1) Subject to this clause 4.6, the directors shall manage and control the business affairs of the Company, shall have full powers in the management and direction of such business and affairs (where such management and direction does not vest in the Managing Agent), and may exercise all such powers of the Company and do all such acts on behalf of the Company which are not required by the Act or by this Memorandum of Incorporation to be exercised or done by the Company in a Members Meeting, subject however to such rules as may be made by the directors pursuant to clause 1.4.
- (2) Save as provided herein, the directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, advocates, architects, engineers, a Managing Agent, or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the directors as on such terms as the directors may decide, subject to any restrictions imposed or direction given at any General Meeting of the Company.
- (3) The directors shall further have power:
 - (a) to require the submission for approval of such plans, drawings, and other information as they may deem necessary to ensure compliance by Members with this Memorandum of Incorporation and the Management Rules made in terms hereof;
 - (b) to require that any works being constructed within the Development shall be supervised to ensure that the provisions of this Memorandum of Incorporation and the Management Rules are complied with and that all work is performed in a proper and workmanlike manner;
 - (c) within the Objects and subject to the requirements of the Company in conjunction with the Developer and in terms of the EMP and ROD to determine access to the Erf.

4.7 **Directors' compensation and financial assistance**

- (1) The authority of the Company to pay reasonable remuneration to the directors, in accordance with a special resolution approved by the Members within the previous two years, is not restricted or varied by this Memorandum of Incorporation.
- (2) The Company shall not, directly or indirectly pay any Erf of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or director, or person appointing a director, of the Company, except –
 - (a) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - (b) as payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
 - (c) as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the company; or
 - (d) in respect of any legal obligation binding on the Company.

4.8 **Indemnification of directors**

- (1) The Company shall not directly or indirectly pay any fine that may be imposed on a director or on a director of a related company, who has been convicted of an offence, provided that this shall not apply to the Company if one individual is the sole member and sole director or two or more related individuals are the only members and there are no directors other than those one or more individuals.
- (2) The authority of the Company to advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the

Company and to directly or indirectly indemnify a director in respect of such expenses if those proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the director, is not restricted or varied by this Memorandum of Incorporation.

- (3) The authority of the Company to indemnify a director in respect of any liability for which the Company may indemnify a director, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Company to purchase insurance to protect:
 - (a) a director against any expenses or liability for which the Company may indemnify a director as contemplated in clause 4.8(2) or clause 4.8(3) or
 - (b) the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a director as contemplated in clause 4.8(2) or any liability for which the Company is permitted to indemnify a director as contemplated in clause 4.8(3),

is not restricted or varied by this Memorandum of Incorporation.

- (5) The Company shall be entitled to claim restitution from a director or 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 clause 4.8 or the Act.

4.9 **Committees of the Board**

- (1) The authority of the Company's Board to appoint any number of committees for managing any of the affairs of the Company and to appoint any persons to be members of such committees and to delegate to any such committee any authority of the Board, is not restricted or varied by this Memorandum of Incorporation.
- (2) Subject to the powers and authorities granted by the Board to any such committee, the authority of any such committee to:

- (a) include persons who are not directors, provided that such persons are not ineligible or disqualified from being a director as contemplated in clause 4.1(10) and that no such person shall vote on a matter to be decided by the committee;
- (b) consult with or receive advice from any other person; and
- (c) exercise the full authority of the Board in respect of a matter referred to it,

is not restricted or varied by this Memorandum of Incorporation.

4.10 **Authentication of documents**

- (1) Any director or any person appointed by the directors for this purpose shall have power to authenticate any resolutions passed by the Members or the directors, and any books, records, documents and accounts relating to the Company, and to certify copies thereof or extracts therefrom as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the registered office, the local manager or other officer of the Company having the custody at such other place shall be deemed to be the person appointed by the directors aforesaid.
- (2) A document purporting to be a copy of a resolution of the directors or an extract from the minutes of a meeting of the directors which is certified as such in accordance with the provisions of clause 4.10(1) shall be conclusive evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the directors.

5 Clause 5 - General Provisions

5.1 **Application of optional provisions of the Act**

The Company, being a non-profit company, does not elect to comply voluntarily with the extended accountability requirements contained in Chapter 3 of the Act.

5.2 **Accounts**

- (1) The Company's Board shall keep such accounting records and books of account as are prescribed by the Act.
- (2) The accounting records shall be kept at the office of the Company or (subject to the provisions of section 25 of the Act) at such other place as the Board think fit, and shall at all times be open to inspection by the Board. Except as provided by the Act, or by the authority of the Board, no Member (other than a Member who happens to be a director) shall have any right to inspect any accounting record book, account or document of the Company. If such right is granted by the Board, the Member shall be liable for payment of the reasonable administrative costs and expenses to provide such information or copies.
- (3) The directors shall, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting such annual financial statements, directors reports and group annual financial statements and group reports, if any, as are referred to in those sections.
- (4) Subject to the provisions of the Act, a copy of the annual financial statements and reports referred to in clause 5.2(3) shall be delivered or sent by post to the registered address of each Member at least 10 business days before the annual general meeting. Alternatively, a Member may give the Company an address for the purposes of receiving electronic communications, in which case a copy of such documents may be delivered to that Member at that address. This clause shall not require a copy of such documents to be delivered or sent to any person who is not entitled to receive notice of Members Meeting s of the Company or of whose address the Company is not aware.

5.3 **Conversion of the Company to a profit company, disposal of assets and mergers**

- (1) The Company may not merge or convert to a profit company, or 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) Any proposal to dispose of all or the greater part of the Company's assets or undertaking or any proposal to amalgamate or merge with another non-profit company must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act, respectively.
- (3) Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause 5.3(2) above.

5.4 **Winding-up**

- (1) Upon the winding-up or dissolution of the Company, 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.
- (2) The entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts which have similar objects to the Company's main Objects.
- (3) The Company's main objects may be determined in terms of the Company's Memorandum of Incorporation or by its Members, or directors immediately before the time of its dissolution; or by the court, if the Memorandum of Incorporation, or the Members or directors fail to make such a determination.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the incorporators of the Company as evidenced by the following signatures made by each of them, or on their behalf.

Name incorporator	of	Identification Number of incorporator	Signature	Date