

MEMORANDUM OF INCORPORATION

of

EQUESTRIA EXTENSION 31 HOMEOWNERS ASSOCIATION (NPC)**Registration Number: 2002/028113/08**(which is referred to in the rest of this Memorandum as "*the Company*")**A) OBJECTS AND POWERS OF THE COMPANY:**

The **Company** is a Non-Profit Company with members and has all the legal powers and capacity of an individual. Its powers, capacity and objects shall include, but will not be limited to the following:

1. The main object of the **Company** is to protect and advance the communal interest of owners, occupants, and other users of any of the properties (or any portion or sub-division thereof or any **Unit** thereof), comprising the **Township** as are more fully defined in this Memorandum of Incorporation, hereunder.

The "**Township**" means the housing scheme developed on the property generally known and referred to as Equestria Extension 31 and comprising of the following properties: Equestria Extension 31; Extension 7; Extension 169 of the Farm The Willows 340.

2. The objectives and powers of the **Company** are:
 - 2.1 to manage, control and administer, on behalf of its members, the **common property** which may include, and where required and necessary, all electric, water, reticulation services, sewage systems and intercom systems and security within the **Township**; and
 - 2.2 to formulate rules and by-laws for the control of buildings, walling, fencing, exterior lighting, signage, landscaping and to ensure compliance of such rules and by-laws by the members.
 - 2.3 to monitor compliance by the members of the Township Establishment Conditions, building restrictions and requirements and, where necessary, to notify the Local Authority with a view to enforcement of such conditions, restrictions, or requirements.
 - 2.4 to collect levies and contributions towards funds of the **Company** for the attainment of the objects of the **Company**, to promote and maintain any business or enterprise of the **Company**; and

- 2.5 to create Rules of Conduct concerning the powers and obligations of members and the use of **common property** and **units** within the **Township** and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation, are enforced equally upon all members and are adhered to for the benefit of the members as a whole and subject to such restrictions and/or conditions, restrictions and/or powers as may be imposed by the members upon the Directors, in General Meeting, on the basis that all members shall have equal rights and obligations.
- 2.6 to formulate and implement rules relating to security, landscaping, vegetation, parking, road use, signage and advertising, exterior finishes of buildings, fencing or walling.

This Memorandum of Incorporation was adopted by the incorporators of the **Company**. In accordance with section 13(1), as evidence by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity or Registration Number	Signature	Date
1. See Annexure "A:"			
2.			
3.			

In this Memorandum of Incorporation –

- (a) A reference to a section by number refers to the corresponding section of the Companies Act, 2008.
- (b) Words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) Words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.
- (d) The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them ("the **Definitions**"):

- (i) **“Business day”** : A business day is calculated by:
- a. Excluding the day on which the first such event occurs; and
 - b. Including the day on or by which the second event so occurs; and
 - c. Excluding any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively.
- (ii) **“Common Property”** : Refers to the **Common Property Areas** in the **Township**, including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the **Common Property Areas** and within servitude areas registered in favour of the **Company**, that are owned by the **Company** and for which the **Company** bears the responsibility to maintain, as such, amongst others, the streets, streetscapes, pavements, fencing security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, storm water reticulation and any equipment or amenities used ancillary to such **Common Property Areas**.
- (iii) **“Common Property Areas”** : Means those erven or areas transferred to or registered in the name of the **Company** and located in the **Township**.
- (iv) **“Company”** : Means the Equestria Extension 31 Home Owners Association (NPC), Registration Number: 2002/028113/08.
- (v) **“Directors”** : Means the directors of the **Company** who shall, for the purposes of the Act, be the directors of the company appointed or elected in accordance with the provisions of this Memorandum of Incorporation.

- (vi) **“Developer”** : Means the owner or seller of **Units** in the **Township** before any individual transfers were affected and with voting rights in respect of those **Units** still registered in the **Developer’s** name from time to time.
- (vii) **“Development Period”** : Means the period which commenced with establishment of the **Township** and which terminates when the last **Unit** in the **Township** is transferred from the **Developer** to a third party or is developed for occupation by the **Developer**.
- (viii) **“General Meeting” / “Members Meeting”** : Means a general meeting of the company and unless the context indicates otherwise, will include the annual general meeting of the company.
- (ix) **“Levy/Levies”** : Means contributions levied in terms of this Memorandum of Incorporation upon members for the purpose of meeting all the expenses which the **Company** has incurred or which the **Directors** reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuits of its business.
- (x) **“Managing Agent”** : Means any qualified and authorised person or body appointed by the Company as an independent contractor from time to time to assist the Company with the collection of levies and administrative arrangements not dealt with by the staff of the Company.
- (xi) **“Member/Members”** : Means the **Developer** and/or his representatives during the **Development Period** in respect of those **Units** still registered in the name of the **Developer** and/or any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a **Unit** in the **Township** or has successfully applied for membership of the **Company**.

- (xii) **“Resident(s)”** : Means a person in occupation of a unit on a temporary basis by agreement with and/or consent from the member of a relevant unit or through his affiliation or association with such member.
- (xiii) **“Resolution”** : Means, in the context of a general meeting or a member’s meeting, a resolution taken at a properly constituted meeting of the company for that purpose and such a resolution cannot be taken by means of section 60 of the Companies Act by informal means.
- (xiv) **“Section/s”** : Means a particular section or sections of the Companies Act 71 of 2008.
- (xv) **“Rules”** : Means rules made in accordance with section 15(3) of the Companies Act.
- (xvi) **“Township”** : Means the housing scheme developed on the property generally known and referred to as Equestria Extension 31 and comprising of the following properties:
- a. Equestria Extension 31;
 - b. Equestria Extension 7;
 - c. Equestria Extension 11; and
 - d. Extension 169 of the Farm The Willows 340.
- (xvii) **“Unit”** : Means an erf or any subdivision thereof in the **Township** or a **Unit** established in terms of the Sectional Titles Act, Act 95 of 1986, within the **Township**.
- (xviii) **“Writing”, “In Writing”** : Means all modes of representing or reproducing word in visible form and also a data message accessible in a manner usable for subsequent use.
- (xix) The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.

B) COMPANY ADMINISTRATION

ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

1.1 Incorporation

- (1) The **Company** is incorporated as a Non-Profit Company, as defined in the Companies Act of 2008.
- (2) The **Company** is incorporated in accordance with, and governed by –
 - (a) the unalterable provisions of the Companies Act that are applicable to Non-Profit Companies;
 - (b) the alterable provisions of the Companies Act of 2008 that are applicable to Non-Profit Companies, subject to any limitation, extension, variation, or substitution set out in this Memorandum; and
 - (c) the provisions of this Memorandum of Incorporation.

1.2 Objects and Powers of the Company

- (1) The Objects of the **Company** are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the **Company** are NOT subject to any restriction, limitation, or qualification, as contemplated in section 19(1)(b)(ii).
- (2) The **Company** is NOT subject to any provision contemplated in section 15(2)(b) or (c).
- (3) Upon dissolution of the **Company**, its net assets must be distributed in the manner determined in accordance with –
 - (a) Item 1(4)(b) of Schedule 2 of the Companies Act, 2008; and
 - (b) the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

1.3 Memorandum of Incorporation and Company Rules

- (1) This Memorandum of Incorporation of the **Company** may be altered or amended only in the manner set out in sections 16, 17, or 152(6)(b) of the Companies Act, subject to the requirement that any alteration of the Memorandum of Incorporation, made in terms of section 17(1), shall be published to the members of the company, by delivering a copy of the altered Memorandum of Incorporation, to each member by ordinary mail and/or telefax and/or email.

- (2) The authority of the **Company's** Board of Directors to make rules for the **Company**, as contemplated in section 15(3) to (5) is NOT limited or restricted in any manner by this Memorandum of Incorporation.
- (3) The **Company's** Board of Directors may, in terms of section 15(2) and (3) of the Act, propose Rules, subject to approval by the members provided for in Article 1.3, necessary or incidental to the management of the **Company** and to attain the objects of the **Company** as set out above with regards to the following aspects:
- (a) Preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of the fences and other improvements to a **Unit**, whether upon or within the boundaries of any **Unit**, which may affect the aesthetical appearance and which includes additions and improvements such as satellite and/or radio antennae dishes and/or receivers, air-conditioning units and/or solar heating systems and panels.
 - (b) The security, vegetation, parking, signage and advertising, exterior finishes of buildings or walling and fences, streetscapes and the maintenance of any unit and any improvements thereon.
 - (c) The right to prohibit, restrict, or control the keeping of any animal/bird/reptile which they may regard as dangerous or likely to cause a nuisance and/or disturbance to other residents or the flora and fauna in the **Township**.
 - (d) The placing or affixing of ornamentation or embellishments to the outside of the buildings or on a portion within the **Township**, including the power to remove, or order the removal or to procure an order for removal of any such objects.
 - (e) The conduct of any person or persons within the **Township** for the preservation of peace and tranquillity and the prevention of nuisance of any nature to any member or resident, and to prevent any harm to the environment.
 - (f) Furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of members of the **Company**.
 - (g) The right to control reasonable access to the **Township** and to any portion to protect the security of the **Township**, the **Members**, residents, and all users thereof.

- (h) The control of any visitors, contractors, and labourers and restriction of their access and activities on the **Township**.
 - (i) The enforcement of any of the Rules through a system of fines and penalties.
- (4) The Board must publish any rules made in terms of section 15(3) to (5) in accordance with the requirements set out in Part D of Schedule 1 of the Act.
 - (5) The **Company** must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) in accordance with the requirements set out in Part D of Schedule 1.
 - (6) Rules proposed by the Board must be approved by the Members of the **Company** by ordinary resolution at a general meeting and will become effective and enforceable on the date of such approval, or a later date provided for in the resolution approving the Rules.
 - (7) The Board must publish any Rules made by delivering a copy of those rules to each member by ordinary mail and/or telefax and/or email. The Rules are always available for inspection at the office of the **Company** within business hours and a copy will be made available against payment of the reasonable fee as determined by the Board of Directors from time to time.
 - (8) The **Company** may itself, through the members in a general meeting, make any rules which the Directors may make in terms of Article 1.3(3) and may likewise vary or modify any rules made by it or the Directors from time to time.
 - (9) Save to the extent that the rules set out in Schedule 1 hereto were amended, the rules made in terms of this Memorandum of Incorporation with regards to conduct of members or any other matter, in force on the date before this Memorandum of Incorporation is accepted by the members, will remain of force and effect as if they were issued in terms of this Article. 1.3.
 - (10) Arbitration:

- (a) In the event of a dispute between the **Company** and a member or between members arising out of or in connection with or related to provisions of this Memorandum of Incorporation, the Act, or the Rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions; provided that any dispute concerning the payment of monies due to the **Company**, shall be excluded from arbitration.
- (b) If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the Board and the Managing Agent, if any, and should the dispute or complaint not be resolved within 10 (ten) business days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- (c) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- (d) If the parties cannot agree as to the person of the arbitrator to be appointed as above within 5 (five) business days after the arbitration has been demanded, the auditors of the **Company** shall, upon written application, appoint in writing an arbitrator within 5 (five) business days after they have been required to make the appointment.
- (e) The arbitration shall be held informally or otherwise as the arbitrator may determine in their own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and from as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 5 (five) business days after demand for security of payment was made, the other party shall be entitled to abandon arbitration proceedings.
- (f) The intention being that the arbitration shall be concluded within 30 (thirty) business days after an arbitrator has been appointed or security for costs has been furnished.

- (g) The arbitrator shall make their award within 5 (five) business days from the date of the completion of the arbitration and shall, in the making of their award, have regard to the principles laid down in terms of the Memorandum of Incorporation and the Rules thereunder. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as they may determine and as they in their discretion may deem appropriate, having regard to the outcome of the arbitration.
- (h) In making an award of costs, it shall be competent for the arbitrator to award costs against the **Company** on the basis that the member in whose favour the award was made, shall be excluded from contributing to such costs through his general levy and/or any special levy contributions.
- (i) The decision of the arbitrator shall be final and binding and may be made and Order of the High Court upon application of any party to, or affected by, the arbitration.
- (j) The provisions of the Arbitration Act 42 of 1965 shall be applicable.
- (k) Notwithstanding that the Arbitration Act 42 of 1965 makes no provision for joiner of parties to an arbitration without their consent thereto, should a dispute arise between the **Company** and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event, not later than 7 (seven) business days prior to the arbitration hearing.

1.4 Optional Provisions of the Companies Act, 2008 do not apply.

- (1) The **Company** does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.

1.5 Membership of the Company

- (1) As contemplated in Item 4(1) of Schedule 1 of the Companies Act, the **Company** has members, who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the **Company**.
- (2) The terms and conditions of membership in the **Company** are as set out in Part E of Schedule 1 to this Memorandum.
- (3) Qualification for Membership of the Company
 - (a) Membership of the company shall notwithstanding the provisions of article 1.5(4), be limited to –
 - (3.1) any person (natural person or juristic entity) who, at incorporation or thereafter, is reflected, in terms of the Deeds Registries Act 47 of 1937, in the records of the Deeds Office concerned, as the registered owner of a unit in the **Township** and who will be bound by the provisions of the Companies Act, this Memorandum of Incorporation and any rules made and incorporated hereunder. Provided that such a person will be obliged to become a member of the **Company** and an offer to purchase a **Unit** in the **Township** will be deemed to be an application to become a member of the **Company** in terms of article 1.5(4).
 - (3.2) Where any **Unit(s)** in the **Township** is/are owned by more than one person, all the registered owners of that/those **Unit(s)** shall together, subject to article 1.5(3.3) 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 a **Unit(s)** shall be jointly and severally liable for the due performance of any obligations towards to **Company**.
 - (3.3) If the registered owner contemplated herein is not a natural person, it will be obliged prior to transfer to nominate a natural person to represent it and to notify the **Company** of the full names, street address, postal address, and email address of the said representative, failing which the **Company** may choose the identity of the representative from amongst the directors, members, trustees, partners, or other office bearers and/or members of the owner. Such a member agrees that such a natural person will be deemed to be the duly appointed agent of that member for all purposes and also for purposes of this Memorandum of Incorporation and rules until substituted by any other natural person by way of written notification for the company.

(4) Application for membership of the **Company**

- (4.1) Subject to the relevant provisions of article 1.5(3), application for membership of the **Company** shall be made to the Board in writing.
- (4.2) When application is made for membership of the **Company** by a person, such person shall declare himself bound by the terms and conditions of this Memorandum of Incorporation and any rules made there under and such person shall be deemed to have acquainted himself with the terms and conditions thereof.

ARTICLE 2 – RIGHTS AND OBLIGATIONS OF MEMBERS

2.1 Member's Authority to Act

- (1) If at any time, every 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 of Incorporation.

2.2 Members

- (1) In addition to the right to access information as set out in section 26(1), a member of the **Company** has the further right to information, if any, as set out in Part B of Schedule 2 of this Memorandum of Incorporation

2.3 Representation by Concurrent Proxies

- (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 of Incorporation.

2.4 Authority of Proxy to Delegate

- (1) 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 of Incorporation.

2.5 Requirements to deliver proxy instrument to the Company

- (1) The requirement that a member must deliver to the **Company** a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a meeting, as set out in section 58(3)(c) is varied to the extent set out in Part C of Schedule 2.

2.6 Deliberative Authority of Proxy

- (1) 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 of Incorporation.

2.7 Proxy Instrument

- (1) The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

EQUESTRIA EXTENSION 31 HOME OWNERS ASSOCIATION NPC

2002/028113/08

I, of

being a member entitle to exercise any voting rights in EQUESTRIA EXTENSION 31 HOMEOWNERS ASSOCIATION NPC

Hereby appoint

..... of or failing him/her

..... of or failing him/her

..... of

as my proxy to vote for me and on my behalf at the annual general or general meeting of the Company to be held on the day of and at any adjournment thereof as follows or on a resolution proposed in terms of section 60 of the Act (as the case may be)*:

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/she thinks fit.

This proxy is valid for one year from the date of signature below, or until exercised or until revoked in writing as hereunder by the authorised signatory.

Signed this day of

Signature

Revocation

I, of

being a member entitled to exercise any voting rights in EQUESTRIA EXTENSION 31 HOME OWNERS ASSOCIATION NPC

Hereby revoke the proxy given to

..... of

With effect from or otherwise from the date of signature hereunder.

Signed this day of

Signature

2.8 Record Date for Exercise of Member Rights

- (1) If, at any time, the **Company's** Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3).

2.9 Levies

- (1) All members shall be liable for payment for a levy or levies, as may be determined in terms of this Memorandum of Incorporation, as may be required for the fulfilment of the objectives of the company.

2.10 Rights and Obligations of Members

- (1) A member of the **Company** shall remain a member thereof until he/she ceases to be the registered owner, as reflected in the relevant Deeds Office as an owner of a **Unit** in the **Township** and a member shall therefore not be entitled to resign as a member of the **Company** unless he/she ceases to be a member of a **Unit** in the **Township**; provided that cessation of registered ownership will be deemed to be an irrevocable application for the cessation of membership and acceptance thereof by the directors in terms of the Memorandum of Incorporation.
- (2) The rights and obligations of a member shall not be transferable, and every member shall:
 - (a) further, to the best of their ability, the objects and interests of the company;
 - (b) observe all rules made by the company or the directors;
 - (c) pay all levies due by the member, to the company;
 - (d) comply with the Conditions of Establishment of the Township; and
 - (e) abide by the Memorandum of Incorporation and adhere to the rules made in terms of the Memorandum of Incorporation from time to time.

Provided that nothing contained in this Memorandum of Incorporation of the company shall prevent a member from ceding their rights in terms of this Memorandum of Incorporation as security to the mortgagee of the member's unit.

ARTICLE 3 – MEMBER’S MEETINGS

3.1 Requirement to Hold Meetings

- (1) The **Company** is NOT required to hold any members meetings other than those specifically required by the Companies Act, 2008

3.2 Member’s Right to Requisition a Meeting

- (1) The right to hold members to requisition a meeting, as set out in section 61(3), may be exercised by at least 20% of the voting members.

3.3 Location of Members Meetings

- (1) The authority of the **Company’s** Board of Directors to determine the location of any members meeting, and the authority of the **Company** to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) is limited or restricted to the extent set out in Part B of Schedule 3.

3.4 Notice of Members Meetings

- (1) The minimum number of days for the **Company** to deliver a notice of a Members Meeting, as required by section 62 is as provided for in section 62(1).

3.5 Electronic Participation in Members Meetings

- (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 of Incorporation; 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 at the meeting.

3.6 Quorum for Members Meetings

- (1) The quorum requirement for a Members Meeting to begin, or for a matter to be considered, is as set out in section 64(1)(a) and (b), subject to a minimum of 10% in substitution for the 25% required by that section.
- (2) The time periods allowed in section 64(4) and (5) apply to **Company**, subject to the variations set out in Part D of Schedule 3.
- (3) The authority of a meeting (or adjourning meeting) to continue to consider a matter, as set out in section 64(9) is NOT limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of Members Meetings

- (1) The maximum period allowable for an adjournment of a members meeting is as set out in section 64(13), without variation.

3.8 Members Resolutions

- (1) For any ordinary resolution to be adopted at a members' meeting, it must be supported by at least 51% of the members who voted on the resolution, notwithstanding the provisions of section 65(7).
- (2) For a special resolution to be adopted at a members' meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided for in section 65(7).
- (3) A special resolution adopted at a members meeting is NOT required for a matter to be determined by the **Company**, except those matters set out in section 65(11).

3.9 Votes of Members

- (1) At every general meeting:
 - (a) Every member, in person or by proxy and entitled to vote, shall have 1 (one) vote for each unit registered in their name.
 - (b) If a unit is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote.
 - (c) Save as expressly provided for, no person other than a member, duly registered and who shall have paid in every levy or other sum due and payable to the company in respect of or arising out of their 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.

ARTICLE 4 – DIRECTORS AND OFFICERS

4.1 Composition of the Board of Directors

- (1) The Board of Directors of the **Company** comprises the elected Directors, and their alternate Directors each of whom is to:
 - (a) be elected in the manner set out in Part A of Schedule 4; and
 - (b) serve for a term of 1 (one) year.
- (2) In addition to the elected Directors, there may be directly appointed Directors of the **Company**, or the appointment or election of alternate Directors of the **Company**, as contemplated in section 66(4), to be designated in the manner specified in Part B of Schedule 4.
- (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a Director of the **Company**, a person must satisfy the additional eligibility requirements and qualifications set out in Part C of Schedule 4.
- (4) Each *appointed* (not elected) Director of the **Company** serves for an indefinite term, until substituted by the person or entity that made the appointment.

4.2 Authority of the Board of Directors

- (1) The authority of the **Company's** Board of Directors to manage and direct the business and affairs of the **Company**, as set out in section 66(1), is limited, or restricted to the extent set out in Part D of Schedule 4

4.3 Board of Directors Meetings

- (1) The authority of the **Company's** Board of Directors to consider a matter other than at a meeting, as set out in section 74, is NOT limited, or restricted by this Memorandum of Incorporation.
- (2) The right of the **Company's** Directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised by at least 25% of the Directors, despite the provisions of that section.
- (3) The authority of the **Company's** Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3), is NOT limited, or restricted by this Memorandum of Incorporation.
- (4) The authority of the **Company's** Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4), is NOT limited, or restricted by this Memorandum of Incorporation.

- (5) The authority of the **Company's** Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5), is NOT limited, or restricted by this Memorandum of Incorporation.
- (6) The quorum requirement for a Director's Meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are set out in section 73(5) and is a Majority of the Directors (51%) present and voting.
- (7) Each Director has 1 (one) vote on a matter before the Board.

4.4 Indemnification of Directors

- (1) The authority of the **Company's** Board of Directors to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(3) is NOT limited, or restricted by this Memorandum of Incorporation.
- (2) The authority of the **Company's** Board of Directors to indemnify a Director in respect of liability, as set out in section 78(5) is NOT limited, or restricted by this Memorandum of Incorporation.
- (3) The authority of the **Company's** Board of Directors to purchase insurance to protect the **Company**, or a Director, as set out in section 78(6) is NOT limited, or restricted by this Memorandum of Incorporation.

4.5 Officers and Committees

- (1) The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the **Company**.
- (2) The authority of the **Company's** Board of Directors to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board as set out in section 72(1), or to include in any such committee persons who are not Directors, as set out in section 73(2)(a), is NOT limited, or restricted by this Memorandum of Incorporation.
- (3) The authority of a committee appointed by the **Company's** Board, as set out in section 72(2)(b) and (c) is limited, restricted, or extended to the extent set out in Part H of Schedule 4.

4.6 Accounting Records

- (1) The Directors shall cause such accounting records as are prescribed by section 28 of the Act to be kept. Proper accounting records shall not be deemed to be kept if they are not kept in a manner which is sufficient to present the state of affairs and business of the **Company** and to explain and support the transactions and financial position of the **Company**.
- (2) The accounting records shall be kept or be accessible from the registered office of the **Company** during normal business hours of the **Company**.

4.7 Annual Financial Statements

- (1) The Directors shall from time to time, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the **Company** in general meeting, such annual financial statements as are referred to in those sections.
- (2) The annual financial statements of the **Company** will be audited annually by the auditor.
- (3) A copy of any annual financial statements which are to be laid before the **Company** in an annual general meeting, in terms of section 30(3)(d) of the Act, shall be included in the notice of the annual general meeting, at which it is to be considered.

ARTICLE 5 – GENERAL PROVISIONS

5.1 Rules

- (1) In accordance with the provisions of section 15 of the Act, the incorporators adopted the Rules as set out in Schedule 5 hereto, which Rules may from time to time be amended, supplemented, or repealed in accordance with the provisions of the Memorandum of Incorporation and the Act.
- (2) Any Rules made, amended, or repealed by the Board of the **Company** from time to time shall be published in accordance with the requirements set out in Part D of Schedule 1.

5.2 Severability

Each and every provision of the Memorandum of Incorporation of the Company shall be deemed to be separate and severable from the remaining provisions of the Memorandum of Incorporation. If any of the provisions of the Memorandum of Incorporation is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of the Memorandum of Incorporation shall be and remain of full force and effect.

Schedule 1

Incorporation and Nature of the Company

Part A

None.

Part B

None.

Part C

None.

Part D

- (1) Any alteration of the Memorandum of Incorporation or the Rules made in terms of section 17(1) shall be published to the members of the **Company** by delivering a copy of the altered Memorandum of Incorporation or the Rules to each member by ordinary mail *alternatively* by telefax and/or email.
- (2) Any Rules made from time to time by the **Company's** Board of Directors in terms of section 15(3)-(5), or any amendment or repeal thereof, shall be published to the members of the **Company** by delivering a copy of those Rules to each member by ordinary mail *alternatively* by telefax and/or email.

Part E

- (1) Qualification for Membership of the Company

Membership of the **Company** shall be limited to:

- (a) The Incorporators of the **Company** during the **Development Period** of the **Township**; and
- (b) Notwithstanding the provisions of Part E, Item 2, any other person (natural person or juristic entity) who is reflected, in terms of the Deeds Registries Act, No. 47 of 1937, in the records of the Deeds Office concerned, as the registered owner of a **Unit** in the **Township** and who will be bound by the provisions of the Companies Act, 2008, this Memorandum of Incorporation and any Rules made and incorporated hereunder.

- (c) Where any **Unit(s)** in the Scheme is owned by more than one person, all the registered owners of that **Unit(s)** 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 **Unit(s)** shall be jointly and severally liable for the due performance of any obligations towards the **Company**.

(2) Application for Membership of the Company

- (a) Subject to the provisions of Part E, Item 1, application for Membership of the **Company** shall be made to the Board in writing.
- (b) When application is made for Membership of the **Company** by a person, such person shall declare himself bound by the terms and conditions of this Memorandum of Incorporation and any Rules made thereunder and such person shall be deemed to have acquainted himself with the terms and conditions thereof.

(3) Initial or Periodic Costs of Membership

- (a) All members shall be liable to payment of a monthly contribution, as may be determined by the Board or the members, in terms of this Memorandum of Incorporation from time to time, as may be required for the fulfilment of the objectives of the **Company**.

(4) Rights and Obligations of Members

- (a) A **Member** of the **Company** shall remain a member thereof until he ceases to be the registered owner, as reflected in the relevant Deeds Office as an owner of a **Unit** in the **Township** and a **Member** shall therefore not be entitled to resign as a member of the **Company** unless he ceases to be a member of a **Unit** in the **Township**.
- (b) Every **Member** shall:
 - i. Further, to the best of their ability, the objects and interests of the **Company**.
 - ii. Observe all Rules made by the **Company** or the Directors.
 - iii. Pay all levies due by the Member, to the **Company**.

- (c) No **Member** shall let or otherwise part with occupation of their **Unit**, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such **Unit**, as a *stipulatio alteri* in favour of the **Company** that such occupier shall be bound by all the terms and conditions of this Memorandum of Incorporation and any Rules made thereunder, and such written agreement is lodged with the **Company** prior to the proposed occupier taking occupation of the **Unit** in question.
- (d) Every **Member** shall, when they agree to transfer of ownership of their **Unit** in the **Township**, set it as a condition of the agreement of sale and transfer, that the new owner shall apply for membership of the **Company** and be accepted as a member of the **Company** and therefore become a member of this **Company**, accepting their obligations towards the **Company** as a member.
- (e) No **Member** of a **Unit** in the **Township** shall be entitled to dispose thereof to any other person without the written consent of the **Company** first having been obtained under the hand of the Secretary, their authorised agent or the **Managing Agent**, which consent will not be withheld unless:
- i. Such **Member** is in arrear with any levies, penalties, fines, or interest or other payment due to the **Company** in terms of the Memorandum of Incorporation or the Rules or otherwise.
 - ii. Such **Member** is in breach with any of their obligations towards the **Company** in terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company** in writing, to remedy such breach and remain in breach.
 - iii. The prospective transferee has not applied for membership of the **Company**, where such application is required, or has not been accepted as a member of the **Company**.
- (f) No **Member** of a **Unit** in the **Township** shall be entitled to pass transfer thereof to any other person until the **Company**, under the hand of its Secretary or their authorised representative or the **Managing Agent**, has certified that such **Member** as at date of transfer has complied with all their financial and other obligations towards the **Company**.
- (g) The provisions of sub-Items (e) and (f) shall apply *mutatis mutandis* to any alienation of an undivided share in a **Unit** in the **Township**.
- (h) The incorporators of the **Company** will cease to be members of the **Company** upon their written resignation as such; provided that none of the incorporators of the **Company** shall resign until such time that there are sufficient members of the **Company** to replace them as Directors of the **Company**.

- (i) The Directors of the **Company** may impose an additional, reasonable fee upon the members of the **Company** for the issuing of the Clearance Certificate as referred to in sub-Item (f). The said fee will be determined by the Directors or the **Managing Agent** from time to time and will be subject to ratification by the **Company** in a General Meeting.
- (j) Members shall have the rights prescribed by the Act, the Memorandum of Incorporation and any Rules made thereunder, which shall *inter alia* include the following rights:
 - i. The right to nominate and elect the Directors of the **Company**.
 - ii. The right to receive access to the **Company** records in accordance with the provisions of Section 26 of the Act.
 - iii. The right to receive notice of, attend, speak, and vote at General Meetings of the **Company**.
 - iv. The right to receive access to the Financial Statements or related information of the **Company**.
- (k) A **Member** shall not have the right to vote at a General Meeting, or as contemplated in terms of the provisions of Section 60 of the Act, if:
 - i. Such **Member** is in arrear with any levies, service costs, contributions, penalties, fines, legal costs, or interest or any other due to the **Company** in terms of the Memorandum of Incorporation or the Rules or otherwise; and/or
 - ii. Such **Member** is in breach with any terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company** in writing, to remedy such breach and they remain in breach.

(5) Levies

- (a) The Directors may from time to time determine the levies payable by the Members for the purposes 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.
- (b) The Directors shall not less than thirty days prior to the end of each financial year or so soon thereafter as is reasonably possible, publish a notice indicating an estimate, in reasonable details, of the amount which shall be required by the **Company** to meet the expenses during the

following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual or recurring nature.

- (c) Each notice to each member shall specify the contribution (levy) payable by that member to such expenses and reserve fund.
- (d) The annual levy for the ensuing financial year or any special or other levy to be implemented, shall become due and payable on the passing of a Board Resolution to that effect, or the publication thereof as envisaged in Sub-Rule (b), but shall be payable in the form that the Directors may direct from time to time and failing direction, in equal monthly instalments, due in advance on the first day of each month of each financial year.
- (e) In the event of the Directors for any reason whatsoever failing to prepare and timeously serve the notice referred to above, every member shall until served with such notice, continue to pay the levy previously imposed and shall after service of such notice pay the levy specified therein.
- (f) Upon the change of ownership of a **Unit**, the successor in title becomes liable for the pro-rata payment of contributions from the date of change of such ownership.
- (g) The Directors may from time to time impose special levies upon the members in respect of all expenses as are mentioned in sub-Item (a) which are not included in any estimate made in terms of sub-Item (b) and may in imposing such levies further determine the terms of payment thereof.
- (h) All levies and any special levies referred to above become due on the passing of a Resolution to that effect and may be recovered by the **Company** by action in any competent Court having jurisdiction, from the member(s) who were owner(s) of the **Unit(s)** at the time when such Resolution was passed.
- (i) The Directors shall be empowered in addition to such other rights as the **Company** may have in law against its members to determine the maximum rate of interest from time to time chargeable upon arrear levies. Should the Directors fail to make any determination of the interest rate, then and in that event, the prescribed rate of interest, as may be applicable from time to time in terms of the Prescribed Rate of Interest Act. Interest shall be calculated monthly in arrears and compounded.
- (j) The obligation of a **Member** to pay a levy and interest shall cease upon their ceasing to be a member without prejudice to the **Company's** right to recover the arrear levies and interest and penalties, fines, and other

amounts due to the **Company**. No levies, interest, penalties, fines, or other amounts paid by a **Member** shall under any circumstances be repayable by the **Company** upon their ceasing to be a **Member**. A **Member's** successor in title to a **Unit** shall be liable for payment of levies as from the date upon which they become the registered owner of the **Unit** as reflected in the Deeds Registry.

- (k) No **Unit(s)** registered in a member's name shall be capable of being transferred without a Clearance Certificate, as referred to above, first being obtained from the **Company** confirming that all levies, penalties, fines, or other amounts due and interest have been paid up to and including date of registration thereof.
- (l) A Member shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses, and charges incurred by the **Company** in obtaining the recovery of arrear levies, penalties, fines, interest, or any other arrear amounts due to and owing by such owner to the **Company** or in enforcing compliance with the Act, the provisions of the Memorandum of Incorporation or the Rules.
- (m) The *domicilium citandi et executandi* (service address) for any legal process or delivery of any other document to a Member is the address of the Erf/Unit registered in that Member's name, provided that a Member is entitled, by written notice to the Company, to change that address to another physical address in the Republic of South Africa and that the change in the service address of the Member is effective when the Company receives notice of such a change.

For delivery of any other document or notice, excluding delivery of any legal process, a Member may designate a fax, e-mail or other address for such purpose and the change of such address is effective when the Company receives written notice of such a change.
- (n) The Directors may from time to time determine a charge payable to the **Company** or to the **Managing Agent**. Any administration charges so levied shall be subject to review of the members in a General Meeting.
- (o) Interest imposed by the Directors shall be subject to review by the **Members** in General Meeting and shall not exceed any limitations set by legislation.
- (p) All payments made by a **Member** and received by the **Company**, shall be allocated firstly towards interest, legal costs, and thereafter towards capital. The Board reserves the right to allocate payments as they deem fit in the absence of an express allocation by the **Member** and to allocate payment to the debt newest in time.

- (q) Members shall further have the rights and obligations as specified in the Rules incorporated in this Memorandum of Incorporation and as may be amended from time to time.
- (r) Should a member fail to effect payment of contributions levied in terms of these Rules on a due date, the full outstanding balance remaining unpaid for the financial year shall become due and payable without notice and/or demand. The Board may, however, at their sole election and discretion agree to a re-payment arrangement with the member concerned and subject to such conditions as the Board may impose. The Board, in managing the financial obligations and cash flow requirements of the **Company**, may at their sole election and discretion agree to reduce, vary, or discount the full outstanding balance remaining unpaid by the **Member**, subject to such conditions as the Board may impose and subject further to the ratification by the **Members**, with or without amendment, at the next General Meeting of the **Company**.

Schedule 2

Rights of Members

Part A

None.

Part B

None.

Part C

The requirement in terms of Section 58(3)(c) is varied to the extent that a copy the instrument appointing a proxy must be delivered to the **Company** or to any other person acting on behalf of the **Company** (including a Board member or duly appointed **Managing Agent**) at any time before commencement of the proceedings or meeting at which the proxy exercises any rights of the **Member**.

Part D

None.

Schedule 3

Members Meetings

Part A

None.

Part B

All member's meetings shall be convened to take place at a location, preferably within the **Township**, but in any event not outside of the Magistrate's Court District within which the **Township** is located.

Part C

None.

Part D

1. If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote, or further notice for 1 (one) week.
2. If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for consideration of a particular matter to begin have not been satisfied –
 - a. if there is other business on the Agenda for the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - b. if there is no other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote.
3. The person intended to preside at a meeting that cannot begin due to the operation of sub-section (64)(1)(a) or 64(3), if applicable, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub-section 64(5).

Part E & F

None.

Schedule 4

Directors of the Company

Part A

Election of Directors

1. There shall be a Board of Directors of the **Company** which shall consist of not less than 13 (thirteen) and not more than 20 (twenty) Directors.
2. Directors shall serve for a term of 1 (one) year until the next Member's Meeting and shall be eligible for re-election.
3. If new appointments are not made or if a member's meeting for the election of Directors is not convened before the expiry of the 1 (one) year term within which a Director serves, then and in that event, such Director(s) shall continue to hold office from the date of their appointment or the next Annual General Meeting following such appointments. At the expiry of any term in office, each Director shall be deemed to have retired from office but will be eligible for re-election or re-appointment to the Board of Directors at such meeting.
4. 4.1. Where Directors are elected, nominations for election must be delivered to the **Company** or to any other person action on behalf of the **Company** (including a Board member or duly appointed **Managing Agent**) at any time before commencement of the proceedings or meeting at which the nomination is to be considered.

4.2 Where Directors are appointed, the following shall apply:
 - 4.2.1 It is recorded that membership of the **Company** comprise **Members** who are also members of 13 (thirteen) complexes of the **Township**.
 - 4.2.2 The elected Trustees of each complex in the **Township** shall, annually after their AGM, appoint 1 (one) Director to serve on the Board of Directors of the **Company**.
5. Upon any vacancy occurring in the Board of Directors prior to the next Annual General Meeting, the vacancy in question shall be filled by a person to be nominated by the Chairman of the Board of Directors for the time being and, in his absence, or inability, the Vice-Chairman.
6. Within 7 (seven) days of the holding of each Annual General Meeting, or the appointment of a new Board of Directors, the Board of Directors shall meet and elect from their own numbers, the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointments, provided that the office of the Chairman and Vice-Chairman shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason.

Part B

The Chairman of the Board of Directors for the time being, and in his absence or inability to act, the Vice-Chairman of the Board of Directors may, upon any vacancy occurring in the Board of Directors, appoint a Director to fill such vacancy until election of Board Members at the next Annual General Meeting or General Meeting convened for this purpose.

Part C

1. In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the **Company**, a person must satisfy the following additional eligibility requirements and qualifications:
 - 1.1 be a paid-up member of the **Company** at the time of appointment as Director;
and;
 - 1.2 may not be in breach of any of their obligations as a member of the **Company**, as stipulated in the Memorandum of Incorporation or the Rules.

Part D

The authority of the **Company's** Board of Directors to manage and direct the business and affairs of the **Company**, as set out in Section 66(1), is limited, or restricted to the extent that:

1. They must in general enforce the provisions of this MOI and the Rules equally upon the **Members** of the **Company**.
2. They may, in their sole discretion and where circumstances require or permit, relieve a **Member/(s)** from strict compliance with the Rules, and/or excuse their non-compliance of a transgression of the Rules, and/or reduce or acquit a **Member** from any payment, interest, penalty, or costs, for example where they enter into a settlement agreement concerning a **Member's/(s)** liability for payment of outstanding levies, interest penalties and costs; **provided** that any leniency granted by the Board of Directors as aforesaid, shall be subject to ratification by the **Members** at the next Annual General Meeting of the **Company**, with or without amendment thereto.

Part E

None.

Part F

None.

Part G

None.

Part H

The authority and powers of any committee established by the Board may be restricted or limited by the Board when the committee is so established.

Schedule 5

Rules

Introduction:

These Rules are intended to preserve the prime objectives of the **Company**, namely, to protect and advance the communal interest of owners, occupants, and users of any of the properties comprising the **Township**, to set uniform standards for development of the properties within the **Township**, to regulate use by owners, members, and occupiers or common areas within the **Township** and to set Rules and standards which will protect the rights of all interested parties and will promote good neighbourliness.

These Rules may be amended from time to time by the Directors of the **Company** in accordance with the provisions of Section 15 of the Act.