

MEMORANDUM OF INCORPORATION

of

HAWAAN HOME OWNERS ASSOCIATION (RF) NPC

Registration Number 2004/008756/08

1.

Definitions

1. In this Memorandum of Incorporation the following words and phrases shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
 - (a) "the Act" means the Companies Act, No. 71 of 2008. Words that are defined in the Act bear the same meaning in this memorandum as in the Act.
 - (b) "Architects" means the architects appointed to the panel of approved architects for the estate.
 - (a) "Association" means Hawaan Home Owners Association (RF) NPC.
 - (c) "Auditors" means the auditors of the Association.
 - (d) "Board" means the board of Directors of the Association from time to time.
 - (e) "Commission" means the Companies and Intellectual Property Commission.
 - (f) "Developer" means Hawaan Investments (Pty) Limited, registration number 2001/000257/07 and its successors-in-title.
 - (g) "Directors" means the directors of the Association from time to time.
 - (h) "Environmental Management Plan" means the comprehensive plan covering all the phases identified within the Estate approved by the Department of Environmental Affairs and adopted by the Developer and the Association.
 - (i) "Environmental Principles" means the environmental framework for the initial site assessment, design, rehabilitation, landscaping requirements and all other relevant information approved by the

Department of Environmental Affairs, Pietermaritzburg, and adopted by the Developer and the Association.

- (j) "Erf" means a subdivision of land in the Estate which is capable of individual ownership or a sectional title unit in the Estate and "Erven" is the plural term.
- (k) "Estate" means the township shown on General plan number 2273/ south and known as Hawaan Forest Estate, phases 1 to 4 and in due course phase 5.
- (l) "gate house" means the security gate and buildings at the entrance to the Estate.
- (m) "Manager" means the person, corporation or other entity appointed by the Association as an independent contractor to undertake management of the Estate.
- (n) "Member" means an owner of an Erf, and includes the Developer for so long as it owns any land in the Estate.
- (o) "the parks, areas of conservation significance, and water features" means the existing land resource designated and shown on the General Plan of the Estate and any future amendments thereto which may include other areas that may be incorporated, restored and rehabilitated in accordance with the Environmental Management Plan for the benefit of the owners of Erven in the Estate.
- (p) "Regulations" means regulations in terms of the Act.
- (q) "Rules" means the Rules made by the Directors.
- (r) "Site Development and Architectural Guidelines", otherwise known as "Building Design and Planning Guide" means the guidelines set out in the document of the same title prepared by Stefan Antoni Architects and lodged with the Developer.
- (s) "phase 5" means 25 Erven numbered 175 to 201 as depicted on the approved General Plan for Hawaan Forest Estate, S.G. No 1750/2008.

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

2. **Incorporation**

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

2.2. The Company is incorporated in accordance with and governed by :

- (a) the unalterable provisions of the Act that are applicable to non-profit companies;

- (b) the alterable provisions of the Act that are applicable to non-profit companies subject to the limitations, extensions, variations and substitutions set out in this Memorandum of Incorporation; and
- (c) the provisions of this Memorandum of Incorporation.

3.
Objects and Aims of the Company

The objects and aims of the Company are to :

- 3.1. ensure that a secure environment for the Members of the Association is maintained by way of a gated controlled access to the Estate, perimeter electrified fencing, beams, sensors and television cameras, as well as the appointed security staff;
- 3.2. maintain the aesthetic standards of the Estate by controlling buildings and improvements on the Erven in accordance with the Site Development and Architectural Guidelines, the Environmental Principles, and Environmental Management Plan and any amendments thereto approved by the Association from time to time;
- 3.3. maintain:
 - (a) the gated security access and perimeter electrified fencing;
 - (b) the roads and verges in the Estate;
 - (c) the street lighting in the Estate;
 - (d) the parks, areas of conservation significance (except for those areas which fall under the management of the Hawaan Forest Conservation Trust) and water features, and especially to preserve any eco-sensitive areas, plant species or colonies in accordance with the Environmental Management Plan for the benefit of the Members and in accordance with any future rehabilitation and amendments approved by the Department of Environmental Affairs and adopted by the Association from time to time;
- 3.4. maintain good conduct standards of Members and occupiers of Erven in the Estate for the general benefit of all Members in accordance with the Conduct Rules adopted by the Association;
- 3.5. insure and properly maintain all assets under its control;
- 3.6. when requested by the Developer after the Erven in phase 5 have been serviced, take under its control such Erven upon the terms and conditions of this Memorandum of Association;
- 3.7. raise levies as provided for herein to fund the carrying out of its objects;
- 3.8. make and enforce rules, in furtherance of the objects of the Association, as set out in clause 7 hereof;
- 3.9. impose fines and penalties for non-compliance with the provisions of this Memorandum of Incorporation and the Conduct Rules and other rules referred to in clause 7.

4.

Powers of the Company

The Company is a juristic person which has all of the legal powers and capacity of an individual except to the extent that :

- 4.1. a juristic person is incapable of exercising any such powers, or having any such capacity; or
- 4.2. this Memorandum of Incorporation or the Act place restrictions on the powers of the Company.

5.

Alterations to the Memorandum of Incorporation

Subject to clause 6, this Memorandum of Incorporation may be altered or amended:

- 5.1. by the Company's Board to the extent necessary to comply with an Order of Court;
- 5.2. by a special resolution passed at a meeting of Members by a majority of not less than 75% of the voting rights exercised on the resolution;
- 5.3. by the Company's Board in order to correct a patent error in spelling, punctuation, reference, grammar or similar defects by posting a notice of the alteration to every shareholder and filing a notice of the alteration with the Commission as provided for in section 17(1) of the Act.

6.

Restrictions on Alterations to the Memorandum of Incorporation

- 6.1. This clause and to the extent to which they confer rights on the Developer, clauses 1.1(n), 1.1(r), 11, 12, 20, 22 and 23 may not be altered without the prior written consent of the Developer for so long as the Developer owns any land in the Estate, which consent shall not be unreasonably withheld.
- 6.2. Should a dispute arise between the Company and the Developer relating to the interpretation and/or implementation of clause 6.1, then in that event the Company and the Developer shall refer the dispute to arbitration by an advocate of at least ten years' standing who has knowledge in property law. If an advocate cannot be agreed upon, either the Company or the Developer may request the KwaZuluNatal Society of Advocates to appoint an advocate to act as arbitrator for the purpose of determining such dispute.

7.

Company Rules

- 7.1. Subject to compliance with section 15 of the Act and subject to any restriction imposed or direction given at a general meeting of the Association, the Board may from time to time make rules in furtherance of the Aims of the Association, which rules shall be observed by all Members and all Members shall procure their observance of the rules by all those occupying Erven through them.

- 7.2. For the enforcement of any of the rules, the Board may:
- (a) give notice to a Member to remedy any breach of the rules within a time period deemed reasonable by the Board; and
 - (b) if the breach is not remedied within the time period afforded to the Member concerned, take or cause to be taken steps as it may consider necessary to remedy the breach of the rule of which the Member or any Member of his family, his invitees, agents, servants, lessees or any other person for whom he may be responsible may be liable and debit the costs of doing so to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association; and
 - (c) impose a system of fines and/or other penalties. The amounts of such fines may be reviewed at the annual general meeting of the Association; and
 - (d) take such other action as the Board may deem necessary to remedy the Member's breach, including litigation; and
 - (e) defend any action taken by any Member or any other person against the Association or its Directors in their capacity as such.
- 7.3. The Board may, in the name of the Association, institute proceedings in a court of competent jurisdiction, to enforce the provisions of this Memorandum of Incorporation and any rules made hereunder, and for this purpose may appoint attorneys and counsel.
- 7.4. Should the Board institute proceedings against a Member or resident within the Estate, the Association shall be entitled to recover all legal costs which it incurs from the Member or resident concerned, on the scale as between attorney and own client, including collection commission.
- 7.5. In the event of any breach of the rules by a Member's family, invitees, agents, employees, contractors, occupants or lessees of his Erf, or any other person for whom the Member may be responsible, such breach shall be deemed to have been committed by the Member himself. Without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 7.6. Should any Member (or other person mentioned in 7.5 above) dispute the fact that such Member has committed a breach of this Memorandum of Incorporation or any of the rules, a committee of three (3) Directors appointed by the Chairman of the Board shall adjudicate upon the issue at such time and in such manner and according to such procedure as the Chairman may direct. A record of such proceedings shall be kept available for inspection at the offices of the Association.
- 7.7. Any fine imposed upon any Member shall be deemed to be a debt due by the Member to the Association, and shall attract interest and be recoverable in the same way as any other debt due under this Memorandum of Incorporation.
- 7.8. The Association may in general meeting itself make any rules which the Board may make and may in general meeting vary or modify any rules made by it or by the Board from time to time.

8.

Publication of Rules

Rules must be published by posting a copy to every member and by filing a copy of the Rules with the Commission. A Rule will not take effect until the expiry of ten (10) business days from the date upon which the Rule was filed with the Commission, or on such later date as may be specified in the Rules. Each Rule made by the Board must be put to the vote at the next General Meeting of Members. Notice of ratification or non-ratification must be filed with the Commission within five (5) business days after the vote.

9.

Members

9.1. Membership of the Association shall consist of the registered owners of Erven in the Estate who have applied for and been granted membership of the Association, which includes the Developer for so long as it is the owner of land in the Estate.

9.2. The title deed of each Erf shall contain a condition that neither the Erf nor an undivided share in the Erf shall be transferred without the prior written consent of the Association, which consent shall be granted if the transferee is accepted by the Association as a Member.

9.3. A person desiring to take transfer of an Erf shall complete a prescribed membership application form and shall sign an undertaking to agree to be bound by this Memorandum of Incorporation, the Site Development and Architectural Guidelines, the Rules and other requirements of the Association. Upon compliance with these requirements, the Association will consent to the person becoming a Member of the Association.

9.4. Where a Member is not a natural person, that Member shall be represented by a duly authorised natural person in its dealings with the Association and/or other Members. The instrument authorizing such person to represent a Member must be lodged with the Association as soon as possible after it becomes a Member.

9.5. Where an Erf is owned by more than one person, all the registered owners of that Erf shall:

- (a) together be deemed to be one Member of the Association and have the rights and obligations of one Member of the Association; and
- (b) be jointly and severally liable for the due performance of any obligation of a Member to the Association.

9.6. The Association shall maintain at its registered office a register of the Members of the Association as provided for in section 24(4) of the Act. The register shall be open for inspection.

9.7. The rights and obligations of Membership shall commence on the day upon which a person becomes a registered owner of an Erf and shall cease on the day when the person ceases to be a registered owner.

9.8. A Member shall not let or part with occupation of an Erf unless:

- (a) the proposed occupier agrees to be bound by all the terms and conditions of this Memorandum of Incorporation, as well as all the Rules imposed by the Association in terms of clause 7 hereof; and
- (b) the Member and occupier conclude a written agreement of lease in a form approved by the Board.

9.9. Notwithstanding the town planning rights granted to the Developer, only one residential dwelling shall be built on each Erf and only twenty five (25) residential dwellings will be built on the Erven comprised within phase 5.

10.

Right to Information

Every Member has the right to inspect and copy without any charge for any such inspection the information contained in the following records of the Company :

- (a) The Company's Memorandum of Incorporation and any amendments to it, and any Rules made by the Company;
- (b) the records in respect of the Company's Directors;
- (c) the reports to annual meetings and annual financial statements;
- (d) the notices and minutes of all Members meetings including all resolutions adopted by Members at such meetings;
- (e) any document that was made available by the Company to its Members in relation to each such resolution for seven (7) years after the date each such resolution was adopted.
- (f) copies of any written communication sent generally by the Company to all its Members for a period of seven (7) years after the date on which each such communication was issued;
- (g) the register of Members.

11.

Levies

11.1. Prior to each annual general meeting of the Association the Directors shall prepare a budget comprising an itemised estimate of the anticipated income and expenditure of the Association for the ensuing financial year, together with an estimate of the levies which the Directors intend to impose on the Members of the Association. At the annual general meeting the Members shall approve, with or without amendment, the budget and the estimated levies.

11.2. Pursuant to the decision taken at the annual general meeting, the Directors shall impose an annual levy on the Members in order to raise sufficient funds to meet the anticipated expenditure. The annual levy shall be payable in equal monthly instalments on the first day of each and every month with effect from the first day of the month following the month in which Members are notified of the amount of the levy.

11.3. A levy shall be borne by each Member in proportion to the number of Erven owned by each Member. However, where two or more Erven, as originally laid

out at the inception of the estate, were consolidated after their purchase, they shall still be treated as separate plots for the purpose of levies, both ordinary and special - unless the Member was given a levy rebate for the consolidated Erven. However, such levy rebate shall not apply to a subsequent purchaser or transferee of the consolidated Erven.

- 11.4. Notwithstanding anything to the contrary contained herein, the levy payable by the Developer in respect of undeveloped sites in phases 1 to 4 shall in respect of each such Erf be equal to 25% of the monthly levy imposed by the Association on each of the remaining Erven. No levies will be payable by the Developer on the Erven in phase 5 until those Erven are integrated into the Estate and the Developer requests the Association to take over the management of phase 5. The Association shall be obliged to take over the management of Phase 5 only once it, in its sole discretion is satisfied that the minimum standards for such take over have been met meaning that the infrastructure including but not limited to, roads, landscaping, security hardware and software, Environmental Management Plan and building standards are on par with those standards which currently exist in phases 1 to 4 of the estate.
- 11.5. Once the first residence on an Erf in phase 5 has been occupied by the owner thereof and until the levies payable to the Association by the owners of Erven in phase 5 (other than the Developer) equal the Association's costs attributable to phase 5, the Developer will, on a monthly basis pay to the Association the difference between such costs and the levies paid by owners of Erven in phase 5. The Association's costs referred to in this clause 11.5 shall be agreed to between the parties prior to the first residence in phase 5 being occupied by the owner thereof and will be reviewed every six (6) calendar months thereafter. Should the parties not be able to agree the Association's costs referred to in this clause 11.5, then in that event the Association and the Developer shall refer the dispute to arbitration by an Advocate of at least ten (10) years standing who has knowledge in property law. If an Advocate cannot be agreed upon, either the Association or the Developer may request the KwaZulu-Natal Society of Advocates to appoint an Advocate who shall thereafter determine the Association's costs and whose decision shall be final and binding on both parties.
- 11.6. Should there be a material change in the Association's monthly expenses, the Board may increase the monthly levies and give written notice to each Member of the increased levies and of the date on which such increased levies become payable.
- 11.7. The Board may from time to time impose special levies upon Members to provide funds for unforeseen or nonrecurring expenditure. The Directors may in their discretion allow payment of a special levy to be made over a period of time. The Developer shall not be liable for the payment of any special levies unless it agrees in advance that such levies will be to its benefit. A proposal to impose special levies shall be discussed with the Developer prior to its imposition by the Directors in order for the Developer to decide whether it will accept liability for such special levies.
- 11.8. Should the Developer, pursuant to the provisions of clause 11.8, dispute that a special levy will be to the benefit of the Developer, the Association and the Developer shall refer the dispute to arbitration by an Advocate of at least ten (10) years standing who has knowledge in property law. If an Advocate cannot be agreed upon, either the Association or the Developer may request the KwaZulu-Natal Society of Advocates to appoint an Advocate. If the arbitrator rules in favour of the Association the Developer will be liable for a

special levy per Erf equal to 25% of the special levy imposed by the Association on the other Erven in the Estate.

- 11.9. Any levy due by a Member shall be a debt due by such Member to the Association. Should the Association be obliged to institute legal proceedings against a Member for the payment of levies, the Member shall be liable for and shall pay all legal costs so incurred upon the attorney and own client scale.
- 11.10. The obligation to pay levies shall cease upon the cessation of membership. The title deeds of each Erf shall contain a clause that the Erf may not be transferred without the lodgement in the Deeds Office of a certificate by a duly authorised representative of the Association to confirm that all levies and other amounts owing by the Member to the Association have been paid in full. The Association shall be entitled to charge a reasonable fee for the issue of the certificate.
- 11.11. If a Member has not paid a monthly levy within seven days of the due date, that Member shall be liable for interest on the amount of the levy calculated from the due date of payment until the date on which the levy is paid at a rate of interest 5% above the prime overdraft rate of interest levied by the major banks from time to time. The interest shall be calculated and shall be compounded monthly in advance.
- 11.12. Should there be any dispute between a Member and the Association concerning the amount of any levy payable by such Member, the dispute shall be referred to the Auditors whose decision shall be final and binding upon both the Member and the Association.

12.

Resales

- 12.1. All resales of Erven are to be concluded on the original watermarked sale agreement document obtainable from the offices of the Association.
- 12.2. Should an Erf be sold privately, the seller shall be obliged to pay to the Association a percentage of the gross selling price, which percentage will be set by the Board from time to time and which currently is 0,5%. The amount shall be payable on the date of transfer and shall be secured pending transfer in a manner acceptable to the Association.
- 12.3. Clause 12.2 does not apply to any sales of Erven by the Developer.
- 12.4. Sale agreements concluded by the Developer shall be in accordance with the terms and conditions of the Developer's standard sale agreement approved by the Association and which shall not include clauses which prejudice or adversely impact on the Association and shall be consistent with the provisions of these clauses. If the Developer considers that any clause may adversely impact on the Association, the Developer will submit a copy of the agreement or addendum to the Association for its prior approval.

13.

General Meetings of the Association

- 13.1. The Association shall within six (6) months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other

general meetings during that year, and shall, in calling the meeting, specify the meeting as such in the notices issued in terms of clause 14 hereof.

- 13.2. The annual general meeting shall be held at such time and place as the Directors shall decide from time to time.
- 13.3. All general meetings other than annual general meetings shall be called extraordinary general meetings.
- 13.4. The Directors may, whenever they think fit, convene an extraordinary general meeting.
- 13.5. The Directors must convene an extraordinary general meeting if one or more written and signed demands of such meeting are delivered to the Company, and;
 - (a) each such demand describes the specific purpose for which the meeting is proposed; and
 - (b) in aggregate demands for substantially the same purpose are made and signed by the holders, as of the earliest time specified in any of those demands, of at least 10% of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

14.

Notices of Meetings

- 14.1. An annual general meeting and a meeting called for the passing of a special resolution shall be called by giving at least twenty-one (21) calendar days notice in writing to each Member. An extraordinary general meeting, other than one called for the passing of a special resolution, shall be called by giving at least fourteen (14) calendar days notice in writing to each Member. In each case the notice shall be exclusive of the day on which it is given and shall specify the place, the day and hour of the meeting. In the case of special business, the notice shall state the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it. A general meeting of the Association which is called by shorter notice than that specified in this clause shall be deemed to have been duly called if it is so agreed:
 - (a) in the case of a meeting called as the annual general meeting, by all the Members entitled to attend and vote thereat; and
 - (b) in the case of an extraordinary general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 95% of the total voting rights of all Members.
- 14.2. The notice may be posted or it may be transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient. In addition a notice transmitted electronically must comply with Regulation 7(4) of the Regulations.
- 14.3. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Memorandum of Incorporation, or the non-receipt of any

such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at, or any resolution passed at any meeting, unless deemed by the Chairman to be a material omission.

15.

Electronic Participation in Members Meetings

The Chairman may allow one or more Members or their proxies to participate by electronic communication in all or a part of a meeting.

16.

Quorum for a Meeting of Members

- 16.1. No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such of the Members entitled to vote as together for the time being represent the votes of TWENTY FIVE PERCENTUM (25%) in number of all Members entitled to vote for the time being.
- 16.2. If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place and time as the Chairman of the meeting shall appoint. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.

17.

Agenda for a Meeting of Members

- 17.1. In addition to any other matters required by the Act or these presents to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:
- (a) the consideration of the Chairman's report;
 - (b) the election of Directors;
 - (c) the consideration of any other matters referred to the meeting, including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
 - (d) the consideration of the accounts of the Association for the preceding financial year;
 - (e) the consideration of the report of the auditors, and the appointment of the auditors for the ensuing year.
 - (f) the consideration of the budget for the ensuing year.

- 17.2. No business shall be dealt with at any general meeting unless written notice has been given to the Directors not less than seven (7) days before such meeting by the person proposing to raise such business of his intention to do so; provided however, that the Chairman may on ordinary resolution of the meeting relax this condition.

18.

Procedure at a General Meeting of Members

The Chairman may, with the consent of any general meeting at which a quorum is present and shall if so directed by the meeting, adjourn a meeting to another time and place. No business shall be transacted at any adjourned meeting other than business which could have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given in the same manner as of the original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment or of the business to be transacted at an adjourned meeting.

19.

Proxies

- 19.1. A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his agent, duly authorised in writing.
- 19.2. The instrument appointing a proxy and the power of attorney or any other authority under which it is signed shall be delivered to the Association at least 24 hours prior to the commencement of the meeting at which the person named in the instrument proposes to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.
- 19.3. A vote given in accordance with the terms of a proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation had been received by the Directors at any time before a vote is taken in respect of which the proxy exercises such vote.

20.

Votes

- 20.1. **At every general meeting:**
- (a) **subject to the provisions of the undermentioned clauses, on a show of hands every Member present in person or by proxy shall be entitled to one vote, regardless of the number of Erven owned by him;**
 - (b) **if an Erf is registered in the name of more than one person, then all such co-owners shall share the vote attached to that Erf;**
 - (c) **on a poll, every Member shall be entitled to one vote for every Erf registered in the name of the Member. In addition to the foregoing, once the Erven in phase 5 are available for sale and integrated into**

the estate, the Developer shall be entitled to one vote for each Erf in phase 5 of the Estate development.

(d) A Member shall not be entitled to vote at any general meeting if the Member is in arrear with the payment of levies or remains in breach of any of the Rules of the Association.

20.2. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, and every Member present or represented by proxy, shall have one vote. Where any proxy represents more than one Member or when demanded by any Member, the vote shall be on a poll. A declaration by the Chairman that a resolution has been carried (unanimously or by a particular majority) or negated, and an entry to that effect in the book containing the minutes of the proceedings of the Association, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

20.3. If a poll is demanded it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

20.4. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

20.5. A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

20.6. Every resolution and every amended resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.

20.7. An ordinary resolution (that is a resolution other than a special resolution) or the amendment of any ordinary resolution shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.

20.8. Unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted. An entry in the minutes to the effect that a motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

21.

Restrictions on Payments to Members

The Company must apply all of its assets, however derived, to advance its stated objects as set out in this Memorandum of Incorporation. The Company must not

directly or indirectly pay any portion 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 a member or director, or person appointing a Director, of a Company except :

- (a) as reasonable :
 - (i) remuneration for goods delivered or services rendered to, or at the direction of, the Company; or
 - (ii) payment or reimbursement for expenses incurred to advance the stated objects of the Company; or
- (b) as payment of an amount due and payable by the Company in terms of *bona fide* agreement between the Company and that person or another; and
- (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.

22.

Directors

- 22.1. There shall be a Board of Directors of the Association which shall consist of not less than three (3) and not more than seven (7) Directors.
- 22.2. A Director shall be an individual (who is not precluded by the Act from being a director of a company) and must either be a Member or the spouse of a Member of the Association, or the authorized representative of a Member which is not a natural person. A Director who is not himself a Member, by accepting his appointment to office shall be deemed to have agreed to be bound by all the provisions of this Memorandum of Incorporation.
- 22.3. Directors shall be elected by the Members in general meeting. For a period of temporary absence a Director may appoint an alternate Director.
- 22.4. Each director shall have the power to nominate another person to act as an alternate Director in his or her place during his or her absence or inability to act as a Director and on such appointment being made, the alternate Director shall be subject to the terms, qualifications and conditions existing with reference to the other Directors of the Association.
- 22.5. For so long as the Developer is the owner of Erven, including Erven in the proposed Phase 5, it shall be entitled to appoint two of the Directors on the Board. Such Directors may not be removed from office other than by the Developer. If one of the Directors resigns, the Developer may appoint another Director in the place of the Director who has resigned.

23.

Removal and Rotation of Directors

- 23.1. Save as set out in clause 23.2 and save for the Directors appointed by the Developer, each Director shall continue to hold office from the date of his appointment for a minimum period of one year, until the beginning of the next

annual general meeting after the expiry of that year. At such meeting each Director shall be deemed to have retired from office but will be eligible for re-election to the Board of Directors at such meeting.

- 23.2. A Director shall be deemed to have vacated office upon:
- (a) having ceased to be eligible under clause 22.2 hereof;
 - (b) having become disqualified to act as a director in terms of the provisions of the Act; or
 - (c) being removed from office as provided in Section 71 of the Act.
 - (d) resigning from office by means of a written notice given to the Board.
- 23.3. Upon any vacancy occurring in the Board prior to the next annual general meeting, the vacancy shall be filled by a person nominated by those remaining for the time being on the Board.
- 23.4. The Directors shall be entitled to appoint committees consisting of such number of their Members and such outsiders, including the estate manager, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary. A committee member who is not also a Director may not vote on a matter to be decided by the committee.

24.

Chairman and Vice Chairman

- 24.1. The Directors shall within fourteen (14) days after each annual general meeting appoint from their number a Chairman and Vice chairman, who shall hold their respective offices until the end of the next annual general meeting, provided that the office of Chairman or Vice Chairman shall *ipso facto* be vacated by a Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time the Board of Directors shall immediately appoint one of their number as replacement in such office.
- 24.2. Except as otherwise provided, the Chairman shall preside at all meetings of the Directors and at all general meetings of Members and, in the event of his not being present within twenty (20) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice Chairman shall act in his stead, or failing the Vice Chairman, a Chairman appointed by the meeting.

25.

Director's Expenses

Directors shall be entitled to recover all reasonable and bona fide expenses incurred by them in the performance of their duties as Directors. Save as aforesaid, Directors shall not be entitled to any remuneration for the performance of their duties in terms hereof.

26.

Power of Directors

- 26.1. Subject to the express provisions of this Memorandum of Incorporation, the Directors:
- (a) shall manage and control the business and affairs of the Association;
 - (b) shall have the right to appoint and dismiss an estate manager;
 - (c) may exercise all the powers of the Association and perform all acts on behalf of the Association, unless these are required by the Act or by this Memorandum of Incorporation to be exercised or performed by the Association in general meeting.
- 26.2. Subject to the provisions of this Memorandum of Incorporation, the Directors are entitled to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, an estate manager and any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors and on such terms as the Directors shall decide.

27.

Meetings of Directors

- 27.1. The Directors may on seven (7) days written notice given by any one (1) Director to the other Directors meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Memorandum of Incorporation. Unless a Director is known to be away, each Director shall acknowledge receipt of the written notice.
- 27.2. The quorum necessary for the holding of any meetings of the Directors shall be a majority present personally. Any resolution of the Board of Directors shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 27.3. If within half an hour from the time appointed for the holding of a Directors' meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place and time as the Chairman of the meeting shall appoint. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Directors present shall constitute a quorum.
- 27.4. The Directors shall cause minutes to be kept of every Directors' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairman. All minutes of Directors' meetings shall, after certification, be placed in a Directors minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Directors' minute book shall be open for inspection at all reasonable times by any Director, the auditors, the Members and the managing agent.
- 27.5. Save as provided in this Memorandum of Incorporation, the proceedings of any Directors' meeting shall be conducted in such reasonable manner and form as the chairman of the meeting shall decide.

- 27.6. A resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a properly convened and constituted meeting of the Board of Directors.
- 27.7. In the event of urgent business arising, a directors' meeting may be called on such period of notice and in such manner as the circumstances require.

28.

Borrowing Powers

The Company may in its discretion raise or borrow sums of money for the purposes of the Association and may secure the repayment of such moneys in such manner and upon such terms and conditions as the Directors think fit and in particular may mortgage or bind its property or any part thereof as security for any debt or obligation of the Association. Any loans exceeding the sum of R100 000,00 must be approved by way of an ordinary resolution passed by the Members in a general meeting.

29.

Accounts

- 29.1. The accounts and books of the Association shall be open to inspection by Members at all reasonable times during business hours.
- 29.2. Once in each financial year the accounts of the Association shall be examined and the correctness thereof ascertained by auditors. The duties of the Auditors shall be regulated in accordance with Chapter 10 of the Act.

30.

Bank Account

Funds received by the Association shall be deposited in the Association's bank account.

31.

Service of Notices

Any notice required to be given to a Member by the Association, whether under this Memorandum of Incorporation or in terms of the Act, shall be in writing and either:

- 31.1. hand delivered to the Member at the address of the Erf, if the Member or the duly authorised representative of the Member ordinarily resides there;
- 31.2. sent by pre-paid registered post to such other address as the Member has given the Association in writing for the service of notice; any notice served by post shall be deemed to have been served on the third day after posting; or
- 31.3. emailed to the email address given by the Member, where the Member has supplied the Association with the Member's email address.

32.

Disclaimer and Indemnity

- 32.1. The Association shall not be liable for any injury to any person, damage to or loss of any property upon the estate, regardless of the cause, nor shall the Association be responsible for any theft occurring on the estate.
- 32.2. Neither the Association nor any of its Directors or agents shall be liable to any Member or any of its lessees, employees, agents, servants, invitees, customers, contractors or any Member of the public dealing with any Member, for any injury or loss or damage of any description which they may suffer on the estate, regardless of the cause thereof.
- 32.3. Members accept responsibility for and indemnify the Association and its employees, servants, agents and lawful invitees against all claims by any person arising from any injury or loss or damage contemplated by this clause 32.

33.

Dissolution

- 33.1. The Association may dissolve itself by a special resolution passed by a majority of not less than seventy five per centum (75%) of the votes cast at a Members' meeting.
- 33.2. In this event:
- (a) the Directors will act as liquidators;
 - (b) the Association's net assets

after discharge of its liabilities will be transferred to some other non-profit association or institution having objects similar to its main object, to be determined by the Members of the Association at or before the time of its dissolution, or failing such determination, by the court having jurisdiction.