

**Companies and Intellectual Property Commission
Republic of South Africa**

**Memorandum of Incorporation
of
Bluewater Estate Homeowners Association NPC**

Registration Number 2004/009220/08

which is referred to in the rest of this Memorandum of Incorporation as **“the Company”**

The Company is a non-profit Company with Members in terms of the Act, having the following objectives:

To promote, advance and protect the communal interests of Members and Residents, in particular to:

- A. Ensure acceptable aesthetic, architectural and environmental standards;
- B. Implement, manage, and maintain security measures and systems for perimeter security, access monitoring and security staffing for the Estate; and
- C. Engage with Members and act as liaison for Members with Neighbouring Estates, the Community, the City of Cape Town, Shark Spotters and Cape Nature for the greater good of the Community, Members and Residents.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the Members of the Company by Special Resolution on 16 March 2016 in accordance with Section 16(1)(c) of the Act.

It was amended by the Members by way of a Special Resolution at a Special Members Meeting held on 27 June 2017.

It was amended by the Members by way of a Special Resolution at an Annual Members Meeting held on 26 July 2023.

It was further amended by the Members by way of a Special Resolution submitted for consideration to the Members in terms of Section 60 (1) of the Act on 5 May 2025 and adopted on 26 May 2025.

1. INTERPRETATION

In this Memorandum of Incorporation, the following words shall, unless the context otherwise requires, have the meaning hereinafter assigned to them:

The Act	The Companies Act 71 of 2008 and any amendments thereto and regulations made thereunder.
Address of Members	The physical address within the Republic of South Africa, recorded in the Register of Members or the address of the Unit Erf.
Board	The elected Board of Directors of the Company in office from time to time, responsible for the management of the Company and its affairs.
Board Meetings	Meetings of the Board.
Calendar Year	12 (twelve) Months from 1 January to 31 December.
Chairperson	Elected chairperson of the Board.
Communal Areas	All spaces outside of the Unit Erven including the boundary wall and palisade fence.
Commencement of Construction	The Day that an Owner commences clearing the Unit Erf and/or building works.
Day	A calendar day, comprising a 24 (twenty-four) Hour period commencing at 00:00.
Defaulting Member	Any Member who, after written notification as a defaulter in terms of 7.7 remains in default and/or any Member who is in default of any financial obligations in terms of Clause 6.
Director	A natural person elected to the Board by the Members at an Annual General Meeting or appointed by the Board pursuant to Article 5.1.6.

Estate	Each of the Unit Erven and the Communal Area, as shown on General Plan 6256/1991 and any further general plans approved in respect of any subdivisions thereof or any extension thereof or amendment thereto.
Estate Manager	A person or Legal Persona, who may, but need not be a Member of the Company, charged with such responsibilities as the Board may determine from time to time, provided that if at any time there is no Estate Manager, any reference in this Memorandum of Incorporation to the Estate Manager shall be deemed to be a reference to the Board.
Estate Manager's Address	The address at which the Estate Manager receives all communications, and which shall be provided to Members by the Board as and when it changes.
Financial Year	12 (twelve) Months from 1 March to the last Day in February of the following year.
General Meetings	Meetings at which all Members of the Company, except Defaulting Members, whose levies and financial or other obligations to the Company are not in Dispute and who are not debtors of the Company, are permitted to attend, speak and vote.
Housing Unit	A dwelling for the habitation of human beings erected on Unit Erven in accordance with a plan approved by the Board and any applicable Regulatory Authority.
Legal Persona	Not a natural person but an entity recognised in law against which legal proceedings may be instituted. The registered Member/s of a Legal Persona Member shall be subject to the same liability or obligations to the Company as a Member.
Material	When used as an adjective, means significant in the circumstances of a particular matter, to a degree that is: of consequence in determining the matter; or might reasonably affect a person's judgement or decision-making in the matter.
Member	An Owner whose name is entered as such in the Register of Members and who, by virtue of being an Owner, is also a Member of the Company and entitled to have their name entered into the Register of Members.

Memorandum of Incorporation	This Memorandum of Incorporation and any amendments thereto, as registered by the Registrar from time to time.
Minutes	A written, summarised record of what happened during a meeting, including who was in attendance, what was discussed, and what action items were decided on.
Month	Any one of the 12 (twelve) Months which comprise a Calendar Year.
Non-resident Member	A Member not Resident at a Unit Erf address.
Notices	Communications in Writing from the Board to Members or communications, in Writing from Members to the Board or to the Estate Manager in terms of this Memorandum of Incorporation.
Objectives	As set out on the cover sheet of this Memorandum of Incorporation.
Owner	A person or persons or Legal Persona in whose name a Unit Erf is registered.
Register of Members	The name, address (physical and postal), email address and contact telephone numbers of the Members of the Company recorded in the Register of Members. A Legal Persona shall give the name of a natural person for liaison purposes. This Register shall be strictly private and confidential and be used for Company administration purposes only.
Registered Office	The physical and postal address of the Company as notified to the Registrar and Members from time to time.
Registrar	The Companies and Intellectual Property Commissioner.
Regulations	Regulations of the Company adopted by the Members by Special Resolution at any General Meeting.
Regulatory Authorities	The Cape Town City Council and its subordinate authorities, South African Revenue Service and any other statutory bodies which may replace them or have jurisdiction over the Company.
Resident	Subject to this Memorandum of Incorporation, a natural person who resides in a Housing Unit.
Rules	Rules made by the Board from time to time in accordance with the provisions of Section 15 of the Act.

Spouse	Means a person who is a party to a marriage and/or a civil union and/or a partner in a permanent life partnership in which the partners have undertaken reciprocal duties of support.
Unit Erf	Each of the erven: 4364 - 4371, 4376 - 4390, 4391 – 4424, 4427 - 4438, 4439 – 4447, 4453 – 4479, Kommetjie and any sub-divided or consolidated portion thereof registered in the name of one or more natural persons or Legal Persona.
Writing	Written, printed, lithographed, electronic formats (such as email), or partly one or partly another and any other modes of representing or producing words in a visible and permanent form.

In this Memorandum of Incorporation:

1. a reference to a Section by number refers to the corresponding Section of the Act;
2. words that are defined in the Act bear the same meaning in this Memorandum of Incorporation; and
3. unless the context of this Memorandum of Incorporation requires otherwise, any word signifying or denoting the singular only, shall include the plural and vice versa; words signifying or denoting any one gender only, shall include both genders and words signifying or denoting a natural person shall include a Legal Persona and vice versa.

2. **INCORPORATION AND NATURE OF THE COMPANY**

2.1 **Incorporation**

- 2.1.1 The Company is incorporated as a non-profit Company as defined in the Act.
- 2.1.2 The Company is incorporated in accordance with and governed by:
 - 2.1.2.1 the unalterable provisions of the Act;
 - 2.1.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
 - 2.1.2.3 the provisions of this Memorandum of Incorporation and any Rules and Regulations made in terms thereof.

2.2 **Objectives and Powers of the Company**

- 2.2.1 The Company shall have all the powers lawfully granted to it by virtue of the Act.
- 2.2.2 The Objectives of the Company are as set out on the cover sheet.

- 2.2.3 The income and property of the Company when so-ever derived shall be applied solely towards the promotion of its Objectives, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend bonus or otherwise howsoever, to any Members, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any Member thereof in return for any services actually rendered to the Company.
- 2.2.4 The Company shall be entitled to bind its Members to contribute by way of levies (and such other contributions prescribed by the Company from time to time) towards the funds of the Company and enforce payment of and to collect and receive from Members such contributions and levies.
- 2.2.5 The Company is not subject to any provisions contemplated in Sections 15(2) (b) or (c) of the Act.
- 2.2.6 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Act.
- 2.3 **Memorandum of Incorporation and Company Rules**
- 2.3.1 This Memorandum of Incorporation may be altered or amended only by Special Resolution and in the manners set out in Sections 16, 17 and 152(6)(b).
- 2.3.2 The authority of the Board to make Rules is not limited or restricted in any manner by this Memorandum of Incorporation.
- 2.3.3 The Board must publish any Rules made in accordance with the requirements set out below.
- 2.3.4 The Board must notify each Member in Writing that it has made Rules in terms of Section 15(3) and must provide each Member with a copy of such Rules by email or to the Address of Members.
- 2.3.5 The Board must notify each Member in Writing of any Regulations adopted or amended in General Meeting and provide each Member with a copy of such Regulation or amended Regulation by email or to the Address of Members.
- 2.3.6 The Board must notify each Member in Writing of any amendment or alteration to this Memorandum of Incorporation in terms of Sections 15 or 17 and send each Member a copy of any such amendment or alteration by email or to the Address of Members.
- 2.3.7 Each Member is deemed to have received any notification sent to them in terms of this Article 2.3:

2.3.7.1 if it was sent by electronic mail to the email address of the addressee, within 4 (four) Hours following the time at which it was transmitted from the information system under the control of the sender; or

2.3.7.2 if delivered to the Address of the Member, at the time of such delivery.

2.3.8 If a Member actually receives any notification in terms of this Article 2.3, it will be deemed to have been sent to them as prescribed in this Article 2.3, notwithstanding that it may not have been sent to its chosen email or physical address as recorded in the Register of Members.

2.4 **Application of Optional Provisions of the Act**

The Company does not elect, in terms of Section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act.

3. **MEMBERS**

3.1 **Members of the Company**

As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members, who are all, subject to this Memorandum of Incorporation, voting Members.

3.2 **Membership Requirements**

3.2.1 The Owner of a Unit Erf shall be a Member of the Company by virtue of the registration of the Unit Erf in the name of such Owner on the title deeds of the Unit Erf and upon the entry of the Member's name/s in the Register of Members.

3.2.2 The Board may provide for the issue of a membership certificate in such form, as it may determine by making a Rule in this respect.

3.2.3 The rights and obligations of a Member shall not be transferable.

3.2.4 Every Member shall:

3.2.4.1 to the best of such Member's ability further the Objectives and interests of the Company;

3.2.4.2 observe the terms of this Memorandum of Incorporation, all applicable by-laws made by any Regulatory Authority from time to time, and all Regulations and Rules made by the Company in General Meeting or by the Board respectively; and

3.2.4.3 while leasing their Unit Erf, ensure that any lessee is aware of the conditions of residence at the Estate, including this Memorandum of Incorporation and any Rules and Regulations.

3.2.5 Any lessee of a Unit Erf will be regarded as a Member only for the purposes of compliance with 3.2.4.1 and 3.2.4.2.

3.3 **Members Obligations**

Members must pay the prescribed levies or charges and comply with all other membership obligations as recorded in this Memorandum of Incorporation and any Rules and Regulations or as otherwise communicated to Members.

3.4 **Change of Membership**

3.4.1 An Owner of a Unit Erf which has been sold shall be liable for all amounts due and payable and for discharging obligations owing to the Company up to the date of transfer of the Unit Erf into the name of the new Owner. Transfer of a Unit Erf shall be subject to:

3.4.1.1 the prior Written consent of the Company and the Company having issued a clearance certificate that all amounts owing to the Company by the Member concerned have been paid; and

3.4.1.2 the proposed transferee acknowledging in Writing that upon the registration of transfer of the Unit Erf into such transferee's name he shall *ipso facto* become a Member, subject to all the rights, obligations and duties of a Member.

3.4.2 A change in ownership of a Legal Persona which is an Owner shall have the same effect as a change in Owner for the purposes of 3.4.1 above.

3.4.3 A Unit Erf Owner shall cease to be a Member of the Company in respect of a Unit Erf when such Unit Erf is registered in the name of another Owner and the relevant Member's name is deleted from the Register of Members as an Owner of the Unit Erf in question.

3.5 **Members' Authority to Act**

If, at any time, every Member is also a Director, 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.

3.6 **Members' Right to Information**

In addition to the rights to access information set out in Sections 26(1) and 31, a Member shall at all reasonable times during normal business hours, with reasonable Notice, have the right to inspect the annual financial statements of the Company at the Registered Office or such other location designated by the Company for such purpose from time to time and/or to request a copy of same which will be provided by e mail. The quarterly management accounts of the Company are posted on the Company's website.

3.7 Representation by Concurrent Proxies

The right of a Member to appoint persons concurrently as proxies, as set out in Section 58(3)(a) is limited to the extent set out in Article 3.9.

3.8 Authority of Proxy to Delegate

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.

3.9 Requirement to Deliver Proxy Instrument to the Company

3.9.1 A signed copy of the instrument appointing a proxy, the power of attorney or other authority, if any, shall be submitted by email to the Estate Manager of the Company not less than 24 (twenty-four) Hours before the time for holding the General Meeting at which the person named in the instrument proposes to vote or handed in person to the Estate Manager by 17:00 on the day of the Meeting.

3.9.2 No instrument appointing a proxy shall be valid after the expiration of 1 (one) Month from the date when it was signed, unless so specifically stated in the proxy itself and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

3.9.3 The instrument appointing a proxy shall be submitted in the prescribed format included in the General Meeting notification.

3.9.4 Attendance of the meeting, whether in person or virtually, and/or the exercise of the vote, whether at the meeting or by poll, at the general meeting can only be exercised by the proxy if so appointed. If a Member thus decides to attend the meeting and/or exercise the vote him/herself, the proxy's authority to attend the meeting and/or exercise the vote will lapse. Where such an instance arises the Member in question will be requested to confirm whether they intend attending the meeting and/or exercise the vote and/or whether the Member intends for the proxy to do so, in which event either the proxy or the Member in question will be asked to leave the general meeting and/or be excluded from exercising the vote.

3.9.5 A vote given in accordance with the terms of an instrument of proxy shall be valid despite the earlier death of the principal, or revocation of the proxy, provided that no intimation, in Writing, of the death or revocation, shall have been received by the Board at least 1 (one) Hour before the time fixed for the holding of the General Meeting.

3.10 **Deliberative Authority of Proxy**

A Member's proxy may only use his discretion whether to exercise or abstain from exercising any voting right of the Member, if there is no direction from the Member.

3.11 **Record Date for Exercise of Members' Rights**

If, at any time, the Board fails to determine a record date for any action or event, as contemplated in Section 59, the record date for the relevant matter is as determined in accordance with Section 59(3).

4. **GENERAL MEETINGS**

4.1 **Requirement to Hold General Meetings**

4.1.1 In addition to those General Meetings specifically required by the Act, the Company shall within 6 (six) Months of its Financial Year end hold its annual General Meeting in accordance with the Act and this Memorandum of Incorporation. Such annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Board shall decide from time to time.

4.1.2 The Board may convene a General Meeting subject to the provisions of the Act and this Memorandum of Incorporation.

4.2 **Members' Right to Requisition a General Meeting**

The right of Members to requisition a General Meeting, as set out in Section 61(3), may be exercised by the holders of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered at the General Meeting, as provided for in that Section.

4.3 **Location of General Meetings**

The authority of the Board to determine the location of any General Meeting, and the authority of the Company to hold any such meeting in the Republic of South Africa or in any foreign country, as set out in Section 61(9) is limited in that all General Meetings shall be held in Cape Town, South Africa. Meetings may also be conducted via electronic means such as over Zoom, Microsoft Teams etc.

4.4 **Notice of General Meetings**

4.4.1 Subject to the provisions of the Act:

4.4.1.1 An annual General Meeting or a General Meeting called for the passing of a Special Resolution shall be called by giving at least 21 (twenty-one) Days clear Notice in Writing.

4.4.1.2 Any other General Meeting shall be called by giving at least 14 (fourteen) Days clear Notice in Writing.

- 4.4.1.3 In each case the Notice shall specify the place, the Day and the hour of the General Meeting and the business of the General Meeting.
- 4.4.1.4 Any document proposed for discussion, which shall have the effect of excluding or amending existing rights or of introducing new obligations for the Company or its Members, shall be available 21 (twenty-one) Days before the proposed General Meeting date, for examination by Members.
- 4.4.2 The financial statements (or the audited financial statements of the Company if required and/or elect to have its financial statements audited) prepared for the Financial Year shall be sent to Members together with the Notice of the annual General Meeting in terms of this Memorandum of Incorporation
- 4.4.3 If there was a material defect in the giving of Notice of a General Meeting, the General Meeting may proceed only if at least 75% (seventy-five percent) of the Members present either in person or by proxy who are entitled to exercise voting rights votes to approve the ratification of the defective Notice.
- 4.4.4 An immaterial defect in the form and manner of giving Notice of a General Meeting, or an accidental or inadvertent failure in the issue or delivery of the Notice to any particular Member to whom it was addressed, does not invalidate any action taken at the General Meeting provided that such failure to issue or deliver a Notice shall be limited to no more than 10% (ten percent) of the Members entitled to receive Notice. In such event the business of the General Meeting shall be cancelled upon 10% (ten percent) of the affected Members submitting proof of non-receipt of Notice prior to such business being discussed at the meeting.
- 4.5 **Agenda at Annual General Meeting**
- 4.5.1 In addition to any other matters which may be competently raised at the annual general meeting required to be dealt with by the Act or this Memorandum of Incorporation the following matters shall be dealt with at every annual General Meeting:
- 4.5.1.1 The Chairperson's report to the Members.
- 4.5.1.2 The Company's financial statements for the Financial Year immediately preceding the date of the annual General Meeting.
- 4.5.1.3 Ratification of the Minutes of the budget meeting.
- 4.5.1.4 The election of Directors.

4.6 **Procedure at General Meetings**

4.6.1 The Chairperson of the Board shall preside as such at all General Meetings. In the Chairperson's absence within 15 (fifteen) Minutes after the time appointed for the holding of the General Meeting, the Board Members present shall appoint another Chairperson for the General Meeting who shall have full competency as Chairperson of that General Meeting.

4.6.2 Subject to the Act and this Memorandum of Incorporation, the Chairperson may, with the consent of the majority of the voting rights held by the Members present at a General Meeting at which a quorum is present, adjourn a meeting, from time to time and from place to place, but no business shall be transacted at any adjourned meeting, other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a General Meeting is adjourned for 10 (ten) Days or more, notice of the adjourned meeting shall be given in the same manner as an original meeting.

4.6.3 Except as otherwise provided for in the Act and this Memorandum of Incorporation, the Members shall not be entitled to any Notice of adjournment, or of the business to be transacted at an adjourned meeting unless the adjournment of the General Meeting was until further notice and not to a fixed time and place.

4.6.4 Any Agenda items including objections, points of orders, concerns, changes concerning previous Minutes or any other matters arising must be lodged at least 7 (seven) Working Days ahead of the meeting date. Objections previously ruled upon will be regarded as concluded and will not be revisited as a new Agenda item at subsequent meetings.

4.6.5 Members who wish to speak on a matter arising will be allocated a timeslot at the end of the Agenda by the Chairperson, which they may not exceed. The Chairperson may also adjourn the matter arising to be discussed at an alternate meeting if so required.

4.7 **Electronic Participation in General Meetings**

The authority of the Company to conduct a General Meeting entirely by electronic communication or to provide for participation in a General Meeting by electronic communication, as set out in Section 63 is not limited or restricted by this Memorandum of Incorporation.

4.8 **Quorum for General Meetings**

4.8.1 The quorum requirement for a General Meeting to begin, or for a matter to be considered is as set out in Section 64(1) without variation, being 25% (twenty

five percent) of the Members entitled to vote (that are present either in person or by proxy).

4.8.2 If within half an hour from the time appointed for the holding of a General Meeting a quorum is not present, the meeting shall be adjourned without motion, vote or further Notice, for 1 (one) Week at the same place and time, or at such other place as the Chairperson shall determine and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

4.8.3 The authority of a meeting to continue to consider a matter, as set out in Section 64(9) is 25% (twenty five percent) of the Members that are entitled to vote.

4.9 **Voting Procedures**

4.9.1 Defaulting Members shall not be entitled to vote at any General Meeting regardless of the number of Unit Erven owned.

4.9.2 At every General Meeting every Member present in person or by proxy and entitled to vote by virtue of the fact that the Member is not a Defaulting Member in any way, shall have 1 (one) vote for each Unit Erf registered in the name of the Member. A Legal Persona shall appoint a proxy to represent it at all General Meetings.

4.9.3 At any General Meeting a Resolution put to the vote of the meeting shall be decided by polling on the prescribed form given to Members and/or by an electronic method determined by the Board as approved by the Members at a special meeting called for this purpose. The Chairperson shall appoint one or more independent scrutinisers from the Members present and one Director to count the vote, which shall be recorded in the Minutes of the meeting.

4.9.4 Any abstentions will be excluded from the voting totals either for or against.

4.9.5 Every Resolution propose for adoption by a General Meeting shall be seconded at the meeting and if not seconded, shall be deemed not to have been proposed.

4.9.6 No person, including the Chairperson, shall have a casting vote in the event of equality of votes cast at either General Meetings of Board Meetings.

4.9.7 If the Resolution proposed is not adopted, the Board and/or the Member (s) who proposed the Resolution may call for the holding of a further General or Special General Meeting to reconsider the Resolution proposed in its current or in an amended form. Should the Resolution still not be adopted thereafter, the Board and/or the Member (s) who proposed the Resolution may commence

the Dispute Resolution process of the Company and/or to the Community Services Ombud Scheme (CSOS).

- 4.9.8 Unless any Member present, in person or by proxy, at a General Meeting shall, before closure of the meeting, have objected to any declaration made by the Chairperson of the meeting as to the result of any voting at the meeting, or as to the proprietary or validity of the procedure at such meeting, such declaration by the Chairperson 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 and an entry into the Minutes to the effect that any motion has been carried or lost, with a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote as recorded

4.10 **Adjournment of General Meetings**

The maximum period allowable for an adjournment of a General Meeting is as set out in Section 64(13), without variation. Accordingly, a meeting may not be adjourned beyond the earlier of:

- 4.10.1 the date that is 120 (one hundred and twenty) Business Days after the record date; or
- 4.10.2 the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

4.11 **Members' Resolutions**

- 4.11.1 For an Ordinary Resolution to be adopted at a General Meeting, it must be supported by the holders of more than 50% (fifty percent) of the voting rights exercised on the Resolution, as provided in Section 65(7).
- 4.11.2 For a Special Resolution to be adopted at a General Meeting, it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the Resolution, as provided in Section 65(9).
- 4.11.3 A Special Resolution adopted at a General Meeting is not required for a matter to be determined by the Company, except those matters set out in Section 65(11) or elsewhere in the Act or elsewhere in this Memorandum of Incorporation.

4.12 **Members Acting other than at a Meeting**

- 4.12.1 In accordance with the provisions of Section 60 of the Act, a Resolution that could be voted on at a Members' meeting may instead:
- 4.12.1.1 be submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the Resolution; and

- 4.12.1.2 be voted on in writing by such Members within a period of 20 (twenty) Business Days after the Resolution was submitted to them.
- 4.12.2 A Resolution contemplated in 4.12.1:
- 4.12.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' meeting; and
- 4.12.2.2 if adopted, will have the same effect as if it had been approved by voting at a properly convened Members' meeting.
- 4.12.3 In addition to a Resolution passed in terms of 4.12.1, a Resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if it had been adopted at a properly constituted Members' meeting.

5. DIRECTORS AND OFFICERS

5.1 Composition of the Board

- 5.1.1 The Board shall comprise at least 3 (three) but not more than 5 (five) Directors each of whom is to be elected or appointed in the manner set out in this Article 5.1.
- 5.1.2 The Directors comprising the Board individually shall be eligible to be elected as Director at the AGM, and/or as provided for in Article 4.12 above, and shall be eligible to be re-elected for a maximum of 4 (four) terms (a term being a period of 12 (twelve) Months). At conclusion of their last term, the Director (s) will retire from office.
- 5.1.3 The Estate Manager shall call for nominations for election as Director not less than 45 (forty-five) Days before the dispatch of the convening Notice for the annual General Meeting, which nominations must be received prior to the proposed date of dispatch of the Notice for the annual General Meeting as set out in the call for nominations. All nominations received prior to the dispatch of the convening Notice for the annual General Meeting will be listed by name in the convening Notice, together with the resumes of each nominated candidate.
- ~~5.1.4~~ Directors shall be elected by an Ordinary Resolution of Members, in attendance or by proxy, at each annual General Meeting of the Company (meaning that each candidate must be supported by the holders of more than 50% (fifty percent) of the voting rights exercised on the Resolution) and subject to this Memorandum of Incorporation. In the event that the number of candidates receiving sufficient votes to be elected by Ordinary Resolution exceeds the vacancies on the Board, the Directors shall be in order of the

greater number of votes for each candidate. In the event that the number of candidates elected by Ordinary Resolution is less than the vacancies on the Board, then the provisions of Article 5.1.6 and 5.1.7. (as appropriate) shall apply.

5.1.5 The Members shall be entitled, and are encouraged to, vote for a maximum of five Directors and a minimum of three Directors each.

5.1.6 If the number of candidates elected at the AGM is less than 5 (five) or the number of Directors fall below 5 (five) during the Board's tenure for any reason, the remaining Directors may fill the vacancy/s through co-option. This may be done at separate intervals, and as many times as required during the reigning Boards tenure. The person/s so appointed shall hold office until the next election of Directors.

5.1.7 If the number of candidates elected at the AGM is less than 3 (three) and/or should the number of Directors fall below 3 (three) for any reason, the remaining Directors shall call a General Meeting or call for a vote as provided for in Article 4.12 for the purpose of filling the vacancies on the Board.

5.1.8 In addition to the elected Directors and a Director appointed in terms of Article 5.1.6, there are not directly appointed or ex officio Directors of the Company, as contemplated in Section 66(4).

5.1.9 In addition to satisfying the qualification and eligibility requirements set out in Section 69; to become or remain a Director or a prescribed officer of the Company, a person must satisfy the following additional eligibility requirements and qualifications:

5.1.9.1 A Director shall be a natural person and a Member in good standing and/or a Non-Resident Member in good standing, and/or a spouse of a Member or Non-resident Member in good standing and may include a Resident representative appointed in Writing by a Legal Persona Member of the Company in good standing.

5.1.9.2 Only one person per Erf may serve as a Director per term.

5.1.9.3 No person may be elected to the office as a Director if such person is a Defaulting Member.

5.1.9.4 No Person may be elected as a Director if they have lodged a formal Dispute against the HOA, until such time as the matter has been resolved/concluded and/or withdrawn.

5.1.9.5 Any abstentions made by Members upon voting will be excluded from the voting totals either for or against.

5.1.9.6 In the event that more than 5 (five) Members stand for election and

more than 5 (five) Members are selected on the voting form, this shall not constitute a spoiled ballot. The first 5 (five) Members selected as they appear on the voting form will be included in the final count and the balance ignored.

5.2 Authority of the Board

5.2.1 The authority of the Board 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 Article 5.2.3.

5.2.2 The Board may exercise all such powers of the Company and act on its behalf in the ordinary course of managing the affairs of the Company. Neither this Memorandum of Incorporation nor any Rule, Regulation or other change shall invalidate any prior act of the Board, which would have been valid, if such Memorandum of Incorporation, Rule or Regulation had not been made.

5.2.3 The Board may, as provided for in this Memorandum of Incorporation make Rules, provided these are not inconsistent with this Memorandum of Incorporation, or any Regulations made by the Company in General Meeting in respect of, but not limited to:

5.2.3.1 Disputes generally;

5.2.3.2 assisting it in administering and governing its activities generally;

5.2.3.3 imposition of fines for failure by Members to comply with this Memorandum of Incorporation or any Rules and Regulations;

5.2.3.4 the cancelling, verification or modification of the Rules from time to time; and

5.2.3.5 the promotion and furtherance of the Company's Objectives.

5.3 Board Meetings

5.3.1 The authority of the Board to consider a matter other than at a Board Meeting, as set out in Section 74 is not limited or restricted by this Memorandum of Incorporation.

5.3.2 The right of the Directors to requisition a Board Meeting, as set out in Section 73(1), may be exercised by at least 1 (one) of the Directors, despite the provisions of that Section.

5.3.3 The authority of the Board to conduct a Board Meeting entirely by electronic communication, or to provide for participation in a Board Meeting by electronic communication, as set out in Section 73(3) is not limited or restricted by this Memorandum of Incorporation.

5.3.4 The authority of the Board to determine the manner and form of providing Notice of Board Meetings, as set out in Section 73(4) is not limited or restricted by this Memorandum of Incorporation.

5.3.5 The authority of the Board to proceed with a Board Meeting despite a failure or defect in giving Notice of the Board Meeting, as set out in Section 73(5) is not limited or restricted by this Memorandum of Incorporation.

5.4 **Proceedings of the Board**

5.4.1 The Board shall meet within 10 (ten) Days of their election at an annual General Meeting and shall elect a Chairperson who shall hold office until replaced by the Directors at a Board Meeting or until the conclusion of the next annual General Meeting, whichever occurs first.

5.4.2 The Chairperson does not have executive authority and is required to express the will of the Board in dealing with Members and third parties and must refer all decisions to be made to the Board, subject always to this Memorandum of Incorporation.

5.4.3 The Chairperson shall not have a casting vote in the case of a tied vote at a Board Meeting.

5.4.4 The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit, subject to the provisions of this Memorandum of Incorporation.

5.4.5 The quorum necessary for a valid Board Meeting shall be 3 (three) Directors present at all times of the meeting.

5.4.6 The Chairperson shall preside as such at all Board Meetings. If the Chairperson is not present within 15 (fifteen) Minutes after the time appointed for the holding of the meeting, then those Directors present shall vote to appoint an acting Chairperson for the meeting, who shall thereupon exercise all such powers and duties of the Chairperson in relation to such meeting.

5.4.7 A person designated by the Board shall take the Minutes of every Board Meeting which Minutes shall be reduced to Writing and shall then be signed as a correct record of the meeting by the Chairperson of that meeting or a subsequent meeting.

5.4.8 A copy of the signed Minutes will be posted on the Company's Member website and saved by the Estate Manager. Detailed statements of the Company's financial position and adopted minutes of meetings may be requested from the Board by any Member acting reasonably upon reasonable Notice.

5.4.9 All Resolutions recorded in the Minutes of any Board Meeting shall be valid

and of full force and effect from the passing of such Resolutions at the meeting. Once a Resolution has been approved, it may not be challenged or impugned by any person in any forum on the grounds that it was not expressed with sufficient clarity and specificity or accompanied by sufficient information or explanatory material, to enable a Member who is entitled to vote on the Resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the Resolution.

- 5.4.10 Except as otherwise provided for in this Memorandum of Incorporation, the proceedings at any Board Meeting shall be conducted in such reasonable manner and form, as the Chairperson of the meeting shall decide.

5.5 **Resolution in Writing**

- 5.5.1 A Resolution, in Writing, signed or agreed by return email by all the Directors shall be valid in all respects as if it had been duly passed at a Board Meeting duly convened, constituted and held.

- 5.5.2 Such Resolution shall be effective from the date of last signature or last return email and noted at the first meeting of the Board following the date of the Resolution. The Resolution shall be inserted in the Company's minute book.

5.6 **Correspondence**

Correspondence on behalf of the Board is to be signed by the Chairperson or such person/s as delegated by the Board.

5.7 **Indemnification of Directors**

- 5.7.1 The authority of the Company to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in Section 78(4) is not limited or restricted by this Memorandum of Incorporation.

- 5.7.2 The authority of the Company 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.

- 5.7.3 The authority of the Company to purchase insurance to protect the Company, or a Director, as set out in Section 78(7) is not limited or restricted by this Memorandum of Incorporation.

5.8 **Officers and Committees**

- 5.8.1 The Board may appoint any officers it considers necessary to better achieve the Objectives of the Company.

- 5.8.2 The authority of the Board to appoint Committees, and to delegate to any such Committee any of the authority of the Board, as set out in Section 72(1), and to include in any such Committee persons who are not Directors, as set out in

Section 72(2)(a) is not limited or restricted by this Memorandum of Incorporation.

- 5.8.3 The authority of a Committee appointed by the Board, as set out in Sections 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

6. BUDGET, LEVIES, FEES AND CHARGES

- 6.1 The Board shall prepare and submit a budget of income and expenditure and proposed monthly levy in respect of each Financial Year to Members at a General Meeting to be held no later than the last day of March of each Calendar Year.
- 6.2 The Board shall motivate and substantiate the reasons for proposed expenditure and detail plans for recovering such expenditure by way of income.
- 6.3 The Board is responsible for including costs pertaining to the Communal Areas in the budget and for the approval of spend against such budget as deemed necessary and in the best interest of the Estate, its Members and Residents.
- 6.4 The budget and monthly levy shall be adopted by an Ordinary Resolution of the Members at the General Meeting. In the event that the budget and monthly levy is not adopted, the Board shall as soon as reasonably possible but in any event within 30 (thirty) Days of the meeting at which the budget and levy was not adopted, convene a General Meeting for the purposes of adopting a revised budget and monthly levy. The Board shall in the interim be entitled to incur normal operational expenditure and other expenditure.
- 6.5 Notwithstanding anything to the contrary in this Memorandum of Incorporation the adoption of a budget whether in whole or in part shall not cause the Company to be in breach of any laws or contractual obligations and where any portion of the approved budget has such an effect, the Board shall ensure that, to the extent legally permissible, the approved budget is implemented when reasonably possible to do so.
- 6.6 The Board shall be required to seek Member approval, in a special general meeting called for this purpose and/or in a vote called for by electronic means, dependent on the urgency associated with the expense, for any expense the Board is required to incur that is in excess of R50 000.00 (Fifty Thousand Rand). The Board may in exceptional circumstances, and only in cases of extreme urgency which urgency shall be explained to the Members as soon as the urgency has arisen and the need for incurring the expense has arisen, make payment of expenditure in excess of

R50 000.00 (Fifty Thousand Rand) to a maximum of R150 000.00 (One Hundred and Fifty Thousand Rand) without prior Member approval.

- 6.7 The Board shall, on a quarterly basis, report to the Members on any deviations to the approved budget.
- 6.8 The Board may in addition to Monthly levies, from time to time, propose special levies to the Members. Special levies shall be adopted by a Special Resolution of the Members at the General Meeting.
- 6.9 All Monthly levies shall, subject to this Memorandum of Incorporation, be paid Monthly in advance on or before the first day of each Month. All payments shall be made by deposit into the banking account of the Company, EFT, debit order or any other procedure recognised by the banker of the Company from time to time. The Estate Manager is to be informed of the manner of payment.
- 6.10 Payments received after the last day of the Month shall bear interest at the rate of the interest quoted from time to time by the Company's bankers as its prime rate of interest for unsecured overdrafts to the private sector plus 2% (two percent), from and including the first day of the Month following the Month in which such payment was due up to and including the date of payment. Proof of payment by a Member and receipt of payment by the Company shall be the date stamped on the bank deposit slip by the receiving bank for payments made by bank deposit, proof of payment issued by the Member's paying bank for EFT, confirmation of payment by debit order or any other proof of payment recognised by the banker of the Company from time to time.
- 6.11 A Member will be regarded as a Defaulting Member, if they are indebted to the Company for non-payment of levies or any other financial charges or failure to discharge any legal obligations, -provided that a Member shall not be considered to be in default if an arrangement has been made with the Board concerning the outstanding monetary amount and/or legal obligation.
- 6.12 Any amount due by a Member whether from a levy or other obligation shall be a debt due and owing to the Company. A certificate stating the amount due by the Member

signed by a Director, whose capacity and authority it shall not be necessary to prove, shall be sufficient evidence of the debt due to the Company by the Member.

6.13 A Member's successor in title to a Unit Erf shall be liable, as from the date transfer is registered in the successor's name, to pay the levy attributable to that Unit Erf.

6.14 No levies paid by a Member shall be repayable by the Company upon cessation of Membership unless the Member is able to provide evidence of overpayment.

6.15 The Board shall be entitled to take all measures including the institution of legal proceedings to ensure that levies and obligations legally authorised in terms of this Memorandum of Incorporation, Rules and Regulations are paid.

Any money received by the Company from a Member shall first be attributed to charges and other costs (including interest) payable by that Member, and finally against levies payable by that Member.

6.16 **Building Levies**

6.16.1 From the Commencement of construction until a certificate of completion has been issued by the Company's control architect, in addition to the Monthly or other levies, the Owner of the Unit Erf concerned shall pay a building levy as determined by the Board from time to time. The Owner shall also be required to pay a deposit prior to the Commencement of Construction as security for any damage to the Estate as a result of the construction process or any non-compliance with building plans as approved, in a manner, form and substance determined by the Board from time to time.

6.17 **Penalty Levies** (at the then prevailing levy amount):

6.17.1 In addition to Monthly levies and building levies (if applicable), in the event of the Owner failing to commence construction as per 7.5.2 and 7.5.3 below or complete construction within 12 (twelve) Months of Commencement of construction, penalty levies, shall be applied as follows:

6.17.1.1 For every Month past the date for Commencement of construction: a penalty levy equal to the amount of the Month levy.

6.17.1.2 For every Month after the due date for completion of construction: a penalty levy equal to the amount of the Monthly levy.

7. **GENERAL PROVISIONS**

7.1 **Title Deeds**

Restrictions will be registered against each Owner's Title Deeds in order to give effect to the terms of this Memorandum of Incorporation. This Memorandum of Incorporation

shall bind the Owners whether or not such restrictions are registered.

7.2 Surety

At the time that a Unit Erf is registered in the name of a Legal Persona the Members of that Legal Persona shall sign joint and several specific guarantees for the payment of all levies and other financial obligations due and payable to the Company and for the discharge of all obligations legally due to the Company by the Legal Persona.

7.3 Mortgage

Nothing contained in this Memorandum of Incorporation shall prevent a Member from mortgaging a Unit Erf but all obligations and rights of Membership of the Company shall remain vested in the Member.

7.4 The Communal Areas

The Board may from time to time, subject to the Act and any restriction or condition imposed by Regulatory Authorities, make Rules governing, for example but not limited to, Members' rights of use, occupation and enjoyment of the Communal Area and to ensure that the Communal Area and any buildings thereon are maintained in good repair and appearance and shall be entitled to cancel, vary or modify any of these Rules from time to time.

7.5 Building Conditions

7.5.1 No buildings and/or structures (including additions or renovations) of any nature whatsoever may be erected on any Unit Erf without plans having been approved by the Company and then only in accordance with such approved plans. Such plans and/or building works must be consistent with any Rules and Regulations of the Company. The Board and/or Members in Board and General Meetings may cancel, vary, modify or make Rules and Regulations respectively from time to time governing, for example but not limited to:

7.5.1.1 the design styles of all Housing Units and improvements erected or to be erected on Unit Erven;

7.5.1.2 building regulations in respect of any developments and improvements on Unit Erven; and

7.5.1.3 Members' conduct, whilst building is in progress in so far as it relates to maintaining the general character, ambience and well-being of the Estate and any other incidental matters.

7.5.2 Construction of a Housing Unit on a vacant Unit Erf must be commenced within 12 (twelve) Months after the date of registration of the transfer of that Erf Unit and be completed within 12 (twelve) Months of commencement of the construction (as evidenced by the issue of a certificate of occupation issued by

the Regulatory Authorities and a completion report by the Company's control architect).

7.5.3 No Housing Unit shall be occupied until and unless the Regulatory Authorities issue a certificate of occupation and the Company grants consent to early occupation.

7.5.4 Notwithstanding anything to the contrary in this Memorandum of Incorporation, a Member shall not be entitled to commence any building works unless and until all levies due by such Member have been paid up in full.

7.6 **Rules and Regulations**

7.6.1 It is hereby specifically recorded that any codes, guidelines or information for Owners in force from time to time and made as Rules or Regulations in terms of this Memorandum of Incorporation shall be binding on Members, who are deemed to be aware of them and which will be available on the Company's website.

7.6.2 Members undertake that they shall comply with the provisions and obligations of this Memorandum of Incorporation and any agreements, Rules or Regulations referred to in this Memorandum of Incorporation insofar as they may affect them.

7.7 **Breach**

7.7.1 Should a Member, in the opinion of the Board be in breach of this Memorandum of Incorporation or any Rules or Regulations, the Estate Manager will first attempt to resolve the issue with the Member in a reasonably acceptable manner as directed by the Board.

7.7.2 In the event of a Member being concerned that another Member could be in breach of this Memorandum of Incorporation or any Rules or Regulations, the complainant and other party should first attempt to resolve the issue between them. If this approach fails the complainant must notify the Estate Manager in Writing of the nature of the complaint, the steps the writer has taken to overcome the complaint and the outcome thereof. Thereafter the Estate Manager will try to resolve the issue in terms of 7.7.1 above.

7.7.3 In the event that the issue is not resolved in terms of 7.7.1 or 7.7.2 above, the Board will serve a Notice in Writing on the Member by either email or delivery to the Address of the Member to rectify such breach within a specified period of receipt of such Notice.

7.7.4 In the event that the Member fails to remedy the breach as required in the Notice in 7.7.3, the Member will be regarded as being in breach and will be regarded as a defaulting Member.

- 7.7.5 In the event that the Member is found to be in breach, the Board may impose a fine plus a penalty as set out in the Rules or Regulations or as otherwise deemed appropriate by the Board.
- 7.7.6 The Board will notify the Defaulting Member of their breach and the fine or penalty-imposed in Writing within 10 (ten) Days of the deadline provided to remedy.
- 7.7.7 A Member found to be in breach by the Board in terms of 7.7.6 shall not be permitted to speak or vote at a General Meeting whilst such Defaulting Member remains in breach unless the Member has commenced proceedings against the Company in terms of the Dispute Resolutions policy of the Company.
- 7.7.8 In the event that the Member fails to remedy the breach in line with the findings and in accordance with the recommendations set by the Board, the Company may institute legal proceedings in a Magistrates' Court with competent jurisdiction against the Defaulting Member.
- 7.7.8.1 In the event that summons is issued by the Company against the Defaulting Member, and the Defaulting Member has incurred further indebtedness or is in further breach in respect of any of the Defaulting Member's obligations contained in this Memorandum of Incorporation or any Rules or Regulations, which indebtedness or breach has arisen after summons has been issued then the Board shall not be required to comply with the procedures set out in 7.7.1. to 7.7.5. in respect of the further indebtedness or breach of the Defaulting Member; and
- 7.7.8.2 the Company shall be entitled to amend its particulars of claim in the court proceedings for the purposes of including in the claim the further indebtedness incurred or breach by the Defaulting Member since the issuing of the summons.
- 7.7.9 In the event of the Company having to instruct attorneys as a consequence of a Defaulting Member's breach of this Memorandum of Incorporation or any Rules and Regulations, the Defaulting Member shall be liable to pay the Company's legal costs on a scale as between attorney and own client, including collection commission.
- 7.8 **Notice**
- 7.8.1 Any Notice by the Company to Members that is signed shall be signed by the Chairperson or another Director or such person/s as designated by the Board and served at the Address of the Members or sent via email to the Member's email address as recorded in the Register of Members and will be deemed to have been received by them within 4 (four) Hours of delivery of the Notice.

7.8.2 If a Unit Erf is registered in more than 1 (one) name, any one of the registered Owners (unless a contradictory Notice is received in Writing) shall be the recipient for the purposes of the receipt of Notices from the Company and Notices so given shall be sufficient Notice to all the registered Owners of the Unit Erf. A Legal Persona must notify the Estate Manager of the appointed natural person and the address to which Notices from the Company may be sent.

7.9 **Payments**

7.9.1 Directors and contracting workers may claim and shall be paid such reasonable expenses as may be incurred in the execution of their duties.

7.9.2 Directors shall not be paid fees or salaries for acting solely in that capacity.

7.10 **Interest in Contracts**

7.10.1 At the first Board Meeting following the appointment of any Directors they shall declare their interest in any contract, proposed contract or business arrangement with the Company.

7.10.2 Subject to the provisions of the Act and this Memorandum of Incorporation a Director shall not vote in respect of any contract, proposed contract or business arrangement with the Company in which such Director is interested or in respect of any matter arising therefrom and shall declare any such interest and withdraw from the Board Meeting.

7.10.3 If a Director has a change of their interest in any contract, proposed contract or business arrangement with the Company during their tenure as Director they shall declare this change at the next Board Meeting following such change.

7.11 **Conduct at Meetings and Between Members**

Members and Directors shall be expected to conform to the rules of debate and good order at all Board, General and other meetings. Name calling, personal comments, screaming and shouting, physical engagement, coercion, bullying, intimidation, constant interruption/grandstanding, intent to cause reputational damage, etc. will result in the Member being asked to leave the meeting. Should a Member/s not conform to the rules of good order prior to voting taking place, the Member/s may be asked to leave the Meeting. The offending Member/s will receive a formal written warning. The conduct rules apply outside of the Meetings and Members may not engage with other Members on an unsolicited basis. The details of Member Disputes

between Members inter se and between Members and the Board will be made available to all Members for transparency purposes.

7.12 **Obligation of Membership**

Members and Directors shall be deemed by their Membership and Directorship to agree to work towards the Objectives and to abide by this Memorandum of Incorporation and any Rules and Regulations made from time to time, reserving at all times the right to Dispute decisions in conflict with this Memorandum of Incorporation or any such Rules and Regulations in terms of the rights given to Members by the Act.

7.13 **Non-Waiver**

A failure by one party at any time to require strict performance by the other of any of the provisions of this Memorandum of Incorporation, or the Rules and Regulations formulated in terms thereof shall not constitute a waiver or extinguish that party's right thereafter to require strict compliance with any of the provisions of this Memorandum of Incorporation or the aforesaid Rules and Regulations.

7.14 **Severability**

In the event of any provision contained in this Memorandum of Incorporation or Rules and Regulations formulated in terms thereof being or becoming invalid or unenforceable, for whatever reason, that offending provision shall be severed from the Memorandum of Incorporation, or aforesaid Rule or Regulation and the remaining provisions shall be enforceable by the party having the right to do so.