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MEMORANDUM OF INCORPORATION

OF

LANDSMEER ESTATE HOMEOWNERS ASSOCIATION NPC

REGISTRATION NUMBER: 2004/031410/08

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**THE REPUBLIC OF SOUTH AFRICA
COMPANIES ACT**

**MEMORANDUM OF INCORPORATION ON A NON-PROFIT COMPANY NOT
HAVING A SHARE CAPITAL**

Registration Number of Association

2004/031410/08

Name of Association:

LANDSMEER ESTATE HOMEOWNERS ASSOCIATION NPC

The Memorandum of Incorporation of the Association is as set out in these Articles:

1. **INTERPRETATION:**

- 1.1. **“the Association”** means the Landsmeer Estate Homeowners Association NPC (“the Association”) to which this Memorandum of Incorporation is applicable, duly registered and incorporated according to the company laws of the Republic of South Africa;
- 1.2. **“the Companies Act”** means Act No 71 of 2008, as amended, or any Act which replaces it;
- 1.3. **“the residential erven”** mean all erven on the property on which residential dwellings have been erected or can be erected in terms of the applicable zoning from time to time and includes consolidated erven and notorially tied erven on which single residential dwellings have been or can be erected and residential erven where higher density sectional title schemes have been or can be erected, whether they are presently improved or unimproved;
- 1.4. **“deliver”** means delivery of any notice, letter and/or any other document by hand at a member’s residential erf or to a member’s postal address as nominated and indicated by the member in writing and recorded in the register of the Association or dispatched by e-mail to the e-mail address as indicated by the member in writing from time to time. Electric communication will carry the meaning set out in Section 1 of the Electronic Communications and Transactions Act, Act 25 of 2002, or as amended;
- 1.5. **“developer”** means Food Fair (Pty) Limited, or their successors - in-title or assigns;
- 1.6. **“development period/phase”** means the initial period from the date of establishment of the Association until 29 February 2024 for the current established erven and a further period of three years for any newly created erven from date of establishment or creation;
- 1.7. **“erf”** means any erf indicated on the approved surveyor general diagrams and includes residential erven and any other erven, for instance the common property erven or any future erven to be created, proclaimed or established.

- 1.8. **“unit”** means any sections(s) in a Sectional Title or Cluster Scheme.
- 1.9. **“estate”** means the township of Meerhof Extension 2 also referred to as Landsmeer, as may be phased or subdivided from time to time and any other land added to this area by the developer.
- 1.10. **“levies”** means the amounts payable by members to the association in accordance with the provisions of this Memorandum of Incorporation, to defray the expenses of the association
- 1.11. **“the manager”** means the manager with specified functions in terms of Article 11 appointed from time to time;
- 1.12. **“members”** mean the persons or entities referred to in Article 5 who have specified rights in respect of the Association;
- 1.13. **“the open spaces / common property”** mean the common and general areas including, but not limited to, the gatehouse, landscaped areas, private streets, street lights, pavements, curbs, sidewalks, traffic islands inclusive of road reserve, water and sewerage treatment plants, electrical and water reticulation, any staff housing owned or used by the Association, estate offices and other amenities and open spaces situated on the land;
- 1.14. **“profits”** include revenue left as a result of over budget and capital income generated from the sale of capital asset(s);
- 1.15. **“the property”** means, the previously known, Portion 3 of the Farm GLENOGLE 573, Registration Division J.Q., North West Province, where the township of Meerhof Extension 2, had been proclaimed. Portion 223 of the Farm RIETFontein 485 Registration Division J.Q., North West Province does not form part of the property even though it falls within the perimeters of the security fencing. The Developer is in the process to acquire Portion 223 which will be incorporated into the Estate.
- 1.16. **“register”** means the register of members kept in terms of the statutes;

- 1.17. **“The Shops / commercial / business sectional title units”** are the shops where commercial activities takes place on the southern side of the estate;
- 1.18. **“the rules”** mean the rules made by the directors in terms of Article 8 from time to time;
- 1.19. **“the statutes”** mean the Companies Act, Act No 71 of 2008, of the Republic of South Africa as well as each and every other statute or ordinance from time to time in force concerning companies and necessarily affecting the Association;
- 1.20. References to members represented by proxy shall include members represented by an agent under a general or special power of attorney and references to members present or acting in person shall include juristic persons represented by a person duly authorised to act on behalf of such juristic person;
- 1.21. Expressions defined in the Companies Act, or any statutory modification thereof, in force at the date on which this Memorandum of Incorporation become binding on the Association shall have the meanings so defined; and
- 1.22. Words in the singular number shall include the plural and words in the plural number shall include the singular, words importing the masculine gender shall include female gender, and words importing natural persons, shall include juristic persons, corporate entities and bodies corporate and *vice versa*.

2. **PRELIMINARY:**

- 2.1. If the provisions of this Memorandum of Incorporation are in any way inconsistent with the provisions of the statutes, the provisions of the statutes shall prevail, and this Memorandum of Incorporation shall be read and interpreted in all respects subject to the statutes.
- 2.2. Notwithstanding the omission from this Memorandum of Incorporation of any provision to that effect, the Association may do anything which the statutes empower the Association to do.

3. **NON-PROFIT COMPANY:**

The Association is a non-profit company as defined and modified by Section 10(1) as well as the exclusions defined in Section 10(2) and Schedule 1 of the Companies Act, 71 of 2008.

4. **MAIN OBJECT AND BUSINESS OF THE ASSOCIATION:**

The main object of the Association is to carry on, promote, advance and protect communal interest, safety and welfare of the members of the Association and the occupiers of erven and units.

The main business of the Association is to carry on the business of promoting, advancing and protecting the interest, safety and welfare of the members of the Association and their tenants including, but not limited to:

- 4.1. operating and maintaining the open spaces and common property; and
- 4.2. controlling the aesthetic appearance of land, including landscaping and buildings on the property, controlling traffic and implementing security measures and controlled access to the property.

5. **MEMBERS:**

The following persons shall be members of the Association:

- 5.1. Any person, juristic person or trust indicated as the registered owner of an erf or a sectional title unit within the estate.
- 5.2. The developer shall be a member, in it's capacity as such (represented by one or more nominees) in respect of each erf and sectional title unit held by it until it ceases to own such erf or sectional title unit.
- 5.3. No person, other than a person, legal entity or trust as referred to in Article 5.1 and the Developer in it's capacity as such as referred to in Article 5.2 shall be entitled to vote at a meeting of the Association
- 5.4. A member shall include the trustee in an insolvent estate, a liquidator or the trustee elected in terms of the Agricultural Credit Act, 28 of 1966, the liquidator of a company or close corporation which is a member, the executor of the estate of a member who

has died, or a representative of a member, recognised by law of a member who is a minor, or of unsound mind, or is under disability if such trustee, liquidator, executor or representative is acting within the scope of his authority.

- 5.5. Where two or more persons are registered as owners of an erf or sectional title unit, such joint registered owners shall be deemed to be one member of the Association.
- 5.6. A member who had ceased to be the registered owner of any land shall *ipso facto* cease to be a member of the Association.
- 5.7. A member shall not agree to alienate an erf or unit of which it is the registered owner, unless it is a condition of such agreement that:
 - 5.7.1. the person to whom the erf or unit is to be sold or otherwise to be alienated ("the transferee"), has bound himself/herself, to the satisfaction of the Association, to subject himself/herself to this Memorandum of Incorporation and its rules, and to become a member of the Association upon transfer of such erf or unit to him/her;
 - 5.7.2. the registration of transfer of the erf or unit to the transferee shall *ipso facto* constitute the introduction of the transferee as a member of the Association *mutatis mutandis*.
- 5.8. A member may not for as long as he/she is an owner of an erf or unit, resign as a member of the Association.
- 5.9. The Association shall keep a register of its members at the place and in the manner specified in the statutes.
- 5.10. The rights and obligations of a member shall not be transferrable to any other person. While the member is a registered owner of an erf or unit and every member shall:
 - 5.10.1. Observe and adhere to the rules;
 - 5.10.2. sign all documents and do all things necessary to enable whatever servitudes and security facilities may be required for services to be registered, whether over or in favour of the access erf or any other erf;

- 5.10.3. provided that nothing contained in this Memorandum of Incorporation shall prevent a member from ceding his/her rights in terms thereof as security to the mortgagee of that member's erf or unit.

6. **COMMON PROPERTY AND CONDITIONS OF ESTABLISHMENT OF TOWNSHIP**

- 6.1. The developer shall reserve the right to make application to the local authority to further develop any erven registered in it's name.
- 6.2. The Association shall take title of the common property during the development phase.
- 6.3. The Association acknowledges that neither the local authority nor the developer shall be responsible for, and the Association shall be solely responsible for, the care, repair, maintenance, cleaning, upkeep, improvements and proper control of the common property and any structure or thing erected or contained therein or thereon, including private roads, parking, electricity, telecommunications and any other private services, if applicable.
- 6.4. The Association shall furthermore comply with all the conditions imposed by the local authority relating to the conditions of the township(s) comprising the estate, and shall be solely responsible for any non-compliance with such conditions.

7. **LEVIES:**

- 7.1. The directors shall be obliged to, yearly in advance, establish and maintain a levy fund for the purpose of meeting all the expenses which the Association has incurred, or which the directors reasonably anticipate the Association will incur (which may include a reasonable provision for contingencies) for the ensuing financial year, in the furtherance of the business of the Association and objects as stated in Article 4 of this Memorandum of Incorporation.
- 7.2. During the initial development period as well as the further development period referred to in paragraph 1.6 above, the developer shall have no liability or obligation to pay or contribute to any levies, building levies or special levies in respect of the erven held by it under the initial and further development periods.

- 7.3. The calculation of the levies for the sectional title units known as the shops will be determined separately on a percentage scale to be determined by the directors for each year.
- 7.4. Contributions to the levy fund shall equally be made by the members in accordance with the following formula and in the following proportions:
- 7.4.1. Upon the inception of each and every financial year of the Association the directors will determine the number of erven/ units liable for the payment of the levies.
- 7.4.2. The budget as prepared in terms of Article 7.1 will be divided by 12 (twelve) for the months of the year and be divided again by the number of erven/units as calculated in terms of Article 7.4.1, read with Article 7.2.
- 7.5. The application of the formula in Article 7.4.2. will annually indicate the monthly levy payable by a member.
- 7.6. Contributions to the levy fund by members shall be made in accordance with Article 7.4. provided that:
- 7.6.1. any member who is the registered owner of more than one residential erf/unit shall be liable to contribute his share in respect of each such erf/unit owned by him or her; and
- 7.6.2. subject to any restriction imposed or direction given at a general meeting of the Association, the directors shall have the power to from time to time, in their sole and absolute discretion, determine and resolve what the additional monthly contribution to the levy fund shall be, other than the contribution imposed in terms of Article 7.4.2. of a member who has consolidated or notarially tied two or more erven; and
- 7.6.3. subject to any restriction imposed or direction given at a general meeting of the Association, the directors shall have the power to from time to time, in their sole discretion, determine and resolve what the additional monthly contribution to the levy fund shall be, other than the contribution imposed in terms of Article 7.4.2. of members

who are the registered owners of the higher density residential sectional title units; and

- 7.6.4. members who have not commenced or completed building works on an erf, shall be liable to contribute a monthly building levy in addition to its normal levy, in an amount to be determined by the directors and within a time to be determined by the directors. The member shall be notified by the Board of Directors before the building levy will be imposed to provide the member with an opportunity to commence or complete the building within a reasonable time and to the satisfaction of the Board of Directors.
- 7.6.5. The directors shall, as soon as possible after the determination of the yearly levies in terms of Article 7.4 notify each member in writing of the contribution payable by him/her to the levy fund. Such levy contribution shall be payable in equal monthly instalments in advance on the first day of each and every month of the financial year.
- 7.7. The directors may from time to time make and impose levies, special levies or otherwise, upon the members who are liable in terms of Article 7.4, or call upon them to make special contributions in respect of all such expenses as are mentioned in Article 7.1. above (which are not included in any estimates made in terms of Article 7.1.) as per the formula set out in Article 7.4, or in such proportions by the members as the directors in their sole discretion may determine as set out in Articles 7.6.2 and 7.6.3, and such levies and contributions may be made payable in one sum or by such instalments, with or without interest, and if with interest, at such rate as may be determined by the directors and at such time or times as the directors shall deem fit.
- 7.8. A member shall not be entitled to withhold for any reason whatsoever a levy or special levy or contribution due by him to the Association.
- 7.9. Interest shall be payable on arrear levies at such rate and at such intervals as may from time to time be determined by the directors.

- 7.10. Any amount due by a member by way of a levy, special levy, contribution or interest thereon shall be a debt due by him to the Association.
- 7.11. Where two or more persons are registered as the owners of an erf/unit their liability to pay levies shall be jointly and several, the one paying the other to be absolved.
- 7.12. The obligations of a member to pay levies and special levies shall cease upon him/her ceasing to be a member of the Association, without prejudice to the rights of the Association to recover arrear levies and interest thereon, despite the member having ceased to be a member.
- 7.13. No levies, special levies or interest paid by a member shall under any circumstances be repayable by the Association to the member upon him ceasing to be a member of the Association.
- 7.14. The successor-in-title to the land of a member shall be liable, with effect from the date upon which he becomes a member pursuant to the transfer of such erf/unit, to pay the levy in respect of such erf/unit.
- 7.15. A member shall be liable for and pay all legal costs, including costs as between an attorney and client, collection commission, expenses and all other charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such member to the Association, or in the event of the Association imposing its rules.
- 7.16. No member, except for the Developer, shall be entitled to any of the privileges of membership unless and until he/she shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that member to the Association, from whatsoever cause arising and until such time that the member is in good standing with the Association. A member is regarded in good standing and will be entitled to attend, vote and speak at any meeting of the Association and to hold office as director of the Association when he had paid all levies, special levies and interest due to the Association and he/she is not in conflict with, or in breach of any rule of the Association.

8. **RULES:**

- 8.1. Subject to the provisions of Article 8.2., Section 15(3) and 15(4) of the Companies Act, and to any restriction imposed or direction given at a general meeting of the Association, the directors may from time to time make, and from time to time amend, substitute or add to, rules which may include house rules to regulate the governance of the Association and the income and property of the Association, when so ever derived, which shall be applied solely towards the promotion of its main object and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the members of the Association or to its holding company or subsidiary, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or employee of the Association or to any member thereof in return for any services actually rendered to the Association.
- 8.2. No rules, as envisaged in Article 8.1. shall be made, amended or added to, will have the effect of restricting the right of the members, their guests, invitees, contractors, repair and maintenance personnel, employees and agents to access to the property and use of the open spaces.
- 8.3. For the enforcement of any of the rules made by the directors in terms hereof the directors may:
 - 8.3.1. take such other action, including court proceedings, as they may deem fit.
- 8.4. In the event of any breach of the rules by the members of any member's household, or his guests, or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the aforementioned, the directors may take or cause to be taken such steps against the person actually committing the breach with the authorities.
- 8.5. In the event of any member disputing the fact that he has committed a breach of any of the rules aforesaid, a committee of three

directors, appointed by the chairman of the Association, shall adjudicate upon this issue summarily at such time and in such manner and according to such procedure as the chairman may direct.

- 8.6. Notwithstanding the aforementioned, the directors may in the name of the Association enforce the provisions of any rules by proceedings in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 8.7. It shall be the duty of the manager, or such other person or body as may be empowered by the directors, to ensure compliance by the members with the rules, and to this end to issue such notices or do such things as may be necessary or requisite to ensure such compliance.
- 8.8. Each member undertakes towards the Association that he shall comply with any rules made in terms of this Article, failure to act accordingly may result in a fine.

9. **MAINTENANCE:**

- 9.1. The directors shall have the power, whenever they consider that the appearance of any member's erf, or improvement thereon, is not properly completed, maintained, unsightly or injurious to the aesthetics of the surrounding area or the property generally, regardless whether this space/object or deviation of current architectural / aesthetic guidelines has seemingly been overlooked or previously condoned, to serve notice on such member to take steps as may be specified in the notice to rectify such unsightly or injurious conditions or effect the required maintenance within a stated period.
- 9.2. Should a member on whom a notice in terms of Article 9.1. is served, fail to take such steps as may be specified in the notice within the stated period, the Association may take such steps as may be necessary to rectify such unsightly or injurious condition and to recover the costs of so doing from the member concerned, which costs shall be deemed to be a debt owing by such member to the Association.
- 9.3. The Association may from time to time determine the routine maintenance requirement of the open spaces and instruct the

manager to attend to such maintenance requirements on behalf of and at the cost of the Association, and pay the costs of employing and housing an estate manager and/or such staff as they deem necessary to further the objects of the Association.

10. **AESTHETICS:**

- 10.1. No member may erect any structure on any residential stand or land unless in compliance with the rules referred to in Article 8;
- 10.2. No member may drill a borehole anywhere or may make any additions or extensions to any building on any erf/unit or erect any further building or structure, in particular, but not limited to, carports, garages, servants' quarters, store rooms and pergolas, whether of a temporary or permanent nature, without the prior written approval of the Association.
- 10.3. Such approval shall not be unreasonably withheld unless the directors of the Association are of the opinion that such building or structure is inconsistent with the standard of finishes, architectural style and/or appearance of the existing buildings in the estate.
- 10.4. The directors shall have the power, in circumstances where no written approval of the Association was given and whenever they consider that the appearance of any member's erf, or improvement thereon, is partially completed, unsightly or injurious to the aesthetics of the surrounding area or the property generally, regardless whether this space/object or deviation of current architectural / aesthetic guidelines as seemingly been overlooked or previously condoned, to serve notice on such member to take steps as may be specified in the notice to rectify such unsightly or injurious conditions within a stated period.
- 10.5. Should a member on whom a notice in terms of Article 10.1. is served, fail to take such steps as may be specified in the notice within the stated period, the Association may take such steps as may be necessary to demolish, remove or rectify such unsightly or injurious condition and to recover the costs of so doing from the member concerned, which costs shall be deemed to be a debt owing by such member to the Association.

11. **MANAGER:**

- 11.1. The directors may from time to time, and shall if required by the members of the Association in a general meeting, appoint in terms of a written contract a managing agent, manager or managers with specified functions to control, manage, maintain and administer the Association and to exercise such powers and duties as may be entrusted to a manager, including the power to collect contributions levied.
- 11.2. The directors shall ensure that there is included in the contract of appointment of the manager a provision to the effect that if he is in breach of any of the provisions of the contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the directors may, without notice, cancel such contract of appointment and the manager shall have no claim whatsoever against the Association or any of the members as a result of such cancellation.
- 11.3. The contract with the manager shall further provide for the appointment to be terminated and the manager shall cease to hold office if:
 - 11.3.1. where the manager is a company, an order is made for its provisional or final liquidation, or where the manager is a natural person, he surrenders his estate as insolvent or his estate is sequestrated, whether provisionally or finally; or
 - 11.3.2. the manager is convicted of an offence involving fraud or dishonesty, or where the manager is a company, any of its directors are convicted of an offence involving fraud or dishonesty; or
 - 11.3.3. a special resolution of the members of the Association is passed to that effect, provided that in such event the manager so removed from office, shall not be deprived of any right he may have to claim compensation for damages for breach of contract.

- 11.4. The manager shall keep full records of his administration and shall report to the Association on all matters which in his opinion detrimentally affect the value or amenity of any portion of the property.
- 11.5. The directors shall give reasonable prior notice to the manager of all meetings of the directors and the manager shall be entitled to be present thereat.
- 11.6. The directors shall from time to time furnish to the manager copies of the minutes of all meetings of the directors of the Association.
- 11.7. Should there be no manager in office at any time, then all reference in this Memorandum of Incorporation and its rules to the manager shall be deemed to be a reference to the directors.

12. **RESTRICTION ON TRANSFER OF THE LAND:**

- 12.1. No member shall transfer the erf/unit of which he/she is the registered owner unless:
 - 12.1.1. the Association, under the hand of the manager or a director has certified in writing that the member has fulfilled all his financial obligations to the Association in respect of the period up to and including the date specified in such notice; and
 - 12.1.2. the transfer takes place prior to or on that specified date; and
 - 12.1.3. the Association, under the hand of the manager or a director has certified in writing that the dwelling erected on an erf to be transferred, complies with the plans in possession of the Association; and
 - 12.1.4. the proposed transferee has agreed in writing to become a member of the Association and subject himself/herself to the Memorandum of Incorporation and the rules, and such written agreement has been lodged with the Association; and

- 12.1.5. a certificate in compliance with paragraphs 12.1.1 has been issued by the Association to the member that all levy contributions or other amounts owing by such member to the Association have been paid prior to the transfer or that prior provision has been made to the satisfaction of the directors for the payment thereof at registration.
- 12.1.6. The Association may claim from any member or his estate any arrears of levy or interest or other amount due by him/her to the Association at the time of his ceasing to be a member.

13. **MEETINGS OF MEMBERS:**

- 13.1. The Association, at such times as are in the statutes prescribed, shall hold general meetings of members in terms of notices to members, calling such meetings as annual general meetings.
- 13.2. The directors may, whenever they think fit, convene a general meeting, and a general meeting shall also be convened, subject to subsections 61(5) and 61(6) of the Companies Act, upon the receipt of one or more written demands for such a meeting to the Association, and
- 13.3. Each such demand describes the specific purpose for which the meeting is proposed; and
- 13.4. 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.
- 13.5. Every meeting of members shall, unless otherwise resolved by the directors, be held on the property or in the city or town in which the registered office of the Association is situated for the time being, or at a destination near the property, convenient to all members. Meetings may be held partially or entirely by electronic communication as per the provisions of Section 63(2) of the Companies Act.
- 13.6. Subject to the provisions of the statutes relating to meetings of which special notice is required to be given, an annual general

meeting and a meeting called for the passing of a special resolution, shall be called by 21 (twenty one) clear calendar days' notice in writing at the least. Any meeting of the Association, other than an annual general meeting or a meeting for the passing of a special resolution, shall be called by 14 (fourteen) calendar days' notice in writing at the least.

- 13.7. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall specify the place, the day and the hour of the meeting and, in the case of special business, the general nature of the business, and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association at a meeting of members, to such persons as are, entitled to receive such notices from the Association, provided that a meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Memorandum of Incorporation, be deemed to have been duly called if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

14. **PROCEEDINGS AT MEETINGS OF MEMBERS:**

- 14.1. All business that is transacted at a general meeting, and all that is transacted at the annual general meeting, with the exception of the consideration of the audited financial statements, the election of auditors and the fixing of the remuneration of the auditors shall be deemed to be ordinary business.
- 14.2. Business may be transacted at any meeting of members only while a quorum (in person or duly represented by proxy) is present.
- 14.3. The quorum at a meeting of members shall be members entitled to vote present or represented by proxy:
- 14.3.1. in the case of a meeting called as the annual general meeting by not less than 25% (twenty five percent) of the voting rights; and

- 14.3.2. in the case of any other meeting by a majority of the members having a right to vote at the meeting being a majority representing not less than 51% (fifty one percent) of the members entitled to vote,
- 14.4. If within 1 (one) hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved, and in any other case it shall stand adjourned to the same day in the next week, at the same time and place or, if that day be a public holiday, to the next succeeding day other than a public holiday, and if at such adjourned meeting a quorum is not present within 1 (one) hour from the time appointed for the meeting then, subject to the statutes, the members or member present shall be a quorum.
- 14.5. The chairperson, if any, of the board of directors shall act as chairman at every meeting of members of the Association. If there is no such chairperson, or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling or unable to act as chairperson, the members present shall choose some director or, if no director be present or, if all the directors present decline to take the chair, they shall choose some member present to be chairperson of the meeting. The members present at the meeting may also, in special circumstances, agree by way of a majority vote, to appoint an independent chairman to chair the meeting.
- 14.6. The chairperson may, at any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned as a result of a direction given in terms of any applicable provision in the statutes, notice of the adjourned meeting shall be given in the manner prescribed by such provision, but, save as aforesaid, it shall not be necessary to give any notice of adjournment or of the business to be transacted at an adjourned meeting.
- 14.7. At any meeting of the association a resolution put to the vote of the meeting shall be decided on a show of hands, unless before or on

the declaration of the result of the show of hands a poll shall be demanded by any person entitled to vote at the meeting and, unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect has been made in the minute book 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. No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to, is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

- 14.8. If a poll is duly demanded it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutinisers shall be elected to declare the result of the poll, and their decision, which shall be given by the chairman of the meeting, shall be deemed to be the resolution of the meeting at which the poll is demanded.
- 14.9. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

15. **VOTES OF MEMBERS:**

15.1. At any meeting of the Association:

15.1.1. each member of the Association present in person or by proxy, duly represented, at any meeting of the Association shall have:

15.1.1.1. 1 one vote for each member who is the registered owner of an erf;

15.1.1.2. 1 (one) vote for each member who is the registered owner of a residential or business sectional title unit or commercial unit;

- 15.1.1.3. The developer has 2 (two) votes per erf/unit for the duration of the development period.
- 15.1.1.4. A member who is in arrears with any amount due and payable to the Association loses all rights and privileges associated with membership and may not attend, speak or vote at any meeting of the Association until such time as all amounts due to the Association by such member have been settled in full.
- 15.1.1.5. For a special resolution (as referred to in Section 65(11)(a) – (m) of the Companies Act, 71 of 2008) to be approved, it must be supported by at least 75% of the voting rights exercised on the resolution in person or by proxy.
- 15.1.1.6. For an ordinary resolution to be approved, it must be supported by at least 51%(fifty one percent) of the voting rights exercised on the resolution in person or by proxy.
- 15.2. A proxy holder needs not be a member of the Association.
- 15.3. The form appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or, if the appointer is a juristic person, under the hand of an officer or agent authorised by that juristic person. The holder of a general or a special power of attorney given by a member shall be entitled to vote, if duly authorised under that power to attend and take part in the meetings and proceedings of the Association, whether or not he be himself a member of the Association.
- 15.4. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power of authority shall be deposited at the registered office of the Association not less than 24 (twenty four) hours (or such lesser period as the directors may unanimously determine in relation to any particular meeting) at which the person named in the form proposes to vote and in default the form of proxy shall not be treated as valid. No form appointing a proxy shall be valid after the expiration of 6 (six) months from the date when it was signed,

except at an adjourned meeting unless otherwise specifically stated in the proxy itself.

- 15.5. Subject to the provisions of the Companies Act, a form appointing a proxy may be in any usual or common form.

16. **DIRECTORS:**

- 16.1. During the development period, the board of directors shall consist of any 3 directors nominated by the developer who shall be so appointed, replaced or removed as directors by the developer.
- 16.2. During the development period the members may elect 2 more directors if so decided at an annual general meeting of members.
- 16.3. After the development period, the board of directors (which shall consist of a minimum of 3 and a maximum of 7 directors) shall be elected by the members.
- 16.4. A director does not need to be a member of the Association.
- 16.5. Unless otherwise decided by a meeting of members any casual vacancy occurring in the board of directors may be filled by the directors.
- 16.6. The remuneration of the directors shall from time to time be determined by a special resolution approved by the members of the Association and subject to the provisions of Section 66(8) and Section 66(9) of the Companies Act, having regard to the general principle that directors should not be remunerated. The directors may also be paid all travelling, hotel and other expenses properly incurred by them in or about the performance of their duties as directors including those of attending and travelling to and from meetings of the directors or any committee of the directors or at any meeting of members of the Association.
- 16.7. The directors may pay any director who serves on any committee or who devotes special attention to the business of the Association, or otherwise performs services which in the opinion of the directors are outside the scope of the ordinary duties of a director, such extra

remuneration as they may determine and subject to the provisions of Section 66(8) and Section 66 (9) of the Companies Act.

17. **ALTERNATE DIRECTORS:**

- 17.1. Any director shall have the power to nominate another person to act as alternate director in his place during his absence or inability to act as such director, and on such appointment being made, the alternate director shall, in all respects, be subject to the terms and conditions existing with reference to the other directors of the Association. A person may be appointed as alternate to more than one director. Where a person is alternate to more than one director or where an alternate director is a director, he shall have a separate vote on behalf of each director he is representing in addition to his own vote, if any.
- 17.2. The alternate directors, whilst acting in the place of the directors who appointed them, shall exercise and discharge all the duties and functions of the directors they represent. The appointment of an alternate director shall cease on the happening of any event which, if he were a director, would cause him to cease to hold office in terms of these Articles, or if the director who appointed him ceased to be a director, or gives notice to the secretary of the Association that the alternate director representing him, shall have ceased to do so. An alternate director shall look to the director who appointed him for his remuneration.

18. **BORROWING POWERS OF DIRECTORS:**

- 18.1. The directors may in their discretion, from time to time, raise or borrow from the members or other bodies corporate any sums of money for the purpose and objects of the Association as set out in this Memorandum of Incorporation of the Association without limitation.

- 18.2. The directors may secure the payment or repayment of any sums of money borrowed or raised in terms of Article 18.1 of the payment of any debit, liability or obligation whatsoever of the Association, in such manner and upon such terms and conditions in all respects as they deem fit.

19. **GENERAL POWERS AND DUTIES OF DIRECTORS:**

- 19.1. The business of the Association shall be managed by the directors who may exercise all such powers of the Association subject to the provisions of this Memorandum of Incorporation and of the statutes.
- 19.2. The directors may from time to time appoint one or more of their body to the office of managing director for such period and generally on such terms as they may deem fit. The appointment of a managing director shall terminate *ipso facto* if he shall cease for any reason to be a director, or if the Association at any meeting of members shall resolve that his tenure of the office of managing director be terminated.
- 19.3. The directors may from time to time entrust to and confer upon a managing director for the time being such of the powers vested in them as they may deem fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient; and they may confer such powers either collaterally or to the exclusion of, and in substitution for, all or any of the powers of the directors, and may from time to time revoke or vary all or any of such powers.
- 19.4. The directors shall have the power from time to time to delegate to any one of their body or to any other person, such of the powers as are vested in the directors pursuant to the statutes or under this Memorandum of Incorporation, as they may deem fit.
- 19.5. The directors may delegate any of their powers to committees consisting of such member or members of their body as they deem

fit; a committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors. Save as aforesaid, the meetings and proceedings of a committee consisting of more than one member shall be governed by the provisions of this Memorandum of Incorporation regulating the meetings and proceedings of directors.

20. **DISQUALIFICATION AND PRIVILEGES OF DIRECTORS:**

20.1. A director shall cease to hold office as such if:

- 20.1.1. he ceased to be a director by virtue of any of the provisions of the statutes or becomes prohibited from being a director by reason of any order made under the statutes; or
- 20.1.2. his estate is sequestrated or he filed a petition for the surrender of his estate, or an application for an administration order, or if he commits an act of insolvency as defined in the Insolvency Act for the time being in force, or if he makes any arrangement or compromise with his creditors generally; or
- 20.1.3. he is declared incapable of managing his own affairs or becomes of unsound mind; or
- 20.1.4. he is removed by a resolution of the Association as provided in the statutes; or
- 20.1.5. he resigns his office by notice in writing to the Association; or
- 20.1.6. a signed notice removing him from office by entitled voters having a right to attend and vote at a meeting who hold more than 75% (seventy five percent) of the total voting rights of all who are at that time entitled so to attend and to

vote and is delivered to the Association or lodged at its registered office; or

20.1.7. he is otherwise removed in accordance with any provisions of this Memorandum of Incorporation.

20.2. No director or intending director shall be disqualified by his office from contracting with the Association in any manner whatsoever.

20.3. Such director shall be entitled to vote at any board meeting or otherwise in relation to such contract as freely as if he were not interested therein and he shall be reckoned for the purpose of constituting a quorum of directors.

21. **PROCEEDINGS OF DIRECTORS:**

21.1. A director may, and the manager on the requisition of a director shall, at any time, summons a meeting of directors. The meeting shall be scheduled within a reasonable time.

21.2. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit. Meetings shall, unless otherwise resolved by Directors, be held in person on the property or may be held partially or entirely by electronic communication as per the Provisions of the Companies Act.

21.3. Unless otherwise resolved by the directors, all their meetings shall be held on the property or in the city or town where the registered office of the Association is for the time being situated or at any other location convenient for the directors.

21.4. Questions arising at any meeting of directors shall be decided by a majority of votes.

21.5. The chairman shall have a second or casting vote in the case of an equality of votes.

21.6. The directors may determine what period of notice shall be given of meetings of directors and may determine the means of giving such notice. It shall not be necessary to give notice of a meeting of directors to any directors for the time being absent from the

country, but notice of any such meeting shall be given to his alternative, if he has appointed one, provided that such alternate is in the country.

- 21.7. Until otherwise determined by the directors, a quorum shall consist of 3 (three) directors. For the purposes hereof a director who has authorised another director to vote for him at a meeting in terms of Article 21.10 shall, if the director so authorised is present at the meeting, be deemed to be present himself and each director whose alternate is present at a meeting (even if the latter is alternate to more than one director) shall be deemed to be so present.
- 21.8. The continuing directors (or sole continuing director) may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Memorandum of Incorporation as a quorum, the continuing directors or director may act only for the purpose of summoning a general meeting of the Association. If there are no directors or director able and willing to act, and no specific provision is made in this Memorandum of Incorporation for the appointment of directors, then any two members may summons a general meeting for the purpose of appointing directors.
- 21.9. Subject to the statutes, a resolution in writing signed by the sole director or by all the directors for the time being present in the country, and being not less than three are sufficient to form a quorum, shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted: Provided that where a director is not present in the country, but has an alternate who is, the resolution must be signed by that alternate. The resolution may consist of several documents, each signed by one or more directors or their alternates.
- 21.10. A director unable to attend a directors meeting may authorise any other director to vote for him at the meeting, and in that event the director so authorised shall have a vote for each director by whom he is so authorised in addition to his own vote. If both the directors so authorised and an alternate of the director who granted the authority are present at the meeting, the alternate shall not be entitled to vote on behalf of the absent director. Authority in terms of this Article must be in writing (which may take the form of a letter, telegram, cable, e-mail, telefax or telex) and must be handed to the person presiding at the meeting at which it is to be used.

21.11. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present within 15 (fifteen) minutes after the time appointed for holding it, the directors present may choose one of their number to be the chairman of the meeting.

22. **VALIDITY OF ACTS OF DIRECTORS AND COMMITTEES:**

As regards all persons dealing in good faith with the Association, all acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that there was any defect in the appointment or continuation in office of any such directors or persons acting as aforesaid, or that they or any of them were disqualified or had ceased to hold office or were not entitled to vote, be as valid as if every such person had been duly appointed or was qualified or had continued to be a director or was entitled to vote, as the case may be.

23. **RESERVES:**

The directors may set aside out profits of the Association and carry to reserve such sums as they think proper. All sums standing to the credit of revenue and general reserve shall at the discretion of the directors be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the Association, for establishing, repairing, improving or maintaining any property of the Association, for meeting losses on realisation of or writing down investments either individually or in the aggregate, or for any other purpose to which profits of the Association may be applied. Pending such application such sums may either be employed in the business of the Association (without being kept separate from the other assets of the Association) or be invested. The directors may divide the reserve into such special reserves as they deem fit and re-allocate the amounts of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of any special reserves into which the reserve may have been divided. The directors may also carry forward any profits without placing them into reserve.

24. **NOTICES, E-MAIL COMMUNICATION AND WEBSITE:**

24.1. A notice by the Association to any member shall be regarded as validly delivered if it is delivered personally to the member or e-mailed to him by electronic communication to an e-mail address, which was provided in terms of 24.3.

24.2. A member shall be bound by every notice given to him in terms of Article 24.1.

24.3. The Association shall not be bound to enter any person in the register of members until that person furnishes the Association with a physical address as well as a postal address, a telefax number and e-mail address for entry in the register as set out herein and as per the statutes.

24.4. Any notice, if given by post, shall be deemed to have been delivered on the day following that on which the letter or envelope containing such notice is posted, and in proving the receipt of the notice sent by post it shall be sufficient to prove that the letter containing the notice was properly addressed and handed in at a Post Office. Any notice by hand, telefax and by e-mail shall be deemed to have been served on the same day of transmittal by hand, telefax and by e-mail.

25. **INDEMNITY:**

Every director, manager and officer of the Association and every person (whether an officer of the Association or not) employed by the Association as auditor, shall be indemnified and defended out of the funds of the Association against all liability incurred by him as such director, manager, officer or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under the Companies Act, or any amendment thereof, in which relief is granted to him by a Court.

26. **WINDING-UP:**

If the Association should be wound up, deregistered or dissolved, the assets of the Association remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution, or associations or institutions 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 a Court.

27. **GUARANTEE:**

27.1. The Association does not have a share capital.

- 27.2. The liability of each member is limited to the following amount upon the Association being wound up. Each member undertakes to contribute to the assets of the Association while he is a member or within one year after he has ceased to be a member upon the Association being wound up, the amount of R1.00 (One Rand) in respect of each erf and each unit for payment of the debts and liabilities of the Association.