

MEMORANDUM OF INCORPORATION

OF

BRIGHTWARD HOMEOWNERS ASSOCIATION (PTY) LIMITED (NPC)

Registration Number of Company: 2008/011168/08

(hereinafter referred to as the "HOA")

This HOA is a Non-Profit HOA with members and elected Directors in terms of the Companies Act of 2008, with the following objects and purpose:

To manage and administer the erven and common areas which are registered within the HOA for the benefit and use of the members of the HOA and in the interests of all the residents who occupy erven within the HOA.

A. ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation was adopted by the members of the BRIGHTWARD HOMEOWNERS ASSOCIATION (PTY) LIMITED NPC (“HOA”) by Special Resolution of its members on the 1st of November 2012.

B. INTERPRETATION

In this Memorandum of Incorporation-

- a) A reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- b) Words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act;
- c) The following expressions shall, unless otherwise stated or inconsistent with the context in which they appear bear the following meanings:

“Act”	means the Companies Act, 2008;
“HOA”	means BRIGHTWARD HOMEOWNERS ASSOCIATION (PTY) LIMITED;
“Auditors”	mean the auditors of the HOA;
“Chairman”	means the Chairman of the Board of Directors for the time being who is elected by his fellow-Directors;

“Managing Agent”	means any person or body appointed by the HOA as an independent contractor to undertake any of the functions of the HOA;
“Member”	means a member of the HOA;
“Scheme”	means the township development scheme laid out in the township collectively Helderwyk Proper.
“Directors”	mean the Directors for the time being elected by the members of the HOA and shall include the Developer as chairman, during the development period;
“the developer”	means MNANDI PROPERTY DEVELOPMENT (PTY) LIMITED with (registration number: 1999/023484/07);
“Development period”	means the period from the establishment of the HOA until all its even have been fully developed and transferred way from the developer, in that improvements have been erected thereon, alternatively until the developer notifies the HOA in writing that the development period has ceased, whichever is the earlier;
“erf”	means a subdivided portion of land in the township registered or capable of being registered in the name of any person or entity;
“in writing”	means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in visible form and shall include electronic forms of communication as set out in the Electronic Communications and Transactions Act 25 of 2002 (as amended);
“Special resolution”	means where required in terms of the Act, a resolution passed at a general meeting of which: <ul style="list-style-type: none"> i) Not less than 21 (TWENTY-ONE) clear days’ notice has been given specifying the intention to propose a resolution as a special resolution;

- ii) The terms and effect of the resolution are specified in such notice;
- iii) The reasons for the resolution are specified in such notice;
- iv) Not less than 25% (TWENTY FIVE PERCENT) of the members entitled to vote thereat are present in person or by proxy;
- v) There has been a show of hands that the resolution has been passed by not less than 25% (TWENTY FIVE PERCENT) of the number of members of the HOA entitled to vote whether in person or by proxy;

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

e) Subject to the aforesaid, any words or expressions defined in the Act or in any statutory modification of the Act in force at the date on which this Memorandum of Incorporation becomes binding on the HOA shall, if not inconsistent with the subject or context, bear the same meaning in this Memorandum of Incorporation.

f) This Memorandum of Incorporation shall be applicable to all residents within the boundaries of the HOA including all Bodies Corporates within the registered within the boundaries of the HOA but will be managed by their own set of rules attached hereto as annexure "E".

1 **ARTICLE 1 – INCORPORATION AND NATURE OF THE HOA**

1.1 **INCORPORATION**

(a) The HOA is incorporated as a Non-Profit Company as defined in the Companies Act, 2008.

(b) The HOA is incorporated in accordance with, and governed by-

- i. the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies;
- ii. the alterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum;
- iii. the provisions of this Memorandum of Incorporation and the set of rules in place (as amended from time to time) attached hereto as annexure **“A”**;
- iv. the Building Contractor’s Code of Conduct attached hereto as annexure **“B”**;
- v. the architectural guidelines attached hereto as annexure **“C”**;
and

- vi. the estate agency accreditation agreement attached as annexure "D".

1.2 **OBJECTS AND POWERS OF THE HOA AND USE OF PROPERTY AND INCOME**

1.2.1 The Objects of the HOA are:

- 1.2.1.1 to manage and administer the erven and common areas that are registered within the HOA for the benefit and use of the members of the HOA and in the interests of all the residents who occupy erven within the scheme;
- 1.2.1.2 to ensure that erven are developed according to uniform aesthetic standards and that those standards are maintained thereafter;
- 1.2.1.3 to take control of and maintain the private roads, sidewalks, and stormwater reticulation within the HOA;
- 1.2.1.4 to maintain the entrance of the HOA (including the gatehouse and access control equipment), the clubhouse (if any), the camera surveillance systems and the perimeter fence around the HOA any common areas in the HOA;

- 1.2.1.5 to maintain the street and/or sidewalk lighting and to pay the electrical consumption costs thereof;
- 1.2.1.6 to institute, control and pay for measures to ensure security;
- 1.2.1.7 to protect the use and enjoyment by members of their property;
- 1.2.1.8 to impose a system of fines, or take other action, including the institution of legal proceedings in a court of law or arbitration proceedings as may be deemed fit by the Directors in relation to the breach of any of the Rules of the Association, or any non-compliance by any Member of any of the terms of the Memorandum of Incorporation of the Association, or non-payment of any levies, special levies, interest and other imposts duly imposed by the Association and payable by its Members;
- 1.2.1.9 to ensure that all engineering service departments, water and emergency services of the local authority have 24-hour access to the HOA and unlimited use of any servitodal areas for the purposes of maintaining the local authority installations and to provide services to the residents in the HOA;

1.2.1.10 to take responsibility for the maintenance an any other essential services not specifically taken over by the local authority;

and its powers shall extend to achieving this object directly and indirectly by taking all reasonable and lawful steps to accomplish this object and purpose.

1.2.2 All the property and income of the HOA, whether obtained by donations or profit by means of income generating activities and levies, must be used to further its objectives as stated above. No part of the HOA's income may be paid to an incorporator, member, or director unless:

1.2.2.1 The payment is reasonable remuneration for goods delivered and/or services rendered;

1.2.2.2 The payment constitutes reasonable reimbursements for expenses incurred in the course of a director's duties in furthering the object and purpose of the HOA;

1.2.2.3 The payment is an amount due and payable under a *bona fide* agreement between the HOA, a member, a director, the developer or any of them;

1.2.2.4 The payment is a fulfillment of any right arising from the advancement of the objective(s) of the HOA;

1.2.2.5 The HOA is obliged by law to do so.

1.2.3 Upon dissolution of the HOA its net assets must be distributed in the manner determined in accordance with Item 1(4) (b) of Schedule 2 of the Companies Act, 2008.

1.3 **ALTERATION OR AMENDMENT OF MEMORANDUM OF INCORPORATION**

This Memorandum of Incorporation of the HOA may be altered or amended –

- a) in compliance with a court order in terms of the provisions of the Act; or
- b) at any other time if a special resolution to amend it –
 - i. is proposed by:
 - a. the Directors of the company; or
 - b. members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution; and in addition,
 - ii. is adopted at a meeting of members.

2. **ARTICLE 2 - MEMBERS AND DIRECTORS OF THE HOA**

2.1. **MEMBERSHIP**

The following persons shall be Members of the Company Namely:

2.1.1. Any person who is the registered owner of any freehold residential stand on the land and includes the Trustee of an Insolvent Estate, a Liquidator or Trustee elected in terms of the Agricultural Credit Act, Act 28 of 1966, a Liquidator of a company or close corporation, the Executor of a Member who has died, or a representative of a Member recognised by law which is a minor or person of unsound mind or is under disability if such Trustee, Liquidator, Executor or representative is acting within the scope of his authority; and

2.1.2. The Developer will remain a Member of the company until such time as it advises the company in writing that it ceases to be a Member or until the last stand transferred or the end of the development period, whichever occurs first.

2.1.3. The Body Corporate Las Pamas established in terms of the provisions of the Sectional Titles Act, Act 95 of 1986.

2.1.4. The Body Corporate Majuba established in terms of the provisions of the Sectional Titles Act, Act 95 or 1986.

- 2.1.5. The Body Corporate Helderview established in terms of the provisions of the Sectional Titles Act, Act 95 of 1986.
- 2.1.6. The Body Corporate Dawns Place established in terms of the provisions of the Sectional Titles Act, Act 95 of 1986.
- 2.1.7. The private school incorporated and established.
- 2.1.8. Any further bodies corporate or commercial non-profit companies to be established.
- 2.1.9. Where any Erf is owned by more than one person, all the registered owners of that erf shall together be deemed to be one Member of the HOA and have the rights and obligations of one Member of the HOA; provided however that all co-owners of any erf shall be jointly and severally liable for the due performance of any obligation to the HOA.
- 2.1.10. When a person becomes the registered owner of an erf in the scheme he shall automatically become a Member of the HOA and when he ceases to be the owner of any such erf in the scheme he *shall* automatically cease to be a Member of the HOA.
- 2.1.11. The *domicilium citandi et executandi* of each owner shall be the address of the erf registered in his name provided that such owner shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be situate

in the Republic of South Africa and shall not be a post office box or *poste restante*, and that the change shall only be effective on receipt of written notice thereof by the HOA at its domicilium, which shall be the address of its duly appointed managing agent unless otherwise advised.

2.2. **RIGHTS AND OBLIGATIONS OF MEMBERS**

2.2.1. No Member shall let or otherwise part with occupation of his erf, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such erf as a *stipulatio alteri* (stipulation for the benefit of a third party) in favour of the HOA that such occupier shall be bound by all the terms and conditions of this Memorandum and such written agreement is lodged with the HOA prior to the proposed occupier taking occupation of the erf in question.

2.2.2. A registered owner of an erf shall not be entitled to at any time resign as a Member of the HOA.

2.2.3. The rights and obligations of a Member shall not be transferable and every Member shall:

- a) further, to the best of his ability, the objects and interests of the HOA;

- b) pay all levies and any other amount due, including fines, penalties, interest and legal fees due by the Member to the HOA on due date without deduction or set-off;
- c) sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of the access erf or any other erf in the Scheme and including the provision of security facilities;

2.2.4. Subject to the rights of membership prescribed by the Act and by this Memorandum, Membership shall confer upon each individual Member the following rights:

2.2.4.1. Subject provisions of clause 2,17 (voting rights) below, the right to nominate and elect the Directors of the HOA;

2.2.4.2. the right to receive copies of the annual financial statements of the HOA;

2.2.4.3. subject to the provisions of clause 2.17 (voting rights) below the right to receive notice of, attend, speak and vote at general meetings of the HOA.

Nothing contained in this Memorandum shall prevent a Member from ceding his rights in terms of this Memorandum as security to the mortgagee of the Member's erf.

2.3. **OBLIGATION OF MEMBERS TO PAY LEVIES**

2.3.1. The Directors shall annually, prior to the end of each financial year prepare, establish and maintain, in their opinion an itemised estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies) of the company during the ensuing financial year in the furtherance of the company's objects and business as stated in the Memorandum of Incorporation..

2.3.2. The Directors shall, not less than 30 (THIRTY) days prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every Member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the HOA to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.

2.3.3. Each notice to each Member shall specify the contribution payable by that Member to such expenses and reserve fund.

2.3.4. The Directors shall estimate the contributions to be levied upon the Members during such ensuing financial year and impose the levies upon the Members.

- 2.3.5. Such levy contributions shall be payable in one lump sum or in such instalments as resolved upon by the Directors.
- 2.3.6. In the event of the Directors for any reason whatsoever failing to prepare and timeously serve the estimate referred to above every Member shall until served with such estimate, continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice, in the manner specified in the notice referred to in article 2.3.2.
- 2.3.7. The Directors may from time to time impose special levies upon the Members in respect of all expenses as are mentioned in article 2.3.1, which are not included in any estimate made in terms of article 2.3.2 and may in imposing such levies further determine the terms of payment thereof.
- 2.3.8. Any special levy imposed shall be payable on the passing of a resolution to that effect by the Directors and shall be payable by the owner of the erf at the time that the resolution is passed.
- 2.3.9. The Directors shall be empowered in addition to such other rights as the HOA may have in law against its Members to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the prime bank lending rate plus 5 percent.

2.3.10. Any amount due by a Member by way of levy and interest shall be a debt due by him to the HOA. The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member without prejudice to the HOA's right to recover arrear levies and interest. Notwithstanding that a member ceases to be such the HOA shall have the right to recover arrear levies and interest from him. No levies or interest paid by a member shall under any circumstances be repayable by the HOA upon his ceasing to be a member. Further, a member on ceasing to be a member shall have no claims whatsoever on any other monies held by the HOA whether obtained by way of sale of HOA assets or otherwise.

2.3.11. Any Member who has consolidated or notorially tied two or more portions of land as shown on the general plan, shall be liable to contribute monthly double the levy contribution previously payable by the Member prior to the consolidation or the notarial tying of two or more stands up to the end of that financial year

2.3.12. A Member's successor in title to an erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy and interest attributable to that erf including any special levy which will be payable subsequent to transfer of the said erf.

2.3.13. Over and above any levy and special levy the HOA, through the Directors, may impose penalties and fines on any member for failure by that member to abide by this memorandum, the rules and any other code of conduct applicable within the HOA, including but not limited to late building penalties, rubble disposal, noise pollution and failure to comply with any rule and/or any other amount the HOA may deem fit to charge to members in the administration of its duties and responsibilities.

2.3.14. Should the HOA institute legal action against any member for and/or in relation to arrear levies or other amounts payable by any member or imposing the rules of the HOA, the costs thereof including collection commission and disbursements, will be recoverable against such member on an attorney and own client scale and will be debited to such owners levy account and be payable within the same time periods as would a normal levy.

2.3.15. Notwithstanding anything to the contrary in this Memorandum, the Developer shall not pay any levy contribution in respect of any of the freehold residential erven of which it is the registered owner until the end of the development period.

2.3.16. It is specifically recorded that the Developer may be owed certain amounts in respect of penalties, interest, legal fees and other amounts from a member in terms of his sale agreement and that the developer may cede to the HOA who may receive such

cession, all such amounts or rights therein. In the event that the HOA enters into such a cession all amounts and any rights ceded to the HOA will be fully enforceable against any member. Members will be bound by such cession despite no notice of such cession having been received by them.

2.3.17. No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and interest, and fines or penalties or any other sum, if any, which may be due and payable by that member to the HOA, from whatsoever cause arising.

2.4 **RESTRICTION ON TRANSFER OF LAND**

2.4.1 No member shall transfer land or a unit in the Township:

2.4.1.1 Unless the HOA, under the hand of two Directors (or a Director and the Managing Agent so appointed), has certified in writing that the member has fulfilled all his financial and any other obligations in terms of this Memorandum in respect of the period up to and including date of registration of transfer of the unit or erf into the name of the purchaser, and that the dwelling conforms to the rules of the company in respect of that dwelling and all improvements to that stand.

- 2.4.1.2 Only accredited Estate Agents will be permitted to sell property within the HOA.
- 2.4.1.3 All prospective buyers are to be personally accompanied by estate agents and may only view properties on a "by appointment" basis. Estate agents will not be permitted to advertise the sale of a house or premises by distribution of leaflets or by erecting "for Sale" boards without the consent of the HOA.
- 2.4.1.4 All sale agreements must make reference of the fact that purchasers are to become members of the HOA and are to consider themselves bound by this Memorandum as well as any other rules (as amended) applicable to the HOA.
- 2.4.1.5 All purchasers are to be made aware of the fact that the title deed of the properties within the HOA contain the condition of title in terms of which it is determined that every owner of an erf or any sub-division thereof or any interest therein or any unit thereon shall become and remain a member of the HOA and be subject to its constitution until he ceases to be an owner as aforesaid.

2.4.1.6 Neither an erf or any sub-division thereof or any interest therein or any unit thereon shall be transferred to any person who has not bound himself to the satisfaction of the HOA to become a member of the HOA.

2.5

2.6 **DIRECTORS**

2.6.1 Up to and inclusive the end of the development period, and unless otherwise determined by a meeting of Members, the number of Directors shall not be less than 3 (three) and not more than 5 (five) individuals.

2.6.2 A Director need not be a Member of the Company.

2.6.3 Up to and inclusive of the end of the development period, the developer will be entitled to nominate 3 (three) Directors to the Board of Directors.

2.6.4 Unless otherwise decided by a meeting of Members, any causal vacancy occurring in the Board of Directors may be filled by the Directors and the Directors are empowered to co-opt onto the Board of Directors any individual.

2.6.5 Up to the end of the development period, the Directors shall have the power to at any time, and from time to time, appoint any person as Director but so that the total number of Directors shall not, at any time, exceed the maximum number fixed by the Members of the Association.

2.7 REMOVAL AND ROTATION OF DIRECTORS

2.7.1 A third of the Board of Directors will annually stand down. Members of the Board who stand down will be eligible to stand immediately for re-election on the Board, provided that up to the end of the development period, the Developer has the power to elect three Directors to the board upon a Resolution of its nominees to stand down.

2.7.2 A Director, save and except of shall be deemed to have vacated his office upon his having become disqualified to act as a Director in terms of the provisions of the Act and/or at the date upon which he has failed and/or neglected to make payment of each and every sum due by him to the HOA by way of levy and interest or any other amount, if any, and has failed to rectify such non-payment within 14 days upon written demand by the remaining directors;

2.7.3 In terms of section 69 of the Act a person is disqualified to be a director of a company if—

- a) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
- b) subject to subsections (9) to (12), the person—
 - i. is an unrehabilitated insolvent;
 - ii. is prohibited in terms of any public regulation to be a director of the company;
 - iii. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
 - iv. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—
 - aa) involving fraud, misrepresentation or dishonesty;
 - bb) in connection with the promotion, formation or management of a company, or in connection

with any act contemplated in subsection (2) or (5); or

cc) under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

2.7.4 Upon any vacancy occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors.

2.8 CHAIRMAN AND VICE CHAIRMAN

2.8.1 The Directors shall within 14 (Fourteen) days after each annual general meeting appoint from their number a Chairman who shall at all times, during the development period, be the developer.

2.8.2 In the event of any vacancy occurring in the board of directors the Board of Directors shall immediately appoint one of the members to the board.

2.8.3 Except as otherwise herein provided, the Chairman shall preside at all meetings of the Board of Directors and all General Meetings of Members and, in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act the Managing Agent shall chair the meeting

2.9 DIRECTORS' EXPENSES

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

2.10 POWERS OF DIRECTORS

2.10.1 Subject to the provisions hereof the Directors shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the Managing Agent, to exercise all such powers of the Association and do all such acts on behalf of the Association as

may be exercised and done by the Association and as are not by the Act or by this Memorandum required to be exercised or done by the Association in General Meeting.

2.10.2 Save as specifically provided herein, the Directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, a managing agent or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors and on such terms as the Director shall decide.

2.10.3 The Directors shall further have power to:

2.10.3.1 require the submission of for approval of plans, drawings, specification and other information as they may deem necessary to ensure compliance by members of this memorandum;

2.10.3.2 require that any works being constructed within the Scheme shall be supervised to ensure that the provisions of this Memorandum and of the rules are complied with and that all work is performed in a proper manner;

2.10.3.3 determine the access to the HOA and to the erven within the HOA;

2.10.3.4 determine the security facilities to be installed and the operation thereof for the protection of the HOA and the erven within the HOA;

2.10.3.5 issue an architectural and environmental design and maintenance manual in respect of the Scheme; and

2.10.3.6 Enter into any cession with the Developer of any rights the developer may hold in any to the HOA.

2.10.4 The Board of Directors shall have the right to co-opt onto the board any person or persons and who need not necessarily be a Member of the Association.

2.10.5 The Directors shall be entitled to appoint committees consisting of Members and outsiders, including the Managing Agent, as they may deem fit and to delegate to such committees all necessary functions, powers and duties as they may deem fit. The Directors may vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

2.10.6 The Directors shall appoint an architectural review committee which shall consist of:

2.10.6.1 a practising professional architect who is duly qualified to practice as such;

2.10.6.2 such committee members as the Directors may determine.

2.10.6.3 Members of the architectural review committee shall not necessarily be required to be Members of the Association.

2.10.6.4 All plans for buildings, outbuildings, structures, additions, alterations and all plans for all works shall be submitted by the Directors to the architectural review committee and the Director shall not approve any plan unless such plan shall first have been approved by the architectural review committee.

2.11 **PROCEEDINGS OF DIRECTORS**

- 2.11.1 The Directors may meet to attend to their business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of this Memorandum.
- 2.11.2 The quorum for the holding of any meeting of the Directors shall be 3 Directors. Of which 2 Directors must be representing the Developer. Any resolution passed by the Board of Directors shall be carried on a simple majority of all votes cast. Should there be an equality of votes for and against any resolution; the resolution shall be deemed to have been defeated.
- 2.11.3 The Directors shall cause the minutes of each meeting to be kept in accordance with Section 204 of the Act, which minutes shall be reduced to writing and signed as correct by the Chairman at the next meeting of Directors. All minutes of Directors meetings shall, after certification be placed in a Directors' Minute Book which shall be kept in accordance with the provisions of the law relating to keeping minutes of meetings of directors of companies. The Directors' Minute Book shall be open for inspection at all reasonable times by any Director, the Auditors, the Members and the Managing Agent.
- 2.11.4 Subject to the provisions of this Memorandum, the proceedings of any Directors meeting shall be conducted in

such reasonable manner and form as the Chairman of the meeting shall direct.

2.11.5 A resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors.

2.12 **GENERAL MEETINGS**

2.12.1 The Company shall hold an annual general meeting not later than 6 (six) months after the end of each financial year of the Company.

2.12.2 The Directors may, whenever they think fit, convene a general meeting and the secretary shall convene a general meeting if a general meeting is requisitioned in terms of the Act. If at any time there are, within the Republic, insufficient Directors capable of acting to form a quorum, any Director or Member of the Company may convene a general meeting in the same manner, as nearly as possible, as that in which meetings may be convened by the Directors.

2.12.3 Subject to the provisions of the Act, general meetings shall be held at such time and place as the Directors shall determine.

2.12.4 A General Meeting of Members shall also be convened on a requisition by Members of the Association representing not less than 1 /20th of the total voting rights of all the Members of the Company having at the date of the lodgement of the requisition a right to vote at General Meetings of the Company or, in default, may be convened by requisitions as provided by and subject to the provisions of the Company's Act.

2.13 NOTICE OF GENERAL MEETING

2.13.1 Subject to the provisions of the Act an annual general meeting and a meeting called for the passing of a special resolution shall be called on not less than twenty one (21) days' notice in writing and any other general meeting shall be called on not less than 14 (fourteen) days notice in writing, such number to be calculated excluding both the first and last day.

2.13.2 The notice of a meeting of the Company shall specify –

2.13.2.1 the place;

2.13.2.2 the date and time of the meeting; and

2.13.2.3 in the case of special business, the general nature of such business;

and shall be given in the manner hereinafter provided or in such other manner as may be prescribed by the Company in general meeting and to such persons as are, under this Memorandum entitled to receive such notices from the Company.

2.13.3 Notwithstanding the provisions of this Memorandum, but subject always to the Act:

2.13.4 a general meeting shall, notwithstanding that it is called by shorter notice than that specified in this Memorandum, 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, who hold not less than ninety five per centum of the total voting rights of all the Members;

2.13.5 a general meeting shall be entitled to deal with special business, the general nature of which has not been notified, if it is so agreed by a majority of the Members present having a right to attend and vote at the meeting, who between them hold not less than twenty five per centum of the total voting rights of the Members.

2.13.6 The accidental omission to give notice of a meeting or of any resolution, or give any other notification, or present any document required to be given or sent in terms of this

memorandum or in terms of the Act, or non-receipt of any such notice, notification or document by any member or other person entitled to receive same, shall not invalidate the proceedings at any meeting or shall not invalidate any resolution passed at any meeting.

2.14 **AGENDA**

2.14.1 In addition to any other matters required by the Act or in terms of this Memorandum to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting –

2.14.1.1 the consideration of the Chairman's report;

2.14.1.2 the election of Directors;

2.14.1.3 the consideration of any other matters raised at the meeting, including any resolutions proposed for adoption by such meeting and the voting upon any such resolutions;

2.14.1.4 the consideration of the accounts of the Association for the preceding financial year;

2.14.1.5 the consideration of the report of the Auditors and the determination of remuneration for the Auditors.

2.14.2 In the event that a member of the Company wishes to include any special business onto the agenda he is required to notify the chairman or the managing agent of such special business, in writing, no later than 48 (FORTY EIGHT) hours before the general meeting.

2.15 **PROCEEDINGS AT GENERAL MEETINGS**

2.15.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors and the appointment of an Auditor and the determination of the remuneration of the Auditor, the appointment of the managing agent and determination of the managing agent's contract, and may deal with any other business laid before it and of which notice has been duly given in terms of this Memorandum or in respect of which notice has been waived.

2.15.2 Where a company or other corporate body is a Member of the Company it may, in the appropriate manner, nominate any person it deems fit to act as its authorised representative at any general meeting and such authorised representative shall

be entitled to exercise the same rights and powers which that corporate body would have had at that meeting as if it were a natural person and present in person or by proxy.

2.15.3 Business may be transacted at a general meeting only while a quorum of Members is present.

2.16 **QUORUM FOR MEMBERS MEETING**

2.16.1 No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds. The quorum requirement for a members meeting to begin, or for a matter to be considered is –

2.16.1.1 Up to and inclusive the end of the development period, 25% of all Members of the Association present in person or represented by proxy and 3 representatives of the Developer.

2.16.1.2 After the development period 25% of all Members present in person or represented by proxy.

2.16.1.3 If within half an hour after the time appointed for the general meeting a quorum is not present, the general meeting, if convened upon requisition of

the Members, shall be dissolved. In any other case the general meeting shall stand adjourned to the same day in the next week at the same time and place, or if that day is not a business day to the next succeeding business day, and if at such adjourned general meeting a quorum is not present within half an hour after the time appointed for the meeting, the Members present in person or represented by proxy shall constitute a quorum.

- 2.16.2 The Chairman of the Board of Directors shall preside as chairman at every general meeting of the Company.
- 2.16.3 If there is no such Chairman or if at any general meeting he is not present within 10 minutes after the time appointed for the holding of the meeting or if he is unwilling to act as Chairman, the Managing Agent shall chair the meeting.
- 2.16.4 The Chairman of a general meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting to a different time or place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place. Subject to the Act, when a meeting is adjourned it shall not be necessary to give notice thereof.

2.16.5 No resolution at a general meeting will require a seconder.

2.17 **VOTING**

2.17.1 At any meeting of the Company:

2.17.1.1 Each Member of the Company present in person or represented by proxy, or if the Member is a Body Corporate or the school, duly represented at any meeting of the Company, shall have 1 vote for each free hold residential Erven of which he is the owner, 5 votes in respect of the school, 5 votes in respect of each of the bodies corporate and

2.17.1.2 The Developer shall, during the development period have an equal number of votes as there are the total number of Members votes in the Company in addition to the votes conferred upon the Developer in terms of this Article.

2.17.2 If an erf or a portion of an erf in the Scheme is registered in the name of more than one person, then all such co-owners shall jointly have one vote.

2.17.3 Subject to the provisions of this Memorandum, no person other than a duly registered Member who has paid every levy

and other sum, if any, which is due and payable to the Company in respect of or arising out of his Membership and any director who is not under suspension in terms of paragraph 2.7.2, shall be entitled to vote on any question, either personally or by proxy, at any general meeting.

2.17.4 No member who is in arrears with any amount due to the HOA may cast a vote at any meeting of the HOA until such time as all amounts due to the HOA by such member have been settled in full. A member may also not appoint a member who is in arrears to represent him at any meeting by proxy.

2.17.5 At any general meeting a resolution put to the vote shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by any person entitled to vote at the meeting. No poll shall, however, be demanded on the election of the Chairman of the meeting or on any question of adjournment. Unless a poll is demanded, a declaration by the Chairman of the meeting that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or negated and on entry to that effect in the minute book contemplated in clause 2.17.6 below shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

2.17.6 If a poll is demanded:

2.17.6.1 the poll shall be taken in such manner and at such time as the Chairman of the meeting shall direct;

2.17.6.2 the Chairman of the meeting shall be entitled to appoint scrutineers;

2.17.6.3 no notice of a poll other than an announcement at the meeting at which it is demanded shall be required;

2.17.6.4 the demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question on which the poll has been demanded;

2.17.6.5 a demand for a poll may be withdrawn;

2.17.6.6 the result of a poll shall be deemed to be the resolution of the meeting on any question on which the poll is taken.

2.17.7 In the case of an equality of votes, whether on a show of hands or a poll, the Chairman of the general meeting of members at which the show of hands takes place or at which the poll is taken shall **not be** entitled to a second or casting vote and the poll would be deemed to have been defeated.

2.17.8 Any objection to the admissibility of a vote on a show of hands or on a poll shall be raised at the general meeting at which that show of hands or poll is to take place or takes place. That objection shall be determined by the Chairman of that general meeting and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at that meeting shall be valid for all purposes.

2.17.9 A resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), the inclusion of that vote would have altered the result of the voting on that resolution.

2.18 **RESOLUTIONS**

2.18.1 **MEMBERS RESOLUTIONS**

2.18.1.1 For an ordinary resolution to be adopted at a members meeting, it must be supported by at least –

- a) 50% of the members who voted on the resolution, as provided in section 65(7)

2.18.1.2 For a special resolution to be adopted at a members meeting, it must be supported by at least –

- a) 75% of the members who voted on the resolution, as provided in section 65(9).

2.18.2 A resolution in writing signed by all the Members entitled to receive notice and attend and vote at the general meeting and inserted in the minute book kept in terms of clause 2.19 (minutes and inspection) shall be as valid and effective as if it had been passed at a general meeting duly called and constituted.

2.19 **MINUTES AND INSPECTION**

2.19.1 The Directors shall cause a record to be made of all resolutions of the Company in general meeting in a book provided for that purpose.

2.19.2 The minutes kept in terms of clause 2.19.1 above (or any extract thereof) which purports to be signed by the Chairman of the Board of Directors or by any Director shall be *prima facie* evidence of the matters therein stated.

2.19.3 The minute book shall be open for inspection and may be copied as provided in the Act.

2.20 **PROXIES**

2.20.1 A Member entitled to vote at a general meeting shall be entitled to appoint one person or more than one person in the alternative to each other as his proxy/ies to attend, speak and vote at a general meeting on his behalf.

2.20.2 A proxy need not be a member of the Company but may under no circumstances be a member who is in arrear with any levy payment or any other amount due to the company.

2.20.3 The instrument appointing a proxy shall be in writing under the hand of the appointer or his agent duly authorised in writing or, if the appointer is a corporate body, under the

hand of the authorised representative. A proxy need not be witnessed. Whether he is himself a Member or not, the holder of a general or special power of attorney given by a Member shall, if duly authorised under that power to attend and take part in meetings and proceedings of the Company or companies generally, be entitled to attend general meetings and to vote thereat.

2.20.4 A proxy form may be issued at the Company's expense only if it is sent to all Members who are entitled to attend and vote at the general meeting to which the proxy form relates.

2.20.5 The instrument 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 or authority) shall be deposited at the office not less than forty-eight (48) hours (or at such other place and such lesser period as the Directors may determine in relation to any particular meeting) before the time for the holding of the meeting which the person named in the instrument proposes to speak and vote. A form of power of attorney or proxy shall be invalid if this clause is not complied with.

2.20.6 Except insofar as the form appointing a proxy indicates otherwise, the appointment of a proxy shall be deemed to include the right to demand or join in demanding a poll and

(except to the extent to which the proxy is specially directed to vote for or against or to abstain from voting on any proposal or resolution), the power generally to act for the Member giving that proxy at the general meeting in question as the proxy may deem fit. Unless the contrary is stated therein, the form appointing a proxy shall be valid for each adjournment of the general meeting to which it relates.

2.20.7 No instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date on which it were signed unless specifically stated to the contrary in the instrument of proxy itself.

2.20.8 The instrument appointing a proxy may be in any usual or common form approved by the Directors but shall be so worded that the holder thereof may vote for or against or abstain from voting on any one.

2.21 **LOCATION OF MEMBERS MEETINGS**

2.21.1 Members' meetings shall be held within the magisterial district in which the HOA is situated unless it is determined otherwise by the Directors and notice of the address at which the meeting is to be held, which address falls outside the magisterial district in which the scheme is situated, is clearly

stipulated in the notice calling the meeting, subject to the following proviso:

2.21.1.1 If 10 (ten) percent of members to whom the notice convening the meeting is sent, *in writing* object to the address at which the meeting is to be held least 7 (seven) days before the meeting, the Directors shall have no alternative but to re-schedule the meeting to take place at an address within the magisterial district in which the scheme is situated.

2.21.1.2 The magisterial district is at present Brakpan in the region of Ekurhuleni in the province of Gauteng, South Africa.

2.22 INDEMNIFICATION OF DIRECTORS

2.22.1 The authority of the HOA's Board of Directors to indemnify a director in respect of the defense of legal proceedings, as set out in section 78 (3) is limited, restricted or extended to the extent set out in Part F of Schedule 2.

2.22.2 The authority of the HOA's Board of Directors to purchase insurance to protect the HOA, or a director, as set out in section is not limited or restricted by this Memorandum of Incorporation.

2.22.3 The directors and the HOA shall not be held liable for any loss, damage, destruction, theft or death of any person or property within the Estate.

2.23 OFFICERS AND COMMITTEES

2.23.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the HOA.

2.23.2 The authority of the HOA's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in section 72 (1), or to include in any such committee persons who are not directors, as set out in section 73 (2)(a) is not limited or restricted by this Memorandum of Incorporation.

3 RULES

3.1 Subject to the provisions of this Memorandum of Incorporation, Section 15(3) and 15(4) of the Companies Act and to any restriction imposed or direction given at a general meeting of the company, the Directors may from time to time make, and from time to time amend, substitute or add to,

3.1.1 rules governing the design and aesthetic control of any

building improvements to be erected on the residential stands, the open spaces and any facilities which may exist on the land which are intended for the general use, enjoyment and amenity of the Members;

3.1.2 rules governing the conduct of Members, their families, lessees, visitors, guests, occupants of their dwellings, contractors, employees and friends to ensure the security and safety of the property and all persons thereon.

3.2 For the enforcement of any of the rules made by the Directors in terms hereof, the Directors may:

3.2.1 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rules of which the Member may be guilty (including, without limiting the generality of the aforementioned, summarily terminating the supply of services to the Members' land and/or denying or restricting access to the property by the Member, and debit the cost of so doing to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the company; and/or

3.2.2 take such other action, including court proceedings, as they may deem fit.

- 3.3 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 as they in their discretion may deem fit.
- 3.4 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 Company, shall adjudicate upon this issue summarily at such time and in such manner and according to such procedure as the Chairman may direct.
- 3.5 Notwithstanding the aforementioned, the Directors may in the name of the Company 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.
- 3.6 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.

3.7 Each Member undertakes towards the Company that he shall comply with any rules made in terms of this Article 3.

4 AUDITORS

4.1 An auditor shall be appointed in compliance with the Companies Act.

4.2 The appointment, powers, rights, remunerations and duties of the auditors shall be regulated by the provisions of the Companies Act.

5 RESERVES

5.1 The directors may set aside out of the profits of the company or contingencies as budgeted for and carry to reserve such sums as they think proper.

5.2 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 company, for repairing, improving or maintaining any property of the company, for meeting losses on realization of, or writing down investments either individually or in aggregate, or for any other purpose to which profits of the company may appropriately be applied. Pending such application such sums

may either be employed in the business of the company (without being kept separate from other assets of the company or be invested and may not be repaid to members.

- 5.3 The directors may divide the reserve into such special reserves as they think 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 special reserves into which the reserve may have been divided. The directors may also carry forward any profits without placing them to reserve.

6 NOTICES

- 6.1 A Notice by the company to any member shall be regarded as validly given if it is delivered personally to the member, or sent by prepaid registered post to him at his registered address or emailed to him by electronic communication at an email address which was provided in terms of clause 34.2.
- 6.2 A member entitled to a notice shall be bound by every notice given in terms of paragraph 6.1. The company shall not be bound to enter any person in the register of members until that person gives the company details of the Members physical address, as well as a postal address and email address to enter on the register.

6.3 Any notice if given by post, shall be deemed to have been served on the day following that on which the letter or envelope containing such notice is posted, and in providing the giving of the notice sent by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office. Any notice by hand and via email shall be deemed to have been served on the same day of transmittal by hand or email.

6.4 When a given number of days' notice or notice over any period is required to be given, the days of service shall not be counted in such number of days or period.

6.5 The domicilium citandi et executandi of each member shall be the address of his erf registered in his name within the HOA; provided that such owner shall be entitled from time to time to change the said domicilium (as per clause 34.2) but such new domicilium selected shall be situate in the Republic of South Africa and shall not be a post office or poste restante and that the change shall only be effective on receipt of written notice thereof by the HOA at its domicilium.

7 WINDING-UP

7.1 The company does not have a share capital.

7.2 The liability of each member is limited to the following amount upon the company being wound-up in that each member undertakes to contribute to the assets of the company while he is a member or within one year after he has ceased to be a member upon the company being wound-up, the amount of R1.00 (one Rand) in respect of each freehold residential stand of which he is the owner.

8 **DISCLAIMER**

8.1 The HOA, its Managing, Agents and/or its Directors and staff shall accept no liability whatsoever for injury or loss or damage of any nature or description whatsoever, which the owner of a unit or the occupier of a unit or any member of his family or his staff, or his friends, acquaintances, visitors or guests may sustain, physically or to his or their property, directly or indirectly, in or about the common property or on the individual erven by reason of any defect in the common property and its amenities or for any act done or any neglect on the part of the HOA, its Directors, employees, agents or contractors.

8.2 The HOA or its agents and staff shall not be liable or responsible in any manner whatsoever for the receipt or non-receipt and the delivery or non-delivery of goods, postal matter or any other property.