

MEMORANDUM OF INCORPORATION

of

RIETVLEI RIDGE HOME OWNERS ASSOCIATION (NPC) Registration Number : 2004/027446/08

(which is referred to in the rest of this Memorandum of Incorporation as "*the Company*")

A) OBJECTS AND POWERS OF THE COMPANY:

The **Company** is a Non-Profit Company with members, with the following objectives:

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

The "**Township**" means the property comprising the # Estate.

2. It is the main business of the **Company**, ancillary to the main object, to:-
 - 2.1 manage, control, and administer, on behalf of its **Members**, the **Common Property** which may include, and where required and necessary, all electric, water, reticulation services, sewerage systems, storm water systems, roads, telecommunication and intercom systems and security within the **Township**; and
 - 2.2 formulate rules and by-laws for the control of buildings, walling, fencing, exterior, lighting, signage, landscaping and to ensure compliance of such rules and by-laws by the **Members**;
 - 2.3 ensure compliance by the **Members** of the Township Establishment Conditions, building restrictions and requirements and, where necessary, to ensure that the Local Authority enforces such conditions, restrictions or requirements;
 - 2.4 formulate and implement rules relating to security, landscaping, vegetation, parking, road use, signage and advertising, exterior finishes of buildings, fencing or walling;

- 2.5 make and enforce rules concerning design, landscaping, ecological planning and any building activities;
- 2.6 ensure that members maintain their **Units** in a clean and tidy condition;
- 2.7 consent to sub-division or re-zoning of any **Unit** and to impose such conditions relating to any landscaping and aesthetic appearance, as they may deem fit;
- 2.8 control access to and from the **Township**;
- 2.9 collect **Levies** and contributions towards funds of the **Company** for the attainment of the objects of the **Company**, to promote and maintain any business or enterprise of the **Company**; and
- 2.10 create Rules of Conduct concerning the rights and obligations of **Members** and the use of **Common Property** and **Units** within the **Township** and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation, are enforced equally upon all **Members** and are adhered to for the benefit of the **Members** as a whole and subject to such restrictions and/or conditions, restrictions and/or powers as may be imposed by the **Members** upon the **Directors**, in General Meeting, on the basis that all **Members** shall have equal rights and obligations;

B) ADOPTION OF MEMORANDUM OF INCORPORATION:

This Memorandum of Incorporation was adopted by Special Resolution of the **Members** in General Meeting, in accordance with **Annexure "A"** attached hereto.

C) DEFINITIONS:

In this Memorandum of Incorporation –

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- (c) the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

- (i) **“the Act”** : Means the Companies Act, 71 of 2008;
- (ii) **“Auditors”** : Means the **Company’s** appointed Auditors from time to time;
- (iii) **“Board”** : Means the **Board of Directors** of the **Company** from time to time;
- (iv) **“Business day”** : A business day is calculated by:
 - (a) excluding the day on which the first such event occurs;
 - (b) including the day on or by which the second event so occurs; and
 - (c) excluding any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively;
- (v) **“Chairman”** : Means the **Chairman** of the **Board of Directors**, elected in accordance with this Memorandum of Incorporation or if that expression is used with reference to a General Meeting or meeting of the **Directors**, at which that person is not present or does not act as **Chairman**, the person acting as **Chairman** in accordance with the provisions of this Memorandum of Incorporation;
- (vi) **“Common Property”** : Refers to the **Common Property Areas** in the **Township**, including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the **Common Property Areas** and within servitude areas registered in favour of the **Company**, that

are owned by the **Company** and for which the **Company** bears the responsibility to maintain, such as, amongst others, the streets, streetscapes, pavements, fencing, security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, storm water reticulation and any equipment or amenities used ancillary to such **Common Property Areas**, including gardens and buildings;

- (vii) **“Common Property Areas”** : Means those areas transferred to or registered in the name of the **Company** and located in the **Township**;
- (viii) **“Company”** : Means the Rietvlei Ridge Home Owners Association (NPC), Registration No: 2004/027446/08;
- (ix) **“Developer”** : Means the owner or seller of **Units** in the **Township** before any individual transfers were effected and with voting rights in respect of those **Units** still registered in the **Developer’s** name from time to time;
- (x) **“Development Period”** : Means the period which commenced with establishment of the **Township** and which terminates when the last **Portion** in the **Township** is transferred from the **Developer** to a third party or is developed for occupation by the **Developer**;
- (xi) **“Directors”** : Means the **Directors** of the **Company** who shall, for the purposes of the **Act**, be the **Directors** of the **Company** appointed or elected in accordance with the provisions of this Memorandum of Incorporation;

- poration;
- (xii) **“Effective Date”** : Means the date upon which CIPC issues a Registration Certificate, or accepts this Memorandum of Incorporation, or on the **1st of May 2013**, whichever event occurs first;
- (xiii) **“in writing”** : Means written, printed or lithographed, or partly one and partly another, and other modes of representing or producing words in a visible form;
- (xiv) **“Levies”** : Means all contributions levied from time to time by the **Directors** upon **Members** for the purpose of meeting all the expenses which the **Company** has incurred or which the **Directors** reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Article 1.5(6) of the Memorandum of Incorporation;
- (xv) **“Managing Agent”** : Means any person or body or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed by the **Company** as an independent contractor from time to time;
- (xvi) **“Member / Members”** : Means the **Developer** and/or his representatives during the **Development Period** in respect of those **Units** still registered in the name of the **Developer** and/or any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a **Unit** in the **Township** and/or any person who has successfully applied for membership of the **Company**;

- (xvii) **“Resident(s)”** : Means a person in occupation of a **Unit** on a temporary or permanent basis by agreement with and/or consent from the **Member** of a relevant **Unit** or through his affiliation or association with such **Member**;
- (xviii) **“Township”** : Means the property comprising the Rietvlei Ridge Estate;
- (xix) **“Unit”** : Means an erf or any subdivision thereof in the **Township** or a Unit established in terms of the Sectional Titles Act, Act 95 of 1986, within the **Township**;
- (xx) **“Vice-Chairman”** : Means the **Vice-Chairman** of the **Board of Directors**;
- (d) The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.

D) COMPANY ADMINISTRATION:

Article 1 – Incorporation and Nature of the Company

1.1 Incorporation

- (1) The **Company** is incorporated as a Non Profit Company, as defined in the Companies Act, 2008.
- (2) The **Company** is incorporated in accordance with, and governed by-
 - (a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies;
 - (b) 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; and
 - (c) the provisions of this Memorandum of Incorporation.

1.2 Objects and Powers of the Company

- (1) The Objects of the **Company** are as set out on the cover sheet (**Part A**) and, except to the extent necessarily implied by the stated objects, the purposes and powers of the **Company** are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii).
- (2) The **Company** is not subject to any provision contemplated in section 15(2)(b) or (c).
- (3) Upon dissolution of the **Company**, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, 2008, which holds that :-
 - (a) the net value of the **Company** must be distributed to one or more non-profit Companies, external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts – having objects similar to the **Company's** main object; and
 - (b) as determined:

- (i) by majority resolution of the **Members**, immediately before the time of dissolution or, failing such determination;
- (ii) by the Court.

1.3 Memorandum of Incorporation and Company rules

- (1) This Memorandum of Incorporation of the **Company** may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b), subject to the requirement that any alteration of the Memorandum of Incorporation or the Rules, made in terms of Section 17(1), shall be published to the **Members** of the **Company**, by delivering a copy of the altered Memorandum of Incorporation or the Rules, to each **Member** by ordinary mail and/or telefax and/or e-mail.
- (2) The **Company's Board of Directors** may make rules for the **Company**, without limitation or restriction and only subject to the provisions of Article 1.3(5), as contemplated in section 15(3) – (5) with regards to the following aspects:
 - (a) Preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of fences and other improvements to a **Unit**, whether upon or within the boundaries of any **Unit**, which may affect the aesthetical appearance and which includes additions and improvements such as satellite and/or radio antennae dishes and/or -receivers, air-conditioning units and/or solar heating systems and panels;
 - (b) The security, vegetation, parking, signage and advertising, exterior finishes of buildings or walling and fences, streetscapes and the maintenance of any **Unit** and any improvements thereon;
 - (c) The right to prohibit, restrict or control the keeping of any animal/bird/reptile which they may regard as dangerous or likely to cause a nuisance and/or disturbance to other residents or the flora and fauna in the **Township**;

- (d) The placing or affixing of ornamentation or embellishments to the outside of the buildings or on a portion within the **Township**, including the power to remove, or order the removal or to procure an order for removal of any such objects;
 - (e) The conduct of any person or persons within the **Township** for the preservation of peace and tranquillity and the prevention of nuisance of any nature to any **Member** resident or to prevent any harm to the environment;
 - (f) Furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of **Members** of the **Company**;
 - (g) The right to control reasonable access to the **Township** and to any **Portion** to protect the security of the **Township**, the **Members** and residents and all users thereof;
 - (h) The control of any visitors, contractors and labourers and restriction of their access and activities on the **Township**;
 - (i) The enforcement of any of the Rules.
- (3) For the enforcement of any Rules made by the **Directors** or the **Company**, the **Directors** shall be entitled to:
- (a) implement a system of fines and penalties from time to time in order to deter any contravention of these Rules and to ensure the due enforcement of these Rules.
 - (b) Any penalties imposed by the Directors are subject to adjustment and/or ratification by members in General Meeting.
 - (c) In the event of contravention of any of these Rules, the following procedure will be followed and implemented by the Directors/**Managing Agent**:
 - (i) A letter of demand will be sent to the member, specifying the nature of the breach and demanding him to remedy the breach within a period of 10 (ten) days;

- (ii) Should the member fail to adhere to the demand letter and to remedy the breach then, unless written objection is received by the owner concerning the alleged contravention, the prescribed penalty shall be implemented and levied against the member's levy account and shall be enforceable, as if such penalty or fine constitutes a normal levy;
- (iii) If the transgression is disputed and upon receipt of any written objection by the **Member**, a Committee of 3 (three) **Directors** appointed by the **Chairman** for this purpose, shall convene a meeting with the **Member** within a period of 10 (ten) days to adjudicate upon the issue. The meeting shall take place at a venue and time, and in accordance with such procedure, as the **Chairman** of the Committee shall direct; provided that the Rules of natural justice shall be observed and at which meeting the **Member** shall be entitled to address his objection and to call witnesses.
- (iv) The decision of the **Board** shall be final;
- (v) Should the **Member** refuse to accept the decision of the **Board** on any matter, such dispute shall then be referred to arbitration in terms of these Rules.

(4) Arbitration:

- (a) In the event of a dispute between the **Company** and a Member or between Members arising out of or in connection with or related to provisions of this Memorandum of Incorporation, the **Act** or the Rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions.
- (b) Notwithstanding the provisions of clause (4)(a), any dispute concerning the payment of monies due to the **Company**; shall be excluded from arbitration.
- (c) If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the **Board** and the **Managing Agent**, if any, and should the dispute or complaint not be resolved within 14 (fourteen)

days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.

- (d) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- (e) If the parties cannot agree as to the person of the arbitrator to be appointed in terms of sub-rule 11.2.4 within 5 (five) days after the arbitration has been demanded, the auditors of the **Company** shall, upon written application, in writing, appoint an arbitrator within 7 (seven) days after they have been required to make the appointment.
- (f) The arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 7 (seven) days after demand for security or payment was made, the other party shall be entitled to abandon arbitration proceedings.
- (g) The intention being that the arbitration shall be concluded within 45 (forty five) days after an arbitrator has been appointed or security for costs has been furnished.
- (h) The arbitrator shall make his/her award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his/her award, have regard to the principles laid down in terms of the Memorandum of Incorporation and the Rules thereunder. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he/she may determine and as he/she in his/her discretion may deem appropriate, having regard to the outcome of the arbitration.
- (i) In making an award of costs, it shall be competent for the arbitrator to award costs against the **Company** on the

basis that the member in whose favour the award was made, shall be excluded from contributing to such costs through his general levy and/or any special levy contributions.

- (j) The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to, or affected by, the arbitration.
 - (k) The provisions of the Arbitration Act, No. 42 of 1965 shall be applicable.
 - (l) Notwithstanding that the Arbitration Act, No. 42 of 1965 makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the **Company** and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event, not later than 10 (ten) days prior to the arbitration hearing.
- (5) The **Board** must publish any rules made in terms of section 15(3) – (5) by delivering a copy of those Rules to each **Member** by ordinary mail and/or telefax and/or e-mail. The Rules are available for inspection at the office of the Company at all times within business hours and a copy will be made available against payment of the reasonable fee as determined by the **Board of Directors** from time to time.
- (6) The **Company** must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) by delivering a copy of the notice and altered Memorandum of Incorporation or the Rules, to each **Member** by ordinary mail and/or telefax and/or e-mail.
- (7) All Rules made by the **Board of Directors** must be ratified by the **Members** of the **Company** at the General Meeting following the publication of the Rules to the **Members**.
- (8) Any Rules issued by the **Directors** with regards to conduct of **Members** or any other matter, in force on the date before this

Memorandum of Incorporation is accepted by the **Members**, will remain of force and effect as if they were issued in terms of this Article 1.3(2).

- (9) The **Company** may itself, through the **Members** in General Meeting, make any Rules which the **Directors** may make in terms of Article 1.3.2 and may likewise vary or modify any Rules made by it or the Directors from time to time.

1.4 **Optional provisions of Companies Act, 2008 do not apply**

The **Company** elects to, in terms of section 34(2), appoint an Auditor, but will not appoint an Audit Committee or a Company Secretary.

1.5 (1) **Membership of the Company**

As contemplated in Item 4(1) of Schedule 1 of the **Act**, the **Company** has **Members**, who are all in a single class, being voting **Members**, each of whom has an equal vote in any matter to be decided by the **Members** of the **Company**.

(2) **Qualification for Membership of the Company**

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

- (2.1) The incorporators of the **Company** during the **Development Period** of the **Township**; and
- (2.2) Notwithstanding the provisions of Article 1.5(3), any other person (natural person or a juristic entity) who, at incorporation or thereafter, is reflected, in terms of the Deeds Registries Act, No. 47 of 1937, in the records of the Deeds Office concerned, as the registered owner of a **Unit** in the **Township** and who will be bound by the provisions of the Companies Act, 2008, this Memorandum of Incorporation and any Rules made and incorporated hereunder;
- (2.3) Where any **Unit(s)** in the **Township** is owned by more than one person, all the registered owners of that **Unit(s)** shall together be deemed to be one **Member** of the **Company** and have the rights and obligations of one **Member** of the **Company**; provided however that all co-owners of a

Unit(s) shall be jointly and severally liable for the due performance of any obligations towards the **Company**.

(3) Application for Membership of the Company

(3.1) Subject to the provisions of Article 1.5(2), application for Membership of the **Company** shall be made to the **Board in writing**.

(3.2) When application is made for membership of the **Company** by a person, such person shall declare himself bound by the terms and conditions of this Memorandum of Incorporation and any Rules made thereunder and such person shall be deemed to have acquainted himself with the terms and conditions thereof.

(3.3) All **Members** who are **Members** of the **Company** at the time this Memorandum of Incorporation is adopted, shall remain **Members** of the **Company** by virtue of them being the registered owners of **Unit(s)** in the **Township**.

(4) Initial or periodic costs for membership

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

(5) Rights and obligations of Membership

(5.1) A **Member** of the **Company** shall remain a **Member** thereof until he ceases to be the registered owner, as reflected in the relevant Deeds Office as an owner of a **Unit** in the **Township** and a **Member** shall therefore not be entitled to resign as a **Member** of the **Company** unless he ceases to be a **Member** of a **Unit** in the **Township**.

(5.2) The rights and obligations of a **Member** shall not be transferable and every **Member** shall:

(5.2.1) further, to the best of his ability, the objects and interests of the **Company**;

- (5.2.2) observe all Rules made by the **Company** or the **Directors**;
- (5.2.3) pay all **Levies** due by the **Member**, to the **Company**;
- (5.2.4) comply with the Conditions of Establishment of the Township;
- (5.2.5) abide by the Memorandum of Incorporation and adhere to the Rules and By-laws proclaimed by the **Directors** from time to time.

provided that nothing contained in this Memorandum of Incorporation of the **Company** shall prevent a **Member** from ceding his rights in terms of this Memorandum of Incorporation as security to the mortgagee of the **Member's Unit**;

- (5.3) No **Member** shall let or otherwise part with occupation of his **Unit**, whether temporarily or otherwise, unless he has agreed **in writing** with the proposed occupier of such **Unit**, as a *stipulatio alteri* in favour of the **Company** that such occupier shall be bound by all the terms and conditions of this Memorandum of Incorporation and any Rules made thereunder, and such written agreement is lodged with the **Company** prior to the proposed occupier taking occupation of the **Unit** in question.
- (5.4) Every **Member** shall, when he agrees to transfer ownership of his **Unit** in the **Township**, set it as a condition of the agreement of sale and transfer, that the new owner shall apply for membership of the **Company** and be accepted as **Member** of the **Company** and therefore become a **Member** of this **Company**, accepting his/her/its obligations towards the **Company** as **Member**.
- (5.5) No **Member** of a **Unit** in the **Township** shall be entitled to dispose thereof to any other person without the written consent of the **Company** first having been obtained under the hand of the Secretary, his/her/its authorised agent or the **Managing Agent**, which consent will not be withheld unless:
 - (5.5.1) such **Member** is in arrear with any **Levies**, penalties, fines or interest or other payment due

to the **Company** in terms of the Memorandum of Incorporation or the Rules or otherwise;

- (5.5.2) such **Member** is in breach with any of his obligations towards the **Company** in terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company, in writing**, to remedy such breach and remain in breach;
- (5.5.3) the prospective transferee has not applied for membership of the **Company**, where such application is required, or has not been accepted as **Member** of the **Company**.
- (5.6) No **Member** of a **Unit** in the **Township** shall be entitled to pass transfer thereof to any other person until the **Company**, under the hand of its Secretary or his/her/its authorised representative or the **Managing Agent**, has certified by way of a clearance certificate that such **Member** as at date of transfer has complied with all his/her/its financial and other obligations towards the **Company**.
- (5.7) The provisions of Article 1.5(5.5) and (5.6) shall apply *mutatis mutandis* to any alienation of an undivided share in a **Unit** in the **Township**.
- (5.8) The **Directors** of the **Company** may impose an additional, reasonable fee upon the **Members** of the **Company** for the issuing of the Clearance Certificate as referred to in Article 1.5(5.6). The said fee will be determined by the **Directors** or the **Managing Agent** from time to time and will be subject to ratification by the **Members** in General Meeting.
- (5.9) **Members** shall have the rights prescribed by the **Act**, the Memorandum of Incorporation and any Rules made thereunder, which shall *inter alia* include the following rights:
 - (5.9.1) the right to nominate and elect the **Directors** of the **Company**;
 - (5.9.2) the right to receive access to the **Company** records in accordance with the provisions of Section 26 of the **Act**;

- (5.9.3) the right to receive notice of, attend, speak and vote at General Meetings of the **Company**;
 - (5.9.4) the right to receive access to the Financial Statements or related information of the **Company**.
- (5.10) A **Member/(s)** shall not have the right to vote at any General Meeting, or as contemplated in terms of the provisions of Section 60 of the **Act**, if:
- (5.10.1) such **Member** is in arrear with any **Levies**, service costs, contributions, penalties, fines, legal costs or interest or any other payment due to the **Company** in terms of this Memorandum of Incorporation or the Rules or otherwise;
 - (5.10.2) such **Member** is in breach with any of his obligations towards the **Company** in terms of this Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company, in writing**, to remedy such breach and he remains in breach.

(6) Levies

- (6.1) The **Directors** may from time to time determine the **Levies** payable by the **Members** for the purpose of meeting all the expenses which the **Company** has incurred, or to which the **Directors** reasonably anticipate the **Company** will be put in the attainment of its objects or the pursuit of its business.
- (6.2) The **Directors** shall not less than thirty days prior to the end of each financial year or so soon thereafter as is reasonably possible, publish a notice indicating an estimate, in reasonable detail, of the amount which shall be required by the **Company** to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The **Directors** may include in such estimate an amount to be held in reserve to meet

anticipated expenditure not of an annual or recurring nature.

- (6.3) Each notice to each **Member** shall specify the contribution (levy) payable by that **Member** to such expenses and reserve fund.
- (6.4) The annual levy for the ensuing financial year or any special- or other levy to be implemented, shall become due and payable on the passing of a **Board** Resolution to that effect, or the publication thereof as envisaged in Article 1.3(4), and shall be payable in the form that the **Directors** may direct from time to time and failing direction, in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- (6.5) In the event of the **Directors** for any reason whatsoever failing to prepare and timeously serve the notice referred to in Article 1.5(6.4) above, every **Member** shall until served with such notice, continue to pay the levy previously imposed and shall after service of such notice pay the levy specified therein.
- (6.6) Upon the change of ownership of a **Unit**, the successor in title becomes liable for the pro-rata payment of contributions from the date of change of such ownership.
- (6.7) The **Directors** may from time to time impose special **Levies** upon the **Members** in respect of all expenses as are mentioned in Article 1.5(6)(6.1) which are not included in any estimate made in terms of Article 1.5(6)(6.2), and may in imposing such **Levies** further determine the terms of payment thereof.
- (6.8) All **Levies** and any special **Levies** referred to in Article 1.5(6)(6.7), becomes due on the passing of a Resolution to that effect and may be recovered by the **Company** by action in any competent Court having jurisdiction, from the **Member(s)** who were owner(s) of the **Unit(s)** at the time when such Resolution was passed.
- (6.9) The **Directors** shall be empowered in addition to such other rights as the **Company** may have in law against its **Members** to determine the rate of interest from time to time chargeable upon arrear **Levies**. Should the **Directors** fail to make any determination of the interest rate, then and in that event, the prescribed rate of interest, as may

be applicable from time to time in terms of the Prescribed Rate of Interest Act, Act No. 55 of 1975, shall be applicable and which interest rate at adoption of this Memorandum of Incorporation is 15,5% per annum. Interest shall be calculated monthly in arrears and compounded.

- (6.10) The obligation of a **Member** to pay a levy and interest shall cease upon his ceasing to be a **Member** without prejudice to the **Company's** right to recover arrear **Levies** and interest and penalties, fines and other amounts due to the **Company**. No **Levies**, interest, penalties, fines or other amounts paid by a **Member** shall under any circumstances be repayable by the **Company** upon his ceasing to be a **Member**. A **Member's** successor in title to a **Unit** shall be liable for payment of **Levies** as from the date upon which he becomes the registered owner of the **Unit** as reflected in the Deeds Registry.
- (6.11) No **Unit(s)** registered in a **Member's** name shall be capable of being transferred without a Clearance Certificate as referred to in Article 1.5(5)(5.6) first being obtained from the **Company** confirming that all **Levies**, penalties, fines or other amounts due and interest have been paid up to and including date of registration of transfer thereof.
- (6.12) A **Member** shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the **Company** in obtaining the recovery of arrear **Levies**, penalties, fines, interest or any other arrear amounts due and owing by such owner to the **Company** or in enforcing compliance with the **Act**, the provisions of this Memorandum of Incorporation, or the Rules.
- (6.13) The **Directors** may from time to time determine a charge to be levied against **Members** in arrears, as an administration charge payable to the **Company** or to the **Managing Agent**. Any administration charges so levied shall be subject to review of the **Members** in General Meeting.
- (6.14) Interest imposed by the **Directors** shall be subject to review by the **Members** in General Meeting and shall not exceed any limitations set by legislation.
- (6.15) All payments made by a **Member** and received by the **Company**, shall be allocated firstly towards interest, legal costs and thereafter towards capital. The **Board** reserves

the right to allocate payments as they deem fit in the absence of an express allocation by the **Member**. In the absence of an express allocation by the **Board** or the **Member**, all payments will be allocated to the debt newest in time.

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

Article 2 – Rights of Members

2.1 Members' authority to Act

If, at any time, every **Member** of the **Company** is also a Director of the **Company**, as contemplated in section 57(4), the authority of the **Members** to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2 Members' right to Information

A **Member** has the right to access to information as set out in Section 26(1) of the **Act**.

2.3 Representation by concurrent proxies

The right of a **Member** of the **Company** to appoint 2 (two) or more persons concurrently as proxies, as set out in section 58(3)(a) is not limited, restricted or varied by this Memorandum of Incorporation.

2.4 Authority of proxy to delegate

The authority of a **Member's** proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b) is not limited or restricted by this Memorandum of Incorporation.

2.5 Requirements to deliver proxy instrument to the Company

The requirement that a **Member** must deliver to the **Company** a copy of the instrument appointing a proxy before that proxy may exercise the **Member's** rights at a **Members** meeting, as set out in section 58(3)(c) is varied to the extent that a copy of the instrument appointing a proxy must be delivered to the **Company** or to any other person acting on behalf of the **Company** (including a Board member or duly appointed **Managing Agent**) at any time before commencement of the proceedings or meeting at which the proxy exercises any rights of the **Member**.

2.6 Deliberative authority of proxy

The authority of a **Member's** proxy to decide without direction from the **Member** whether to exercise, or abstain from exercising any voting right of the **Member**, as set out in section 58(7) is not limited or restricted by this Memorandum of Incorporation.

2.7 Record date for exercise of Member rights

If, at any time, the **Company's Board of Directors** fails to determine a record date, as contemplated in section 59, the record date for the relevant matter shall be 15 (fifteen) days prior to the action, meeting or event as contemplated in accordance with section 59(3).

Article 3 – Members Meetings

3.1 Requirement to hold meetings

- (1) The **Company** shall, within 6 (six) months after the end of each financial year, hold a General Meeting in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices, in terms of Article 3.4 below, calling such meeting;
- (2) The abovementioned General Meeting shall be called the “Annual General Meeting” and all other General Meetings shall be called “Special General Meetings”.

3.2 Members’ right to requisition a meeting

The right of **Members** to requisition a meeting, as set out in section 61(3), may be exercised by at least 20% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting despite the provisions of that section.

3.3 Location of Members meetings

The authority of the **Company’s Board of Directors** to determine the location of any **Members** meeting, and the authority of the **Company** to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) is limited or restricted to the extent that all **Members’** meetings shall be convened to take place at a location, preferably within the **Township** or within close proximity thereof.

3.4 Notice of Members meetings

The minimum number of days for the **Company** to deliver a notice of a **Members** meeting to the **Members**, as required by section 62 is as provided for in section 62(1), being 15 (fifteen) **Business Days**.

3.5 Electronic participation in Members meetings

The authority of the **Company** to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation; provided that the

electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively at the meeting.

3.6 Quorum for Members meetings

- (1) The quorum requirement for a **Members** meeting to begin, or for a matter to be considered are as set out in section 64(1) without variation is 10% (ten percent) of the votes entitled to be exercised, present in person or by proxy, subject thereto that at least 3 (three) **Members** are present as determined in Section 64(3)(a).
- (2) The time periods allowed in section 64(4) and (5) apply to the **Company**, subject to the following variations :
 - (a) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for 1 (one) week;
 - (b) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for consideration of a particular matter to begin have not been satisfied –
 - (i) if there is other business on the Agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - (ii) if there is no other business on the Agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote.
 - (c) The person intended to preside at a meeting that cannot begin due to the operation of sub-section 64(1)(a) or 64(3), where a quorum is not present, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub-section 64(5).
- (3) The authority of a meeting to continue to consider a matter after the quorum has been met, so long as at least 1 (one) **Member**

remains present, as set out in section 64(9), is not limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of Members meetings

- (1) If a quorum has not been reached within 15 (fifteen) minutes after the appointed time for the meeting to begin or such extended period as the **Chairman** directed, the **Chairman** appointed for the meeting will be authorized to adjourn the meeting of the **Members** for 1 (one) week. Adjournment will take place in accordance with the provisions of Sections 64(4) – (13).
- (2) The maximum period allowable for an adjournment of a **Members** meeting is (sixty) **Business Days** after the date upon which the adjournment occurred.

3.8 Members resolutions

- (1) For any ordinary resolution to be adopted at a **Members** meeting, it must be supported by at least 51% of the **Members** who voted on the resolution, despite the provisions of section 65(7).
- (2) For a special resolution to be adopted at a **Members** meeting, it must be supported by at least 75% of the **Members** who voted on the resolution, as provided in section 65(7).
- (3) A special resolution adopted at a **Members** meeting is not required for a matter to be determined by the **Company**, except those matters set out in section 65(11) and the following matters:
 - (a) to amend the **Company's** Memorandum of Incorporation to the extent required by Section 16(1)(c);
 - (b) to approve the voluntary winding-up in the circumstances contemplated in Section 80(1);
 - (c) to approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the **Act**, subject to Schedule 1 of the **Act**;
 - (d) to ratify actions by the **Company** or **Directors** in excess of their authority, as contemplated in Section 20(2);

- (e) to authorize the **Board** to grant financial assistance in the circumstances contemplated in Section 44(3)(a)(ii) or 45(3)(a)(ii);
- (f) to authorize the basis for compensation to **Directors** of the **Company**, as required by Section 66(9).

3.9 Votes of Members

At every General meeting:

- (1) Every **Member**, including the **Developer**, in person or by proxy and entitled to vote, shall have 1 (one) vote for each **Portion** registered in his name;
- (2) If a **Unit** is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote;
- (3) Save as expressly provided for in these presents, no person other than a **Member**, duly registered and who shall have paid every levy or other sum due and payable to the **Company** in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting;
- (4) At any General Meeting, a Resolution put to the vote of the meeting, shall be decided on a show of hands, unless a poll (before or in the declaration of the result of a show of hands) is demanded by the **Chairman** or **Members** referred to in Section 63(4)(2)(vi) of the **Act** and unless a poll is so demanded, a declaration by the **Chairman** that a Resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or has been declined, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or the proportion of the votes recorded in favour or against such Resolution. The demand for a poll may be withdrawn.
- (5) If a poll is duly demanded, it shall be taken in such manner as the **Chairman** directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded. Two (2) **Members** shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the Resolution shall fail. In the case

of equality of votes for and against any Resolution, the Resolution shall be deemed to have been defeated.

- (6) Every Resolution and every amended Resolution proposed for adoption by a General Meeting, shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.
- (7) Unless any **Member** present in person or by proxy at a General Meeting shall, before closure of the meeting, have objected to any declaration made by the **Chairman** of the meeting as to the result of any voting at the meeting, whether by a show of hands or otherwise, or validity of the procedure at such meeting, such declaration by the **Chairman** shall be deemed to be a true and correct statement of the voting, and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated, with or without record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

Article 4 – Directors and Officers

4.1 Composition of the Board of Directors

- (1) The **Board of Directors** of the **Company** comprises the elected **Directors**, and their alternate **Directors** each of whom is to -
 - (a) be elected in the following manner:
 - (i) There shall be a **Board of Directors** of the **Company** which shall consist of not less than 6 (six) and not more than 10 (ten) **Directors**, provided that each Body Corporate within the **Township** with more than 15 (fifteen) members, shall be entitled to representation of 1 (one) **Director** to the **Board** and provided further that **Directors** representing the Bodies Corporate, shall not exceed 50% (fifty percent) of the **Board of Directors**;
 - (ii) **Directors** shall serve for a term of 1 (one) year or until the next **Members'** Meeting, and shall be eligible for re-election;
 - (iii) If a **Members** meeting for the election of **Directors** is not convened before the expiry of the 1 (one) year term within which a Director serves, then and in that event, such Director(s) shall continue to hold office from the date of his/her/their appointment until the next Annual General Meeting following such appointment and at which meeting each Director shall be deemed to have retired from office but will be eligible for re-election to the **Board of Directors** at such meeting;
 - (iv) Nominations for election of **Directors** must be delivered to the **Company** or to any other person acting on behalf of the **Company** (including a Board member or duly appointed **Managing Agent**) at any time before commencement of the proceedings or meeting at which the nomination is to be considered;
 - (v) Upon any vacancy occurring in the **Board of Directors** prior to the next Annual General Meeting, the vacancy in question shall be filled by a person to

be nominated by the **Chairman** of the **Board of Directors** for the time being and in his absence or inability, the **Vice-Chairman**;

- (vi) Within 7 (seven) days of the holding of each Annual General Meeting, the **Board of Directors** shall meet and shall elect from their own numbers, the **Chairman** and the **Vice-Chairman**, who shall hold their respective offices until the Annual General Meeting held next after their said appointments, provided that the office of the **Chairman** or **Vice-Chairman** shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason; and
 - (b) serve for a term of 1 (one) year.
- (2) In addition to the elected **Directors** there may be directly appointed **Directors** of the **Company**, or the appointment or election of alternate **Directors** of the **Company**, as contemplated in section 66(4), to be designated in the following manner: The **Chairman** of the **Board of Directors** for the time being, and in his absence or inability to act, the **Vice-Chairman** of the **Board of Directors** may, upon any vacancy occurring in the **Board of Directors**, appoint a Director to fill such vacancy until election of Board Members at the next Annual General Meeting or Special General Meeting convened for this purpose.
- (3) In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the **Company**, a person must satisfy the following additional eligibility requirements and qualifications:
- (a) be a paid-up **Member** of the **Company** at the time of appointment as Director;
 - (b) may not be in breach of any of his/her obligations as a **Member** of the **Company**, as stipulated in the Memorandum of Incorporation or the Rules;
 - (c) may not be disqualified from acting as Director of the **Company** in terms of the Companies Act, 2008.

- (4) Each **appointed** (not elected) Director of the **Company** serves for an indefinite term, until substituted by the person or entity that made the appointment or until the next Annual General Meeting following his appointment.
- (5) A **Director** shall be deemed to have vacated his office as such when:
 - (a) he resigns his office by notice in writing to the **Company**;
 - (b) he has been disqualified to act as a **Director** in terms of the provisions of Sections 69 of the **Act**;
 - (c) he has been discharged from office under circumstances in terms of Section 71 of the **Act**;
 - (d) he becomes of unsound mind;
 - (e) he is absent from more than 2 (two) meetings of the **Directors** without leave having been granted to him and if the **Board** so resolve;
 - (f) his removal has been approved by majority resolution of the **Members** in General Meeting.

4.2 Authority of the Board of Directors

The authority of the **Company's Board of Directors** to manage and direct the business and affairs of the **Company**, is not limited or restricted by this Memorandum of Incorporation but subject only to any restriction and direction given at a General Meeting of the **Company**.

4.3 Board of Directors meetings

- (1) The authority of the **Company's Board of Directors** to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation and may instead be adopted by written consent of a majority of the **Directors** given in person, or by electronic communication, provided that each **Director** has received notice of the matter to be decided.
- (2) The right of the **Company's Directors** to requisition a meeting of the **Board**, as set out in section 73(1), may be exercised by at least 25% of the **Directors**, despite the provisions of that section.

- (3) The authority of the **Company's Board of Directors** to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation.
- (4) The authority of the **Company's Board of Directors** to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this Memorandum of Incorporation.
- (5) The authority of the **Company's Board of Directors** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this Memorandum of Incorporation.
- (6) The quorum requirement for a **Directors** meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such meeting, are as set out in section 73(5) (51% / a majority of the **Directors**).
- (7) Each **Director** has 1 (one) vote on a matter before the **Board**.
- (8) A simple majority of the votes cast on a Resolution is sufficient to approve a Resolution of the **Board of Directors**.
- (9) **A Chairman:**
 - (a) The **Directors** will, at the first meeting after being appointed as such in terms of Article 4.1(1), elect a **Chairman** from their number to hold office as such for 1 (one) year or until the next Annual General Meeting, whereafter the newly elected **Directors** will elect a new **Chairman** at their first meeting after the Annual General Meeting.
 - (b) The **Chairman** elected shall hold his office until the Annual General Meeting next after his appointment, provided that the office of **Chairman** shall *ipso facto* be vacated by a **Director** holding such office upon him ceasing to be a **Director** for any reason. In the event of any vacancy of the aforesaid office occurring during the term for which the **Chairman** is elected, the **Vice-Chairman**, if any, shall act as such and the **Board of Directors** shall immediately appoint one of their number as a replacement to the office of **Chairman** or **Vice-Chairman**.

(10) **Chairman** to preside at meetings:

Except as otherwise provided, the **Chairman** shall preside at all meetings of the **Board of Directors** and at all General Meetings of **Members** and in the event of him not being present within 5 (five) minutes of the scheduled time for the commencement of the meeting or in the event of his inability or unwillingness to act as **Chairman**, the **Vice-Chairman**, if appointed shall preside at such meeting and failing him, a **Chairman** shall be elected from the ranks of the **Members** present, by the **Members** present.

4.4 Indemnification of Directors

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

4.5 Officers and Committees

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

4.6 Accounting records

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

4.7 Annual Financial Statements

- (1) The **Directors** shall from time to time, in accordance with Section 29 and 30 of the **Act**, cause to be prepared and laid before the **Company** in General Meeting, such Annual Financial Statements as are referred to in those Sections.
- (2) The Annual Financial Statements of the **Company** will be audited annually by the Auditor.
- (3) A copy of any Annual Financial Statements which are to be laid before the **Company** in Annual General Meeting, in terms of Section 30(3)(d) of the **Act**, shall be included in the notice of the Annual General Meeting, at which it is to be considered.

Article 5 – General Provisions

5.1 Rules

In accordance with the provisions of Section 15 of the **Act**, the Rules as set out in Schedule 5 hereto, are effective as at the **Effective Date**, which Rules may from time to time be amended, supplemented or repealed in accordance with the provisions of the Memorandum of Incorporation and the **Act**. Any Rules made, amended or repealed by the **Board** of the **Company** from time to time shall be published in accordance with the following requirements:

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

5.2 The Rules concerns all matters referred to in Article 1.3(3), and the conduct of **Members**, residents and visitors of the **Township**, including Guidelines concerning any improvements, encroachments on **Common Property** and alterations thereto, to the extent that such improvements/alterations may influence the aesthetical and harmonious appearance of the **Township**.

5.3 Save to the extent that the Rules as set out in Schedule 5 hereto were amended, the Rules issued by the **Directors** or the **Company** with regards to conduct of **Members** or any other matter, in force on the date before this Memorandum of Incorporation is accepted by the **Members**, will remain of force and effect as if they were issued in terms of Article 1.3(2).

Schedule 5

Rules

Introduction:

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

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

These Rules comprise of:

- (A) **Conduct Rules**
- (B) **Security : Access Policy and Procedures**
- (C) **Contractor's / Owner Builder's Standard Code of Conduct**

Definitions:

In these Rules the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

- (i) **"Board"** : Means the Board of Directors of the **Company** from time to time in office;
- (ii) **"Common Property" or "Communal Property"** : Means all areas comprising the **Township** but excluding the **Units**;
- (iii) **"Company"** : Means the # Home Owners Association (NPC), established as a Non-profit Company in accordance with the provisions of the Companies Act, 71 of 2008;
- (iv) **"Developer"** : Means the owner or seller of **Units** in the **Township** before any

individual transfers were effected and with voting rights in respect of those **Units** still registered in the **Developer's** name from time to time;

- (v) **“Development Period”** : Means the period which commenced with establishment of the **Township** and which terminates when the last **Unit** in the **Township** is transferred from the **Developer** to a third party or is developed for occupation by the **Developer**;
- (vi) **“Levies”** : Means all contributions levied from time to time by the Directors upon **Members** for the purpose of meeting all the expenses which the **Company** has incurred or which the Directors reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Schedule 1, Part E, Item 5 of the **Memorandum of Incorporation**;
- (vii) **“Managing Agent”** : Means any person or body or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed by the **Company** as an independent contractor from time to time;
- (viii) **“Member” / “Members”** : Means the Developer and/or his representatives during the **Development Period** in respect of those Units still registered in the name of the **Developer** and/or any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a **Unit** in the **Township**;
- (ix) **“Memorandum of Incorporation” (“MOI”)** : Means the Memorandum of Incorporation of the **Company** (Form CoR 15.1E);

- (x) **“Owner”** : Means the owner or co-owner of a **Unit** in the **Township**;
- (xi) **“Township” / “Estate” / “Rietvlei Ridge Estate”** : Means all the property/ies comprising the Rietvlei Ridge Estate;
- (xii) **“Unit”** : Means an erf or any subdivision thereof in the **Township** or a Unit established in terms of the Sectional Titles Act, Act 95 of 1986, within the **Township**.

- (xiii) Words importing -
 - (i) the singular shall include the plural and vice versa;
 - (ii) the masculine gender shall include females; and
 - (iii) persons shall include partnerships, trusts and corporate bodies, and vice versa.

- (xiv) Head notes to paragraphs in this **MOI** are inserted for purposes of reference only and shall not affect the interpretation of provisions to which they relate.

- (xv) Reference to the **MOI** means this **Memorandum of Incorporation**, including all schedules and annexures hereto.

- (xvi) Any word or expression which is defined in the Act and which is not otherwise defined in these Rules shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the **Company**.

- (xvii) These Rules shall be deemed to authorise the **Company** to do anything which the Act empowers a Company to do if so authorized by its **MOI** unless that authority is expressly excluded.

(A)

CONDUCT RULES

1. USE OF THE STREETS

- 1.1 The speed limit is restricted to 30 km/h throughout the **development**.
- 1.2 Parking on sidewalks and in streets is prohibited.
- 1.3 Only licensed vehicles are to be operated in the streets and no off-road motorcycles, go-carts or quad bikes may be operated in the streets.

2. GOOD NEIGHBOURLINESS

- 2.1 Any activity or hobby, which could cause aggravation or nuisance to fellow residents, may not be conducted from any property.
- 2.2 The volume of music or electronic instruments, partying and the activities of domestic assistance should be kept at a level so as not to create a nuisance to neighbours.
- 2.3 The mechanical maintenance and use of power saws, lawnmowers and the like machinery should only be undertaken between the following hours:
 - 2.3.1 Weekdays : 07:00 – 19:00
 - 2.3.2 Saturdays : 08:00 – 18:00
 - 2.3.3 Not on Sundays
- 2.4 Refuse, garden refuse and refuse bags may not be placed on the pavement. Garden refuse must be removed on the same day and may not be piled up. All refuse containers must be removed from the pavement on the same day the refuse is collected.

3. AESTHETICS

- 3.1 Garden fences and/or walls and/or outbuildings forming part of the streetscape should be regularly maintained and painted when necessary.
- 3.2 Caravans, trailers, boats, equipment, tools, engine and vehicle parts, building materials and any accommodation for pets should be located out of view and screened from neighbouring properties and the street.
- 3.3 Building materials may not under any circumstances be dumped on the sidewalks or roads.

- 3.4 No trees, plants or sidewalk lawn may be removed without the permission of the **Board**.
- 3.5 No private gardening is allowed on communal property.
- 3.6 No wendy houses or similar structures will be permitted and the use of shade cloth is prohibited.
- 3.7 No structural alterations or additions may be made unless prior approval of the plans have been obtained from the **Board** and approval from the Local Authority.

4. ENVIRONMENTAL MANAGEMENT

- 4.1 No rubble or refuse should be dumped or discarded in any public area or on vacant stands.
- 4.2 Residents are encouraged to maintain trees, plants and shrubs that have been planted on their pavements by the **Board**.
- 4.3 Residents are encouraged to maintain a high standard of gardening and to keep their gardens clean and neat at all times and includes the pruning of trees and cutting of palms leaves and seeds where palm trees are planted.
- 4.4 Vacant stands must be kept clean on a regular basis to the satisfaction of the **Board** and if not maintained, the **Board** shall be entitled to clean the stand at the owner's expense.

5. SECURITY

- 5.1 The security rules and protocol must be adhered to at all times.
- 5.2 All attempts at burglary or any suspicious activities within the **Township** must be reported to the **Board** or the **Managing Agent**.

6. TENANTS, VISITORS, CONTRACTORS AND EMPLOYEES

- 6.1 The provisions of these Rules and the duties of the owner/member in relation to the use and occupation of **Units** and common property shall be binding on the member/owner of any **Unit** and any lessee or other occupant of any **Unit** and it shall be the duty of the owner/member to ensure compliance with these Rules by his lessee or occupant,

including employees, guests and any member of his/her family, his/her lessee or his/her occupant.

- 6.2 A member shall not let his property or part thereof or allow occupation thereof without notifying the **Board** of the name, ID number and contact details of such tenant or occupant.
- 6.3 The owner shall ensure that a copy of these Rules is included in any written lease concluded in respect of his **Unit** or part thereof and shall at the request of the **Board**, furnish a copy of such lease to the **Board**. If a written lease is not concluded, the member may be required to furnish proof to the **Board** that his/her tenant/occupant has received a copy of these Rules.
- 6.4 Occupants of any **Unit** within the **Township** are liable for the conduct of their visitors, contractors, servants and/or employees and must ensure that they adhere to these Rules.
- 6.5 All members must ensure that contractors in their employ have signed/acknowledged the Contractor's Code of Conduct prior to commencement of any building/construction activity and must ensure that they adhere to the provisions of these Rules and of the Contractor's Code of Conduct at all times.

7. PETS

- 7.1 Any by-laws concerning pets must be adhered to.
- 7.2 Pets are not permitted to roam the streets and dogs must be kept on a leash at all times.
- 7.3 Should animal excrement be deposited in any public area, the person in control of the pet shall be responsible for the immediate removal thereof.

8. FINES AND PENALTIES

- 8.1 The Directors shall be entitled to implement a system of fines and penalties from time to time in order to deter any contravention of these Rules and to ensure the due enforcement of these Rules.
- 8.2 Any penalties imposed by the Directors are subject to adjustment and/or ratification by members in General Meeting.

8.3 In the event of contravention of any of these Rules, the following procedure will be followed and implemented by the Directors/**Managing Agent**:

8.3.1 A letter of demand will be sent to the member, specifying the nature of the breach and demanding him to remedy the breach within a period of 10 (ten) days;

8.3.2 Should the member fail to adhere to the demand letter and to remedy the breach then, unless written objection is received by the owner concerning the alleged contravention, the prescribed penalty shall be implemented and levied against the member's levy account and shall be enforceable, as if such penalty or fine constitutes a normal levy;

8.3.3 If the transgression is disputed and upon receipt of any written objection, the **Board** shall convene a meeting with the owner within a period of 10 (ten) days and at which meeting the owner shall be entitled to address his objection, to call witnesses and which meeting shall take the form of an informal inquest. The decision of the **Board** shall be final;

8.3.4 Should the member refuse to accept the decision of the **Board** on any matter, such dispute shall then be referred to arbitration in terms of these Rules.

9. **GARDENS**

Plants, shrubs and lawn:-

9.1 may be planted within the parameters of a **Unit**, provided that such plants, shrubs and lawn may not fall under any category which is prohibited from time to time in terms of any law, by-law or regulation;

9.2 shall be planted in such a manner so as not to cause a hindrance or damage to any foundations, walls, pipes, drains or any sewerage system or electricity reticulation, security fencing or to any common property;

9.3 shall be removed by the owner and any damages caused thereby repaired at the owner's expense, where, at the sole discretion of the **Board**, such hindrance or damages are caused or is likely to be caused by such plants, shrubs and lawns. If an owner fails to give effect to these provisions, then the **Board** shall

be entitled to remedy any defect, failure or damages caused and to claim such expenses from the owner.

10. AESTHETICAL GUIDELINES

- 10.1 The **Board** may from time to time make Rules concerning alterations, additions and improvements to **Units** which may include directives concerning design, appearance, colour schemes and the location of any such additions/alterations.
- 10.2 Any aesthetical guidelines or rules made by the **Board** shall be subject to review by the members in General Meeting.

11. DISPUTE RESOLUTION PROCEDURES

11.1 Monies due:

- 11.1.1 Any contributions, levies or other monies due and payable by a Member to the **Company** may be recovered by the **Company** by action in any Court, including any Magistrate's Court, of competent jurisdiction. The parties hereto consent, in terms of the Magistrate's Court Act, 32 of 1944, as amended, to the taking of any legal proceedings arising from this Agreement in the Magistrate's Court of any District otherwise having jurisdiction by virtue of Section 28(1) of the aforesaid Act, notwithstanding that such proceedings would otherwise be beyond such jurisdiction. The **Company** instituting such proceedings shall nevertheless still have the right to institute such proceedings in any Division of the High Court of South Africa having jurisdiction, should he so wish and in which event the **Company**, if successful, will not be penalized with an order for costs on the Magistrate's Court scale.
- 11.1.2 A Member shall be liable and pay all legal costs, including costs as between attorney and client, collection commission, expenses and other charges incurred by the **Company** in obtaining the recovery of contributions, arrear levies or any other arrear amounts and monies due and owing by such Member to the **Company** or in enforcing compliance with any of the provisions of the Memorandum of Incorporation, the **Act** or these Rules.

11.2 Other disputes:

- 11.2.1 In the event of a dispute between the **Company** and a Member or between Members arising out of or in connection with or related to provisions of this Memorandum of Incorporation, the **Act** or these Rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these Rules.
- 11.2.2 Notwithstanding the provisions of clause 11.2.1, any dispute concerning payment of monies due in accordance with clause 11, shall be excluded from arbitration.
- 11.2.3 If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the **Board** and the **Managing Agent**, if any, and should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- 11.2.4 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- 11.2.5 If the parties cannot agree as to the person of the arbitrator to be appointed in terms of sub-rule 11.2.4 within 5 (five) days after the arbitration has been demanded, the auditors of the **Company** shall, upon written application, in writing, appoint an arbitrator within 7 (seven) days after they have been required to make the appointment.
- 11.2.6 The arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 7 (seven) days after demand for security or payment

was made, the other party shall be entitled to abandon arbitration proceedings.

- 11.2.7 The intention being that the arbitration shall be concluded within 21 (twenty one) days after an arbitrator has been appointed or security for costs has been furnished.
- 11.2.8 The arbitrator shall make his/her award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his/her award, have regard to the principles laid down in terms of the Memorandum of Incorporation and the Rules thereunder. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he/she may determine and as he/she in his/her discretion may deem appropriate, having regard to the outcome of the arbitration.
- 11.2.9 In making an award of costs, it shall be competent for the arbitrator to award costs against the **Company** on the basis that the member in whose favour the award was made, shall be excluded from contributing to such costs through his general levy and/or any special levy contributions.
- 11.2.10 The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to, or affected by, the arbitration.
- 11.2.11 The provisions of the Arbitration Act, No. 42 of 1965 shall be applicable.
- 11.2.12 Notwithstanding that the Arbitration Act, No. 42 of 1965 makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the **Company** and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event, not later than 10 (ten) days prior to the arbitration hearing.

11.3 **Fines and penalties:**

The **Company** may create and implement a system of fines and penalties in terms of the Rules as referred to in clause 8.

12. NOTICES

- 12.1 A notice in terms of the **Act**, the Memorandum of Incorporation or these Rules may be served by the **Board** upon any member by ordinary mail, by telefax or by e-mail in accordance with the provisions of the **Act**, unless same is required to be sent by a specific method for a particular purpose in a manner prescribed by the **Act** or the Regulations.
- 12.2 Any notice, if served by ordinary mail on a person's last known address, shall be deemed to have been received on the 7th (seventh) day following the day on which the notice or document was posted, as recorded by a Post Office.
- 12.3 Any notice, if served by fax, shall be deemed to have been served on the date and at the time recorded by the fax receiver.
- 12.4 Any notice, if served by electronic mail, shall be deemed to have been served on the date and at the time recorded by the computer used by the sender.
- 12.5 Reference to a "notice" includes any document or communication required to be sent in terms of the **Act**, the Memorandum of Incorporation or these Rules and includes a copy of such document.

(B)

SECURITY: ACCESS POLICY AND PROCEDURES

1. The Directors may from time to time issue guidelines concerning access to the **Township** and all security issues.
2. The principle of access control to be applied is that some form of identification should be required.
3. The security access policy and guidelines made and implemented by the Directors from time to time, shall be subject to review by the members in General Meeting.

(C)

CONTRACTOR'S /
OWNER BUILDER'S
STANDARD CODE
OF CONDUCT:

1. The Directors are authorized to, from time to time, make Rules concerning any building activity and/or construction within the **Township**.
2. Any such Rules made by the **Board** shall be subject to review by the members in General Meeting.
3. The following general rules shall apply:
 - 3.1 Prior to commencement of any building activity/construction, the owner shall notify the **Board** of his intention and such written notification shall include:
 - (i) Particulars of the intended building operation/construction;
 - (ii) Particulars concerning the design and materials to be employed;
 - (iii) Date of commencement of the activities and anticipated date for completion;
 - 3.2 Building hours shall be from Mondays to Fridays between 06h00 – 18h00.
 - 3.3 Contractors' employees shall not be permitted to remain on the site between the hours of 18h00 – 06h00 unless specific arrangements have been made with the **Board** concerning security of the building site.
 - 3.4 The contract site is to be kept neat and clean and no building materials or rubble shall be left on the pavement.
 - 3.5 Materials and/or rubble must be dumped or stored within the stand boundaries and it is the contractor's and owner's responsibility to clear communal areas of all such materials and/or rubble. The same applies to sand or rubble washed or moved over a boundary during building operations.
 - 3.6 Deliveries from suppliers must be scheduled in building hours.
 - 3.7 One contractors board may be erected on the stand without obstructing any view. Boards must be removed after completion of construction (no sub-contractor boards are allowed).

- 3.8 The contractor and his employees and all sub-contractors and their labourers shall adhere to the security protocol and to the Rules of Conduct applicable.
 - 3.9 The contractor shall provide toilet facilities in accordance with Local Authority regulations if such facilities are not yet available on site.
 - 3.10 The contractor shall provide facilities for rubbish and/or rubble disposal and ensure that his labourers use such facilities. Rubbish and/or rubble shall be removed on a regular basis.
 - 3.11 The Directors may from time to time require owners to effect payment of a building deposit prior to commencement of the building activities, to ensure that these Rules are complied with, that all rubble and building materials are removed and/or to ensure that any damage caused to common property by the building activity, is restored.
- 4 In the event of a breach of these Rules, the **Board** may suspend all building activities and disallow access to the **Township** until any breach of these Rules have been remedied.
 5. It is the responsibility of the owner to ensure that these Rules are fully understood and accepted by his contractor and/or sub-contractors and the owner shall procure the written acknowledgement by the contractor or his sub-contractors that they have received a copy of these Rules from the owner and agree to abide thereby and such written acknowledgement shall be furnished to the **Board** prior to commencement of any building activities.