

# **PORT ZIMBALI ESTATE HOME OWNERS' ASSOCIATION (NPC)**

*(Registration Number: 2006/008435/08)*

## **MEMORANDUM OF INCORPORATION** **("MOI")**

*Approved by the Members of the Association on 3 September 2016*



# **MEMORANDUM OF INCORPORATION**

of

## **PORT ZIMBALI ESTATE HOMEOWNERS' ASSOCIATION (NPC)**

*(Registration Number: 2006/008435/08)*

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

The **Association** is a Non Profit Company with members, with the following objects:

1. The main object of the **Association** is to protect and advance the communal interest of the **Members** as owners 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.

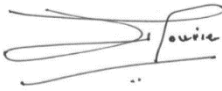
The "**Township**" means the property comprising **Port Zimbali Estate**.

2. It is the objective of the **Association** to:
  - 2.1 manage, advance, improve, control, and administer, on behalf of its **Members**, the **Common Property** within the **Township**;
  - 2.2 to collect levies and contributions towards funds of the **Association** for the attainment of the objects of the **Association**, to promote and maintain any business or enterprise of the **Association**; and
  - 2.3 to create Rules of Conduct concerning the powers and obligations of **Members** and the use of **Common Property** and their Units and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation and the Rules, 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.



### Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted and approved by the **Members** of the **Association** in accordance with section 17 (1) in an Annual General Meeting of the **Members** held on 3 September 2016, as evidenced by the signature of the Chairman of the board of Directors, on their behalf.

Name of Chairman	Identity Number	Signature	Date
F.H. Fourie	471205 5012 088		3 September 2016

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) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option;
- (d) the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them (*"the Definitions"*):
  - (i) **"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;



- (ii) **"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 **Association**, that are owned by the **Association** and for which the **Association** 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**;
- (ii) **"Common Property Areas"** : Means erven 466, 467, 468, 469 and 470, Port Zimbali and located in the **Township**;
- (iii) **"Developer"** : Means Viking Pony Properties 37 (Pty) Ltd (Registration number: 2000/010934/07) as owner or seller of **Units** in the **Township** and with voting rights in respect of those **Units** still registered in the **Developer's** name from time to time;
- (iv) **"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**;
- (v) **"Levies"** : Means all contributions levied from time to time by the Directors upon **Members** for the purpose of meeting all the expenses which the **Association** has incurred or which the Directors reasonably anticipate



- the **Association** 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**;
- (vi) **"Managing Agent"** : Means a qualified professional or individual appointed by the **Association** to fulfil all or part of the managerial activities of the **Association** on its behalf;
- (vii) **"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** or has successfully applied for membership of the **Association**;
- (viii) **"Township"** : Means the private township established on erf 465, Port Zimbali and laid out in the proposed township known as PORT ZIMBALI ESTATE, comprising 86 individual erven;
- (ix) **"Unit"** : Means any privately owned developed or undeveloped erf or any subdivision thereof, either in the **Township** or a Unit established in terms of the Sectional Titles Act, Act 95 of 1986, within the **Township**;

The Schedules attached to this Memorandum are part of the Memorandum of Incorporation.



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## **Article 1 – Incorporation and Nature of the Association**

### **1.1 Incorporation**

- (1) The **Association** is incorporated as a Non Profit Company, as defined in the Companies Act, 2008.
- (2) The **Association** 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 Association**

- (1) The Objects of the **Association** are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the **Association** are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii).
- (2) The **Association** is not subject to any provision contemplated in section 15(2)(b) or (c).
- (3) Upon dissolution of the **Association**, its net assets must be distributed in the manner determined in accordance with –
  - (a) Item 1(4)(b) of Schedule 2 of the Companies Act, 2008; and
  - (b) the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

### **1.3 Memorandum of Incorporation and Association rules**

- (1) This Memorandum of Incorporation of the **Association** may be altered or amended in the manner set out in section 16, 17 or 152(6)(b), subject to the provisions contemplated in section 16(1)(c), and set out in Part D of Schedule 1.



- (2) The authority of the **Association's** Board of Directors to make rules for the **Association**, as contemplated in section 15(3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- (3) The Board must publish any rules made in terms of section 15(3) to (5) in accordance with the requirements set out in Part D of Schedule 1.
- (4) The **Association** must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) in accordance with the requirements set out in Part D of Schedule 1.

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

The **Association** does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.

#### **1.5 Members of the Association**

- (1) As contemplated in Item 4(1) of Schedule 1 of the Act, the **Association** 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 **Association**.
- (2) The terms and conditions of membership in the **Association** are as set out in Part E of Schedule 1 to this Memorandum.



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## **Article 2 – Rights of Members**

### **2.1 Members' authority to act**

If, at any time, every member of the **Association** is also a Director of the **Association**, 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**

In addition to the rights to access information set out in section 26(1), a member of the **Association** has the further rights to information, if any, set out in Part B of Schedule 2 of this Memorandum of Incorporation.

### **2.3 Representation by concurrent proxies**

The right of a member of the **Association** to appoint 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 Association**

The requirement that a member must deliver to the **Association** a copy of the instrument appointing a proxy before that proxy may exercise the **Member's** rights at a **Member's** meeting, as set out in section 58(3)(c) is varied to the extent set out in Part C of Schedule 2.

### **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 **Association's** Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59(3).



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## **Article 3 – Members Meetings**

### **3.1 Requirement to hold meetings**

The **Association** is not required to hold any **Member's** meetings other than those specifically required by the Companies Act, 2008.

### **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 **Members**.

### **3.3 Location of Members meetings**

The authority of the **Association's** Board of Directors to determine the location of any **Member's** meeting, and the authority of the **Association** 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 set out in Part B of Schedule 3.

### **3.4 Notice of Member's meetings**

The minimum number of days for the **Association** to deliver a notice of a **Member's** meeting to the **Members**, as required by section 62 is as provided for in section 62(1).

### **3.5 Electronic participation in Member's meetings**

The authority of the **Association** 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.

### **3.6 Quorum for Member's meetings**

- (1) The quorum requirement for a **Member's** meeting to begin, or for a matter to be considered are as set out in section 64(1) without variation (25%).
- (2) The time periods allowed in section 64(4) and (5) apply to the **Association**, subject to the variations set out in Part D of Schedule 3.
- (3) The authority of a meeting to continue to consider a matter, as set out in section 64(9) is not limited or restricted by this Memorandum of Incorporation.



### 3.7 Adjournment of Member's meetings

The maximum period allowable for an adjournment of a **Member's** meeting is as set out in section 64(13), without variation.

### 3.8 Member's resolutions

- (1) For any ordinary resolution to be adopted at a **Member's** meeting, it must be supported by at least 51% of the **Members** who voted on the resolution, despite section 65(7).
- (2) For a special resolution to be adopted at a **Member's** 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 **Member's** meeting is not required for a matter to be determined by the **Association**, except those matters set out in section 65(11).



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## **Article 4 – Directors and Officers**

### **4.1 Composition of the Board of Directors**

- (1) The Board of Directors of the **Association** comprises the elected Directors, and their alternate Directors each of whom is to -
  - (a) be elected in the manner set out in Part A of Schedule 4; 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 **Association**, or the appointment or election of alternate Directors of the **Association**, as contemplated in section 66(4), to be designated in the manner specified in Part B of Schedule 4.
- (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a Director of the **Association**, a person must satisfy the additional eligibility requirements and qualifications set out in Part C of Schedule 4.
- (4) Each **appointed** (not elected) Director of the **Association** serves for an indefinite term, until substituted by the person or entity that made the appointment.

### **4.2 Authority of the Board of Directors**

The authority of the **Association's** Board of Directors to manage and direct the business and affairs of the **Association**, as set out in section 66(1) is limited or restricted to the extent set out in Part D of Schedule 4.

### **4.3 Board of Directors meetings**

- (1) The authority of the **Association'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.
- (2) The right of the **Association'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 **Association'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 **Association'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 **Association'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), subject to the variations set out in Part F of Schedule 4.

#### **4.4 Indemnification of Directors**

- (1) The authority of the **Association'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 **Association'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 **Association's** Board of Directors to purchase insurance to protect the **Association**, 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 **Association**.



- (2) The authority of the **Association'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 **Association's** Board, as set out in section 72(2)(b) and (c) is limited, restricted or extended to the extent set out in Part H of Schedule 4.

## **Article 5 – General Provisions**

### **5.1 Rules**

In accordance with the provisions of Section 15 of the Act, the incorporators adopted the Rules as set out in Schedule 5 hereto, 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 **Association** from time to time shall be published in accordance with the requirements set out in Part D of Schedule 1.



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# **Schedule 1**

## **Incorporation and nature of the Association**

### **Part A**

None.

### **Part B**

None.

### **Part C**

None.

### **Part D**

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

### **Part E**

#### **1. Qualification for Membership of the Association:**

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

- 1.1 The incorporators of the **Association** during the **Development Period** of the **Township**; and



- 1.2 Notwithstanding the provisions of Part E, Item 2, any other person (natural person or a juristic entity) who 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;
- 1.3 Where any **Unit(s)** in the Scheme 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 **Association** and have the rights and obligations of one member of the **Association**; provided however that all co-owners of **Unit(s)** shall be jointly and severally liable for the due performance of any obligations towards the **Association**.

**2. Application for Membership of the Association:**

- 2.1 Subject to the provisions of Part E, Item 1, application for Membership of the **Association** shall be made to the Board in writing.
- 2.2 When application is made for membership of the **Association** by a person, such person shall declare themselves 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 themselves with the terms and conditions thereof.

**3. 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 **Association**.

**4. Rights and obligations of Members:**

- 4.1 A **Member** of the **Association** 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 **Association** unless he ceases to be a member of a **Unit** in the **Township**.
- 4.2 Every **Member** shall:
  - 4.2.1 further, to the best of his ability, the objects and interests of the **Association**;
  - 4.2.2 observe all Rules made by the **Association** or the Directors;





- 4.2.3 pay all levies and contributions due by the member, to the **Association**.
- 4.3 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 **Association** 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 **Association** prior to the proposed occupier taking occupation of the **Unit** in question.
- 4.4 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 **Association** and be accepted as member of the **Association** and therefore become a member of this **Association**, accepting his/her/its obligations towards the **Association** as member.
- 4.5 No **Member** of a **Unit** in the **Township** shall be entitled to dispose thereof to any other person without the written consent of the **Association** 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:
- 4.5.1 such **Member** is in arrear with any levies, penalties, fines or interest or other payment due to the **Association** in terms of the Memorandum of Incorporation or the Rules or otherwise;
- 4.5.2 such **Member** is in breach with any of his obligations towards the **Association** in terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Association** in writing, to remedy such breach and remain in breach;
- 4.5.3 the prospective transferee has not applied for membership of the **Association**, where such application is required, or has not been accepted as member of the **Association**.
- 4.6 No **Member** of a **Unit** in the **Township** shall be entitled to pass transfer thereof to any other person until the **Association**, under the hand of its Secretary or his/her/its authorised representative or the **Managing Agent**, has certified that such **Member** as at date of transfer has complied with all his/her/its financial and other obligations towards the **Association**.
- 4.7 The provisions of sub-Items 4.5 and 4.6 shall apply *mutatis mutandis* to any alienation of an undivided share in a **Unit** in the **Township**.



- 4.8 The incorporators of the **Association** will cease to be **Members** of the **Association** upon their written resignation as such; provided that none of the incorporators of the **Association** shall resign until such time that there are sufficient **Members** of the **Association** to replace them as Directors of the **Association**.
- 4.9 The Directors of the **Association** may impose an additional, reasonable fee upon the **Members** of the **Association** for the issuing of the Clearance Certificate as referred to in sub-Item 4.6. 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 **Association** in General Meeting.
- 4.10 **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:
- 4.10.1 the right to nominate and elect the Directors of the **Association**;
  - 4.10.2 the right to receive access to the **Association** records in accordance with the provisions of Section 26 of the Act;
  - 4.10.3 the right to receive notice of, attend, speak and vote at General Meetings of the **Association**;
  - 4.10.4 the right to receive access to the Financial Statements or related information of the **Association**.
- 4.11 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:
- 4.11.1 such **Member** is in arrear with any levies, service costs, contributions, penalties, fines, legal costs or interest or any other payment due to the **Association** in terms of the Memorandum of Incorporation or the Rules or otherwise;
  - 4.11.2 such **Member** is in breach with any of his obligations towards the **Association** in terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Association** in writing, to remedy such breach and he remains in breach.



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## 5. Levies, Service Costs and Contributions:

- 5.1 The Directors may from time to time determine the levies payable by the **Members** for the purpose of meeting all the expenses which the **Association** has incurred, or to which the Directors reasonably anticipate the **Association** will be put in the attainment of its objects or the pursuit of its business ("levies"). It is recorded that "levies" includes such service costs and fees as may from time to time be determined by the Board and become payable by the **Members** in respect of **Member**-specific services, such as landscaping service costs, water and sewer service costs and all such services as are separately metered or rendered to individual **Members**, irrespective of the fact that such costs may not be included in any estimate in respect of income and expenditure (the budget).
- 5.2 The Directors may from time to time determine the service cost payable by the **Members** for the purpose of meeting all the expenses which the **Association** has incurred on behalf of its **Members** in relation to the landscaping maintenance cost of the landscape on the properties of the **Members** ("landscaping service cost").
- 5.3 The **Association** will, on a monthly basis, recover the service cost from its **Members** which the **Association** has incurred on their behalf in relation to the cost for the provision of water and sewer services to the properties of the **Members** and the usage of water and sewer services by the **Members** on their properties as provided by the local authority, its agents or assigns to the **Members** of the **Association** ("water and sewer service cost"). The usage of water and sewer services is separately metered for each member on their properties and the **Association** will record the meter readings on a monthly basis so as to determine the relevant monthly usage of water and sewer services of each individual member.
- 5.4 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 **Association** 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.
- 5.5 Each notice to each member shall specify the contribution (levy and landscaping service cost) payable by that member to such expenses and reserve fund.



- 5.6 The annual levy for the ensuing financial year shall become due and payable on the passing of a Board Resolution to that effect or the publication thereof as envisaged in clause 5.2, but shall be payable in equal monthly instalments, in the form that the Directors may direct from time to time, due in advance on the first day of each and every month of each financial year.
- 5.7 The landscaping service cost shall be payable monthly, in the form that the Directors may direct from time to time, due in advance on the first day of each and every month of each financial year.
- 5.8 The water and sewer service cost shall be payable monthly, in the form that the Directors may direct from time to time, due in arrears as per the metered usage on the last day of each and every month of each financial year.
- 5.9 In the event of the Directors for any reason whatsoever failing to prepare and timeously serve the notice referred to in sub-rule 5.2 and 5.3 above, every member shall until served with such notice, continue to pay the monthly levy and landscaping service cost previously imposed and shall after service of such notice pay the levy and landscaping service cost specified therein.
- 5.10 Should a member fail to effect payment of contributions ("levies, landscaping service costs, water and sewer service cost, special levies, penalties, interest and fines") 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 **Association**, 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.
- 5.11 The Developer, however, shall not be liable at any time for the payment of any levies pertaining to Units owned by the Developer, unless such Units are developed into habitable dwellings and such habitable dwelling is leased or rented at an income by the Developer. A levy shall thus become payable by the developer from the date on which an unsold unit is occupied by a paying tenant, until the subject unit is either vacated by the paying tenant, replaced by another paying tenant or the subject unit is transferred to a purchaser of the subject unit, in which instance the new purchaser will become a paying member of the **Association** as provided for in this Memorandum of Incorporation.
- 5.12 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.



- 5.13 The Directors may from time to time impose special levies upon the **Members** in respect of all expenses as are mentioned in sub-rule 5.1 which are not included in any estimate made in terms of sub-rule 5.4, and may in imposing such levies further determine the terms of payment thereof.
- 5.14 A Levy Stabilisation Fund contribution, as may from time to time be determined by the Board of the **Association** and published to the **Members**, is payable per **unit** by the purchaser of any **unit** in the **township** to the **Association** at every instance such a **unit** is transferred to a new owner/purchaser or the ownership of a property owning entity owning a **unit** in the **township** changes. Funds accumulated by the **Association** as a result of this contribution remains the property of the **Association** for the benefit of its **Members**, and will specifically be utilised to cater for unexpected costs and expenditures that the **Association** may need to incur to fulfil the objects of the **Association**. Any determination made by the Board from time to time shall be ratified, with or without amendment thereto, by the **Members** at the next Annual General Meeting of **Members**.
- 5.15 Any special levies referred to in sub-clause 5.13, becomes due on the passing of a Resolution to that effect and may be recovered by the **Association** 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.
- 5.16 The Directors shall be empowered in addition to such other rights as the **Association** may have in law against its **Members** to determine the rate of interest from time to time chargeable upon arrear contributions. 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 Prescribe Rate of Interest Act, shall be applicable and which interest rate at adoption of this Memorandum of Incorporation is 15,5% per annum. Interest shall be calculated and compounded monthly in arrears.
- 5.17 The obligation of a member to pay the contributions and interest shall cease upon his ceasing to be a member without prejudice to the **Association's** right to recover arrear contributions, interest, penalties, fines and other amounts due to the **Association**. No contributions, interest, penalties, fines or other amounts paid by a member shall under any circumstances be repayable by the **Association** upon his ceasing to be a member. A **Member's** successor in title to a **Unit** shall be liable for payment of contributions as from the date upon which he becomes the registered owner of the **Unit** as reflected in the Deeds Registry.
- 5.18 No **Unit(s)** registered in a **Member's** name shall be capable of being transferred without a Clearance Certificate as referred to in sub-clause 4.6 first being obtained from the **Association** confirming that all contributions, the Levy Stabilisation Fund contribution and other amounts and interest due have been paid up to and including date of registration of transfer thereof.



- 5.19 A member shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the **Association** in obtaining the recovery of arrear contributions, penalties, fines, interest or any other arrear amounts due and owing by such owner to the **Association** or in enforcing compliance with the Act, the provisions of the Memorandum of Incorporation, or the Rules.
- 5.20 **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.
- 5.21 The Directors may from time to time determine a charge to be levied against **Members** in arrears, as an administration charge payable to the **Association** or to the **Managing Agent**. Any administration charges so levied shall be subject to review of the **Members** in General Meeting.
- 5.22 Interest imposed by the Directors shall be subject to review of the **Members** in General Meeting and shall not exceed any limitations set by legislation.
- 5.23 All payments received shall be allocated firstly to interest, legal costs and thereafter towards capital. The **Association** reserves the right to allocate payments as they deem fit in the absence of an express allocation and to allocate payment to the debt newest in time.



## Schedule 2

### Rights of Members

#### Part A

None.

#### Part B

None.

#### Part C

The requirement in terms of Section 58(3)(c) is varied to the extent that a copy of the instrument appointing a proxy must be delivered to the **Association** or to any other person acting on behalf of the **Association** (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**.

#### Part D

None.



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## **Schedule 3**

### **Member's Meetings**

#### **Part A**

None.

#### **Part B**

All **Member's** meetings shall be convened to take place at a location, preferably within the **Township**, but in any event not outside of the Magistrate's Court District within which the **Township** is located.

#### **Part C**

None.

#### **Part D**

1. 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.
2. 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.
3. The person intended to preside at a meeting that cannot begin due to the operation of sub-section 64(1)(a) or 64(3), if applicable, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub-section 64(5).





**Part E**

None.

**Part F**

None.



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## **Schedule 4**

### **Directors of the Association**

#### **Part A**

##### **Election of Directors:**

1. There shall be a Board of Directors of the **Association** which shall consist of not less than 5 (five) and not more than 12 (twelve) Directors.
2. Directors shall serve for a term of 1 (one) year or until the next **Member's** Meeting, and shall be eligible for re-election.
3. If a **Member's** 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 illegible for re-election to the Board of Directors at such meeting.
4. Nominations for election of Directors must be delivered to the **Association** or to any other person acting on behalf of the **Association** (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.
5. 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.
6. 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.
7. The Developer shall be entitled to appoint the majority of the Directors for as long as it owns at least 15% (FIFTEEN PERCENT) of the **Units** in the **township**.



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## **Part B**

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 General Meeting convened for this purpose.

## **Part C**

1. In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the **Association**, a person must satisfy the following additional eligibility requirements and qualifications:
  - 1.1 be a paid-up member of the **Association** at the time of appointment as Director;
  - 1.2 may not be in breach of any of his/her/its obligations as a member of the **Association**, as stipulated in the Memorandum of Incorporation or the Rules.

## **Part D**

The authority of the **Association's** Board of Directors to manage and direct the business and affairs of the **Association**, as set out in Section 66(1), is limited or restricted to the extent that:

1. They must in general enforce the provisions of this MOI and the Rules equally upon the **Members** of the **Association**;
2. They may, in their sole discretion and where circumstances require or permit, relieve a **Member/(s)** from strict compliance with the Rules, and/or excuse their non-compliance of a transgression of the Rules, and/or reduce or acquit a **Member** from any payment, interest, penalty, or costs, for example where they enter into a settlement agreement concerning a **Member's** liability for payment of outstanding levies, interest penalties and costs; **provided** that any leniency granted by the Board of Directors as aforesaid, shall be subject to ratification by the **Members** at the next General Meeting of the **Association**, with or without amendment thereto.

## **Part E**

None.



**Part F**

The **Developer** shall, during the development period, be entitled to be represented on the Board of Directors by at least 3 (three) Directors and shall hold a casting vote at a Board Meeting and shall hold a veto right in respect of any matter for consideration at a General Meeting, for as long as the **Developer** is the registered owner of at least 15% of the **Units** in the **Township**.

**Part G**

None.

**Part H**

The authority and powers of any committee established by the Board may be restricted or limited by the Board when the committee is so established.

