

MEMORANDUM OF INCORPORATION

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

HERON HILL HOME OWNERS ASSOCIATION (NPC)

(hereinafter referred to as "the Company")

HOME OWNERS ASSOCIATION NON-PROFIT COMPANY

INCORPORATED FOR A COMMUNAL OR GROUP INTEREST BENEFIT OR A PUBLIC BENEFIT

SECTION 10 – SCHEDULE 1 COMPANY

DIRECTORS AND MEMBERS WITH VOTING RIGHTS

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MEMORANDUM OF INCORPORATION OF A HOME OWNERS ASSOCIATION NON-PROFIT COMPANY (NPC)

REPUBLIC OF SOUTH AFRICA COMPANIES ACT, ACT NO 71 OF 2008

Heron Hill Home Owners Association (NPC) which is a Non-Profit Company and which is hereinafter referred to as "the Company" in the rest of this Memorandum of Incorporation, has the prescribed minimum number of at least 3 (three) Directors in terms of section 66(2)(b) and where the Incorporators may be its first Directors, who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company and no single person shall have the ability or authority, either directly or indirectly, to control the decision-making powers relating to the Company. Spouses and anyone related to the person or the persons' spouse within the third degree of consanguinity shall be regarded as connected persons. *Item 3 of Schedule 1 of the Act, and Section 30(3)(a)(i) of the Income Tax Act*

The Number of Directors is reflected in Schedule One at the end of this Memorandum of Incorporation.

Adoption of the Memorandum of Incorporation

The former Memorandum of Association and Articles of Association adopted in terms of the repealed Companies Act, Act 61 of 1973, as amended, was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Members of the Company on _____.

This Memorandum of Incorporation was signed by the Board of Directors of the Company in accordance with section 13(1) of the Companies Act, Act 71 of 2008, as amended, as evidenced by the following signatures of each Director or by proxy on their behalf in the Table of Signatories of Directors, and the Board shall submit to the Commissioner of the South African Revenue Services, a copy of this Memorandum of Incorporation under which the Company has been established, and the Company shall comply with such reporting requirements as may be determined by the said Commissioner from time to time.

Default Memorandum of Incorporation not to apply

The standard form Memorandum of Incorporation for a Non-Profit Company referred to in Regulation 15(1)(a) shall not apply to the Company. This Memorandum of Incorporation is in a form unique to the Company as contemplated in section 13(1)(a)(ii).

Registered Office for which the Company is established

The Registered Office of the Company shall be situated at:

Physical Address:

Heron Hill Garden Estate
Ajax Avenue
Olympus

Postal Address:

c/o @Ease Property Management
P O Box 9151364
Faerie Glen
0043

Objects of the Company

This Memorandum of Incorporation of the Company sets out at least 1 (one) object of the Company and each object is either a public benefit object or an object relating to 1 (one) or more cultural or social activities, or communal or group interests in terms of Item 1(1)(a) of Schedule 1 of the Act.

The primary object of the Company on its incorporation is:

To promote, advance and protect the communal interests of Members of the Home Owners Association.

Special Resolution of the Members

Repeal of the Memorandum of Association and Articles of Association and Adoption of the Memorandum of Incorporation

The former Memorandum of Association and Articles of Association adopted in terms of the repealed Companies Act, Act 61 of 1973, as amended, were repealed in their entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Members of the Company on 01 September 2014 in accordance with section 13(1) of the Act, as evidenced by the following signature of each Member or his proxy.

Full Name of Member	Identity Number	Signature	Date

Table of Signatories of Directors

Names of all Directors	Identity Number Certified ID of each Signatory to attach with MOI on submission	Signature	Date

ARTICLE 1 – INTERPRETATION AND INCORPORATION AND NATURE OF THE COMPANY

1.1 INTERPRETATION

In this Memorandum, unless the context requires otherwise:

- section or sections refers to a section or sections of the Companies Act, Act 71 of 2008, as amended;
- Regulation or Regulations refers to a Regulation or Regulations of the Companies Regulations, 2011 in terms of section 223 and Item 14 of Schedule 5 of the Companies Act, Act 71 of 2008, as amended;
- words importing any one gender shall include the other two genders;
- the singular shall include the plural and vice versa;
- any words or expressions defined in any Ordinance or Act and any statutory modifications of such acts in force at the date in which this Memorandum of Incorporation becomes binding on the Home Owners Association shall, if not inconsistent with the subject or context, bear the same meaning herein;
- the headings have been inserted for convenience only and shall not be used for or assist or affect their interpretation;
- Where any consent or approval is required for any act by a Member, such consent or approval shall be:
 - in writing and signed by the Home Owners Association or its authorised agent;
 - not be unreasonably withheld; and
 - be given prior to the Member taking such action;
- the onus of proof in regard to the receipt of any Notice given or payment made by a Member shall be on the giver of the Notice or the maker of the payment;
- in the event of a Member consisting of more than one person, they shall, except in the case of co-owners as dealt with hereinafter, be jointly and severally liable in solidum for all their obligations in terms of this Memorandum of Incorporation and
- in the event of any provision of this Memorandum of Incorporation being unenforceable for any reason whatsoever then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions;
- an annexure shall, in all respects, and in regard to all the matters arising therefrom, be governed by the law of the Republic of South Africa; and
- each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:

“Act” or “the Act” – means the Companies Act, Act 71 of 2008, as amended or re-enacted from time to time, and includes all Schedules to the Act (Companies Regulation Item 2(h) 2011);

“Alternate Director” – a person elected or appointed to serve, as the occasion requires, as a member of the Board of the Company in substitution for a particular elected or appointed Director of that Company (section 1 of Act 71/2008);

“Alienate” – means any unit, erf or portion of an erf, part thereof or undivided share therein, and without derogating from the generality of the foregoing transfer of any rights or interest whatsoever in respect of a unit, erf or portion of an erf, howsoever arising and whether voluntarily or involuntarily and includes by way of sale, exchange, donation, deed, intestacy inheritance, will, cession, assignment, court order of insolvency, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and alienating has a corresponding meaning;

“Audit” – has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005) but does not include an “independent review” of Annual Financial Statements, as contemplated in section 30(2)(b)(ii)(bb) (section 1 of Act 71/2008);

“Auditors” – mean the auditors of the Home Owners Association from time to time;

“Board” – means the Board of Directors of the Home Owners Association from time to time;

“Board Resolution” – means a Resolution by the Board of Directors where each Director has 1 (one) vote on a matter before the Board and a majority of the votes cast on the Resolution is sufficient to approve it (section 73(5)(c)(d));

“Chairman” – means the Chairman of the Board of Directors from time to time;

“Common Property” – means such part of the land as may be designated as such in any manner or in terms of any law or condition or authority for use in common by Members or the public and in the case of a sectional title development scheme, common property as defined in the Sectional Titles Act;

“Development Plan” - means the provisional lay-out plan relative to BOARDWALK EXTENSION 16 township and includes design regulations for the control and the development of the land on which the aforementioned townships are developed;

“Developer” – means AJAX AVENUE DEVELOPMENTS (PTY) LTD NO 2005/034073 and includes its successors in title, nominees and assigns;

“Developer’s rights” – means the following specific rights of the developer or its successors in title, nominees or assigns, namely:

- (a) to complete the development scheme and to promote and market the same;
- (b) to construct additional units, buildings and other structures as part of the development scheme in conjunction with or in addition to that shown on the plans;
- (c) to impose conditions concerning the use of the land, any unit and/or the common property or conditions of whatsoever nature in respect of any part of the scheme;
- (d) to decide who shall have any right to or interest in any part of the scheme and to determine the nature of such rights;
- (e) to give effect to all of the foregoing and without derogating from the generality of the preceding provisions;
- (f) to consolidate, subdivide, partition and/or to alienate and give transfer of such parts of the land or any part thereof as it shall determine;
- (g) to enter into leases in respect thereof;
- (h) to register reciprocal or other servitude rights in respect thereof;
- (i) to conduct or permit the conduct of group housing and sectional title schemes in respect of an erf and/or
- (j) to appoint any such person/s or body/ies corporate including managing agents on its behalf to exercise its rights or perform its obligations;

“Development period” – means that period from the establishment of the Home Owners Association until the Developer or its successors in title has notified the Home Owners Association that it has ceased development of the scheme which notice must be given once the Developer has sold and transferred all erven belonging to it in the Development Scheme to the purchasers thereof;

“Development Scheme” – means the scheme for the development of the land by development (which may include the subdivision) thereof in even, subdivisional erven, group housing developments, cluster developments and any other scheme of the land or subdivision thereof including development schemes as defined in the Sectional Titles Act, substantially as shown on the Development plan;

“Development” – means the residential development on the Land and includes the sale of erven belonging to the Developer;

“Director” – means a member of the Board as contemplated in section 66 or an alternate Director, and includes any person occupying the position of a Director or alternate Director, by whatever name designated. Director includes a Prescribed Officer or a person who is a Member of a Committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company’s Board (section 1 of Act 71/2008);

“Duet Stand” – means a stand in the Township where an owner is in terms of these airtickets, entitled to erect two dwellings;

“Dwelling” – means a unit or group housing unit capable of being situated on an individual subdivisional erf or parent erf or being part of the development scheme or one of two units on a duette stand;

“Erf” – means erven 204 to 441 or any subdivision of such erven Boardwalk Extension 16 on the land upon which may be erected any sectional title or residential units capable of registration in the Deeds Registry;

“External Company” – a foreign Company that is carrying on business, or non-profit activities, as the case may be, within the Republic of South Africa, subject to section 23(2) (section 1 of Act 71/2008);

“Facilities” – mean any facilities of whatsoever nature which may be provided on the land including without limitation such facilities relating to the entertainment recreation or otherwise , not being common property and the use of which may be exclusive, reserved or conditional;

“Financial Reporting Standards” – with respect to any particular Company’s Financial Statements, means the standards applicable to that Company, as prescribed in terms of section 29(4) and (5) (section 1 of Act 71/2008);

“Financial Statements” – includes: Annual Financial Statements and provisional Annual Financial Statements; interim or preliminary reports; group and consolidated financial statements in the case of a group of Companies; and financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the Company’s Securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on (section 1 of Act 71/2008);

“Financial year end” – means the financial year of the Home Owners Association which shall run from the first day of March in any year to the last day of February in the subsequent year unless otherwise required by law;

“Group Housing development” – means the group housing development as shown on the Development Plan;

“Home Owners Association or Company” – means HERON HILL HOME OWNERS ASSOCIATION (NPC), (Home Owners Association incorporated under Section 21);

“Independently compiled and reported” – means that the Annual Financial Statements are prepared:

- (a) by an independent accounting professional;
- (b) on the basis of financial records provided by the Company; and
- (c) in accordance with any relevant financial reporting standards (Companies Regulation 26(1)(e)(i) to (iii) 2011);

“Independent reviewer” – means a person referred to in Companies Regulation 29(4) and who has been appointed to perform an independent review under this Regulation (Companies Regulation 29(1)(a) 2011);

“Land” – in respect of Boardwalk Extension 16, means Portion 198 (a portion of portion 3) of the farm Tweefontein 327 JR Gauteng;

“Levy or contributions” – means the levy and other contributions as referred to in Article 3.7;

Local authority – means the local authority having jurisdiction over the development scheme;

“Managing Agent” – means any person or body appointed by the Developer or the Home Owners Association as an independent contractor to undertake routine management of the scheme and of the affairs of the Home Owners Association. If the managing agent be a corporate body, any reference to the managing agent as a Member of any Committee shall be deemed to be a reference to a nominee or appointee of the managing agent approved by the Board;

“Member” – means a Member of Heron Hill Home Owners Association (NPC);

“Month” – means calendar month;

“Non-Profit Company” – means a Company –

- (a) incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1; and
- (b) the income and property of which are not distributable to its Incorporators, Directors, Members, Prescribed Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1;

“Office” – means the registered office of the Company;

“Ordinary Resolution” – means a Resolution adopted with the support of more than 50% (fifty percent) of the Voting rights exercised on the Resolution, or a higher percentage as contemplated in section 65(8):

- (a) at a Members’ Meeting; or
- (b) by Members acting other than at a Meeting, as contemplated in section 60 (section 1 of Act 71/2008 as amended by section 1(1)(u) of Act 3/2011);

“Prescribed Officer” – means a person who, within the Company, performs any function that has been designated by the Minister in terms of section 66(10) despite not being a Director of a particular Company. A person is a “Prescribed Officer” of the Company for all purposes of the Act if that person exercises general executive control over and management of the whole, or a significant portion, of the business and activities

of the Company; or regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the Company (section 1 of Act 71/2008 as amended by section 1(1)(x) of Act 3/2011);

“Purchasers” – means all such persons as have acquired rights, regardless as to the nature therein relative to and which gives rise to or purports to give rise to an entitlement to own a unit or an erf forming part of the development scheme;

“Quorum” – is not defined in the Act but means the minimum number of Directors of the Company, who are entitled to vote, that must be present to make a Board Meeting valid;

“Republic” – means the Republic of South Africa;

“Roads” – means such roads as may be constructed on the property including all rights of way servitudes;

“Sectional Titles Act” – means the Sectional Titles Act no 95 of 1986, as amended;

“Services” – means the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, firefighting, security, transport and such other utilities and amenities as may be provided by or at the instance of or with approval of the Board;

“Solvency and Liquidity Test” – has the meaning attributed thereto in section 4; being the test the Company satisfies if at a particular time, considering all reasonably foreseeable circumstances at that time:

- (a) the Company’s assets, as fairly valued, equal or exceed its liabilities, as fairly valued and
- (b) it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve) months after the date on which the test is considered or 12 (twelve) months following the distribution. (section 1 of Act 71/2008);

“Special Resolution” – means:

- (a) in the case of the Company, a Resolution adopted with the support of at least 75% (seventy five percent) of the Voting rights exercised on the Resolution in terms of section 65(8) or a different percentage as contemplated in section 65(10):
 - (i) at a Members’ Meeting or
 - (ii) by Members acting other than at a Meeting, as contemplated in Section 60; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorised person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated (section 1 of Act 71/2008 as amended by section 1(1)(cc) of Act 3/2011);

“Subdivisional erf” – means any subdivision of an erf;

“Town Planning Scheme” – means an operative town planning scheme applicable to the land;

“Township” – means BOARDWALK EXT 16;

“Unit” – means any group housing unit, sectional title unit (including its exclusive use area) or a dwelling unit for a single family as defined in the Town Planning Scheme of the local authority – with or without outbuildings and situated on a residential erf or individual subdivisional erf, tenure of which may be registered in the office of the Registrar of Deeds at Pretoria.

“Voting rights” – with respect to any matter to be decided by the Company, means the rights of any Member of the Non-Profit Company to vote in connection with that matter (section 1 of Act 71/2008).

1.2 Incorporation

- (1) Heron Hill Home Owners Association (NPC) is incorporated from 19 September 2007 as a Non-Profit Company, in terms of Schedule 1 and section 10 of the Companies Act, Act 71 of 2008 and section 122 of the Companies Amendment Act, Act 3 of 2011.
- (2) Heron Hill Home Owners Association (NPC) is incorporated in accordance with and governed by the unalterable provisions of the Companies Act, 2008, meaning a provision of the Companies Act that does not expressly contemplate that its effect on any particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company’s Memorandum of Incorporation or rules and the alterable provisions of the Companies Act, meaning

a provision of the Companies Act in which it is expressly contemplated that its effect on a particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation, subject to the limitation, extensions, variations or substitutions set out in this Company's Memorandum of Incorporation, and the provisions of this Company's Memorandum of Incorporation, which forms the Constitution of the Company. *Section 1*

- (3) Heron Hill Home Owners Association (NPC) shall apply all of its assets and income, however derived, to advance its stated objects, as set out above in this Memorandum of Incorporation. The income and property of the Company shall not be distributable to its Incorporators, Members, Directors, Prescribed Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1. *Item 1(2)(a) of Schedule 1 and Item 1(3) of Schedule 1*
- (4) This Memorandum of Incorporation does not limit or restrict the Company to acquire and hold securities issued by a profit Company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects. The Non-Profit Company may conduct any business, including a commercial venture, as long as the funds generated are applied to advance the Company's primary object. *Item 1(2)(b)(i)(ii) of Schedule 1*
- (5) Heron Hill Home Owners Association (NPC) shall not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person, who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
 - (5.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company, or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - (5.2) as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
 - (5.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
 - (5.4) in respect of any legal obligation binding on the Company. *Item 1(3)(a)(i)(ii) and Item 1(3)(b)(c)(d) of Schedule 1 of the Act and section 122(b) of Act 3 of 2011*

1.2 Powers of the Company

- (1) Heron Hill Home Owners Association (NPC) is not subject to any prohibitions regarding the amendment of this Memorandum of Incorporation, other than those contained in the Companies Act or the Income Tax Act.

1.3 Memorandum of Incorporation and Company Rules

- (1) In terms of this Memorandum of Incorporation the Company is not limited from making, amending or appealing any Company Rules as contemplated in section 15(3) of the Act, and the Board's capacity to make such Rules is not hereby limited or restricted. *Section 15(3)*
- (2) The Board shall publish these Company Rules in terms of section 15(3), (4) and (5) by delivering a copy of the Rules to each Director and Member, by publishing a copy of those Rules in any manner required or permitted by the Company's Memorandum of Incorporation, or the Rules of the Company, and filing a copy of those Rules. *Section 15(3)(a)(b)*
- (3) Any Rules proposed by the Board will take effect 10 (ten) business days after the filing of that Rule, or on the later date specified in the Rule. Any Rules proposed by the Board may not be filed if written objection by Members of 25% (twenty five percent) or more of the Voting rights are received by the Board within 20 (twenty) business days after publication.

This provision shall have the effect of limiting the authority of the Board and may be omitted or adjusted. Any Rule that takes effect as contemplated in this sub-article shall remain binding on an interim basis until put to a vote at the next General Meeting of the Company and shall become permanently binding if ratified by a Members' Resolution. In the event that a Rule may not be filed, the Board shall promptly inform each Director and Member of this result by ordinary mail.

1.4 Solvency and Liquidity Test

- (1) Heron Hill Home Owners Association (NPC) shall satisfy the Solvency and Liquidity Test at a particular time if, considering all reasonably foreseeable financial circumstances of the Company at that time, the assets of the Company, as fairly valued, equal or exceed the liabilities of the Company, as fairly valued, and it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve) months after the date on which the test is considered, or in the case of a distribution, 12 (twelve) months following that distribution. *Section 4(1)(a)(b) of the Act and section 2(a) of Act 3 of 2011*
- (2) The Board or any other person applying the Solvency and Liquidity Test to the Company shall consider a fair valuation of the Company's assets and liabilities, including a reasonably foreseeable contingent assets and liabilities, or may consider any other valuation of the Company's assets and liabilities that is reasonable in the circumstances. *Section 4(2)(b)(i)(ii)*

1.5 Interpretation of the Memorandum of Incorporation, Anti-avoidance, Exemptions and Substantial Compliance

- (1) When, in this Memorandum of Incorporation, a particular number of 'business days' is provided for between the happening of one event and another, the number of days shall be calculated by excluding the day on which the first such event occurs, including the day on or by which the second event is to occur, and excluding any public holiday, Saturday or Sunday that falls on or between the days. *Section 5(3)(a)(b)(c)*
- (2) If a provision of this Memorandum of Incorporation requires a document to be signed or initialled by or on behalf of a person, that signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act, or by 2 (two) or more persons, it shall be sufficient if all of those persons sign a single original of the document, in person or in the manner provided for in the Electronic Communications and Transactions Act, or each of those persons signs a separate duplicate original of the document, in person or in the Electronic Communications and Transactions Act, and in such case, the several signed duplicate originals, when combined, constitute the entire document. *Section 6(12)(a) and section 6(12)(b)(i)(ii)*

1.6 Members' Agreement and Company Rules

- (1) Subject to the Board having the authority to make Company Rules, a rule in terms of clause 1 of this sub-article shall be consistent with the Act and the Company Memorandum of Incorporation, and any such rule that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency, shall take effect on a date that is the later of 10 (ten) business days after the rule is filed in terms of this clause, or the date, if any, specified in the rule, and shall be binding on an interim basis from the time it takes effect until it is put to a vote at the next General Members' Meeting of the Company, and on a permanent basis only if it has been ratified by an Ordinary Resolution of Members at the said Meeting.

Within 10 (ten) business days after any rules of the Company have been put to a ratification, the Company shall file a Notice in Form CoR 16.2 indicating whether the rules have been ratified or rejected. *Section 15(4)(a), section 15(4)(b)(i)(ii), section 15(4)(c)(i)(ii) and Regulation 16(2)*

- (2) If a rule that has been filed in terms of clause 1 of this sub-article is subsequently ratified in terms of this sub-article, the Company shall file a notice of ratification within 5 (five) business days in the prescribed manner and form, or if not ratified when put to a vote, the Company shall file a notice of non-ratification within 5 (five) business days after the vote, in the prescribed manner and form, and the Company's Board is prohibited by this Memorandum of Incorporation from making a substantially similar rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Ordinary Resolution of the Members. Any failure to ratify the rules of the Company shall not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in clause 2 of this sub-article. *Section 15(5)(a), section 15(5)(b)(i)(ii) and section 15(5A)*
- (3) Within 10 (ten) business days after any rules of the Company have been amended, altered or repealed the Company shall file a Notice in Form CoR 16.1 indicating the extent and effect of the change. *Regulation 16(3)*
- (4) The Company's Memorandum of Incorporation, and any rules of the Company, are binding between the Company and each Member, between or among the Members of the Company, and between the Company and each Director of the Company,

or any other person serving the Company as a Member of a Committee of the Board, in the exercise of their respective functions within the Company. *Section 15(6)(a)(b) and section 15(6)(c)(i)(ii)*

- (5) This Memorandum of Incorporation does not limit or restrict the Members of the Company entering into any agreement with one another concerning any matter relating to the Company, but any such agreement shall be consistent with the Act and the Company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency. *Section 15(7)*

1.7 Amending the Memorandum of Incorporation

- (1) Heron Hill Home Owners Association (NPC)'s Memorandum of Incorporation may be amended subject to Article Incorporation – Powers of the Company:

(1.1) in compliance with a Court Order in the following manner: an amendment to a Company's Memorandum of Incorporation required by any Court Order must be effected by a Resolution of the Company's Board and does not require a Special Resolution as set out in this clause; or

(1.2) at any other time if a Special Resolution to amend it:

(1.2.1) is proposed by the Board of the Company or Members entitled to exercise at least 10% (ten percent) of the Voting rights that may be exercised on such a Resolution; and

(1.2.2) is adopted at a Members' Meeting or in accordance with section 60.

1.8 Authenticity of versions of the Memorandum of Incorporation

- (1) This Memorandum of Incorporation of Heron Hill Home Owners Association (NPC) as altered or amended, prevails in any case of a conflict between it and a translation filed and a consolidated revision filed, unless the consolidated revision has subsequently been ratified by a Special Resolution at a general Members' Meeting of the Company.

The latest version of the Company's Memorandum of Incorporation that has been endorsed by the Commission in terms of this sub-article prevails in the case of any conflict between it and any other purported version of the Company's Memorandum of Incorporation. *Section 18(1)(a)(b) and section 18(2)*

- (2) In regards to this Memorandum of Incorporation of Heron Hill Home Owners Association (NPC) and authentication of documents, any Director or the Company Secretary (if applicable) or any person appointed by the Directors for the purpose shall have the power to authenticate:

(2.1) any document affecting the constitution of the Company;

(2.2) any Resolution passed at the General Meeting or at a Meeting of the Directors or at a Meeting of any Committee; and

(2.3) any book, record, document or account relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or true extracts.

Where any book, record, document or account is elsewhere than at the Registered Office, the local Manager or officer of the Company having the custody of it shall be deemed to be a person appointed by the Directors for the purpose of this sub-article.

A document purporting to be a copy of any such Resolution, or an extract from the minutes of any such Meeting, which is certified, shall be conclusive evidence in favour of all persons dealing with the Company that such Resolution has been duly passed or, as the case may be, that any minute so extracted is a true and accurate record of proceedings at a duly constituted Meeting. *Section 18(1)(a)(b) and section 18(2)*

1.9 Legal Status of the Company

- (1) From the date and time that the incorporation of Heron Hill Home Owners Association (NPC) is registered, as stated in its registration certificate, the Company is a juristic person, which exists continuously until its name is removed from the Company's register in accordance with this Act, has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity, or the Company's Memorandum of Incorporation provides otherwise, is constituted in accordance with the unalterable provisions of this Act, the alterable provisions of the Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the Company's Memorandum of Incorporation, and any further provisions of the Company as set out in the Company's Memorandum of Incorporation. *Section (1)(a), section 19(1)(b)(i) and section 19(1)(c)(i)(ii)(iii)*
- (2) No persons shall solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities and obligations of the Company. *Section 19(2)*

1.10 Validity of the Company's Actions

- (1) The Company's Memorandum of Incorporation limits, restricts, qualifies the purposes, powers or activities of the Company, or limits the authority of the Directors to perform an act on behalf of the Company. The Members' Resolution may ratify any action by the Company or the Directors, that is inconsistent with any such limit, restriction or qualification, but such an action may not be ratified if it is in contravention of this Memorandum of Incorporation.

The Company's Memorandum of Incorporation limits, restricts or qualifies the purposes, powers or activities of the Company. No action of the Company is void by reason only that, the action was prohibited by that limitation, restriction or qualification, or as a consequence of that limitation, restriction or qualification, the Directors had no authority to authorise the action by the Company, and in any legal proceeding, other than proceedings between the Company and its Members and its Directors or its Members and Directors of the Company, no person may rely on such limitation, restriction or qualification to assert that an action contemplated in this clause is void. *Section 20(1)(a)(i)(ii), section 20(1)(b)(i)(ii) and section 20(2)(3)*

ARTICLE 2 – MEMBERS’ RIGHTS AND MEETINGS

2.1 Interpretation and Application of the Memorandum of Incorporation

- (1) A Member of the Non-Profit Company is a person who holds Membership in, and specified rights in respect of the Non-Profit Company, in terms of Schedule 1 of the Act.

A Member of the Non-Profit Company is a Voting Member of the Company, and who is entered as such in the Membership register of the Company in terms of Item 1(9) of Schedule 1 of the Act and who is entitled to exercise any Voting rights in relation to the Company.
- (2) 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.
- (3) Each Voting Member of the Non-Profit Company has at least 1 (one) vote. *Item 1(7) of Schedule 1*
- (4) This Memorandum of Incorporation does not limit or restrict the Company to allow for Membership to be held by juristic persons, including any profit Companies. *Item 4(c) of Schedule 1*
- (5) This Memorandum of Incorporation does not restrict or regulate, or provide for any restriction or regulation of, that Membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution. *Item 4(2) of Schedule 1*
- (6) This Memorandum of Incorporation does not presume the Membership of any person, regard a person to be a Member, or provide for the automatic or *ex officio* Membership of any person, on any basis other than in accordance with the qualifications set out in Article 2(10) below. *Item 4(2)(b)(i)(ii) of Schedule 1*
- (7) In relation to the Company, and for purposes of this Memorandum of Incorporation, no person other than a Member or its authorised representatives or proxies in terms of Article: Members’ Rights and Meetings - Members’ Right to be represented by Proxy, shall be entitled to attend, speak and vote at a Meeting of that class of Members. *Section 1 and section 57(1)*
- (8) The Board shall admit to Membership any person eligible in terms hereof to be Members of the Company.
- (9) Heron Hill Home Owners Association (NPC) shall maintain a Member’s register. *Section 24(4)(a)*
- (10) Membership of the Home Owners Association shall be limited to:
 - (10.1) the developer in its capacity as such (and represented by not more than 7 (seven) nominees or its successors in title in their capacity as such whilst it still is in terms of the Deeds Registrations Act reflected in the records of the deeds office concerned as the registered owner fo any erf or unit or an undivided share in an erf or unit in the Development Scheme; and
 - (10.2) any other person, who is, in terms of the Deeds Registries Act, reflected in the records of the deeds office concerned as the registered owner of any erf or unit or of an undivided share in an erf or unit in the scheme.
- (11) A person reflected in the records of the deeds office Pretoria as the registered owner of an undivided share in any erf or unit shall, subject to contrary proof, be deemed to be lawful registered or joint registered owner, as the case may be, thereof.
- (12) Where any erf or unit is owned by more than one person, all the owners of that erf or unit shall, except where otherwise determined by the Board, together be deemed to be one Member of the Home Owners Association, provided however that

all co-owners of any erf or unit shall be jointly and severally liable for the due performance of any obligations to the Home Owners Association.

2.2 Members' Right to be represented by Proxy

- (1) At any time, a Member may appoint any individual, including an individual who is not a Member of the Company, as a proxy to participate in, and speak and vote at, a Meeting of that class of Member, on behalf of the Member or give or withhold written consent on behalf of the Member to a decision to be taken by that class or by Round-Robin Resolution, provided that the Member may not appoint more than 1 (one) proxy to exercise Voting rights on behalf of that Member.

This Memorandum of Incorporation hereby limits and restricts the appointment of proxies to the appointment of 1 (one) proxy per Voting Member in terms of section 58(3)(a).

The Member of an instrument of proxy or general Power of Attorney, given by a Member, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any Meeting or proceeding of the Company, whether or not he is himself a Member in the Company.

Any Member may at any time appoint any natural person, including a natural person who is not a Member, as a proxy to participate in, and speak and vote at a Members' Meeting on behalf of that Member, or give or withhold written consent on behalf of that Member to a decision in terms of section 60 of the Act. *Section 58(1)(a) and (b), section 58(3)(a), section 58 and section 60*

- (2) A proxy appointment shall be in writing, dated and signed by the Member and remains valid for 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration unless it is revoked or expires earlier as contemplated in the Act.

The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the holder entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote. *Section 58(2)(a)(b)(i)(ii)*

- (3) The authority of a Member's proxy to delegate the proxy's powers to another person, and to decide without direction from the Member whether to exercise or abstain from exercising any Voting rights of the Member, is not limited or restricted by this Memorandum of Incorporation, subject only to any restriction set out in the instrument appointing the proxy. *Section 58(3)(b)*

- (4) In terms of the Act and this Memorandum of Incorporation if a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from Voting as he sees fit unless the proxy indicates otherwise.

Unless the instrument appointing a proxy provides otherwise, a Member's proxy may 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) of the Act, and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation. *Section 58(7)*

- (5) Heron Hill Home Owners Association (NPC) shall not require that the proxy appointment be made irrevocable. *Section 58(8)(c)*

- (6) Heron Hill Home Owners Association (NPC) shall be entitled to disregard a proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:

- (6.1) the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 of the Act or is inconsistent with or contravenes this Memorandum of Incorporation; or

- (6.2) the authority of the proxy has been revoked by the Member (if applicable, through its authorised representative or through its legal representative terms of section 58(4)(b) and (c). *Section 58(4)(a)(b)(c) and section 58(7)*
- (7) Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which may be disregarded, or the Voting of whom may be disregarded, shall not be entitled to attend, participate in, or speak or vote at the Meeting of Members in question or by way of Round-Robin Resolution in terms of section 60 of the Act, and shall forthwith remove himself from the Meeting in question at the request of the Chairman of the Meeting. *Section 60*

2.3 Record date for determining Members' Rights

- (1) The Board of the Company shall set a record date for the purpose of determining which Members are entitled to receive notice of a Members' Meeting, participate in and vote at a Members' Meeting, decide any matter by written consent or electronic communication, exercise pre-emptive rights, or be allotted or exercise other rights. *Section 59(1)(a)-(f)*
- (2) A record date determined by the Board may in terms of section 59(1) set the applicable record dates for the purposes of determining Member rights, in accordance with and as contemplated by section 59, including for purposes of determining that Members who are registered on a particular record date shall be entitled to:
- (2.1) receive the notice of Members' Meeting (section 59(1)(a)); or
- (2.2) participate in and vote at a Members' Meeting (section 59(1)(b)); or
- (2.3) decide any matter by Round-Robin Resolution (section 59(1)(c)).

Each applicable record date determined by the Board:

- (2.4) shall not be earlier than the date on which the record date is determined by the Board, i.e. shall not be a "retrospective" record date (section 59(2)(a)(i));
- (2.5) shall not be more than 10 (ten) business days before the date on which the event or action for which the date is being set, is scheduled to occur (section 59(2)(a)(ii));
- (2.6) must be published to every Member in terms of section 59(2)(b). *Section 59(1), section 59(1)(a)(b)(c), section 59(2)(a)(i)(ii) and section 59(2)(b)*
- (3) For the sake of clarity, in relation to each Members' Meeting, and having regard to the possible sequence of events or actions, separate record dates shall be determined, and published by the Board, to determine which Members shall be entitled to:
- (3.1) receive the notice of Members' Meeting;
- (3.2) attend and vote at that Members' Meeting, as it may be adjourned or postponed, receive notice of any adjourned or postponed Members' Meeting, if notice is required or given; and
- (3.3) attend and vote at the resumption of the adjourned Meeting or the commencement of the postponed Meeting. *Section 59*

2.4 Members acting other than at a Meeting

- (1) A Resolution that could be voted on at a Members' Meeting, other than in respect of the election of Directors, may instead be submitted by the Board for consideration to the Members entitled to exercise Voting rights in relation to the Resolution and voted on in writing by Members entitled to exercise Voting rights in relation to the Resolution within 20 (twenty) business days after the Resolution was submitted to them. *Section 60(1)(a)(b)*

- (2) A Resolution will have been adopted if it is supported by persons entitled to exercise sufficient Voting rights for it to have been adopted as an Ordinary or Special Resolution at a properly constituted Members' Meeting and if adopted, shall have the same effect as if it had been approved by Voting at a Meeting. *Section 60(2)(a)(b)*
- (3) An election of a Director that could be conducted at a Members' Meeting may instead be conducted by written polling of all of the Members entitled to exercise Voting rights in relation to the election of that Director. *Section 60(3)*
- (4) In addition to a Resolution passed in terms of this clause, a Resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened Members' Meeting.

Within 10 (ten) business days after adopting a Resolution, or conducting an election of Directors in terms of the provisions of this clause, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Resolution, or vote on the election of a Director, as the case may be. *Section 60(1)(a)(b) and section 60(4)*

2.5 Members' Meetings

- (1) In terms of this Memorandum of Incorporation, the Board of the Company or a Member may call a Member's Meeting at any time. *Section 61(1)(2)*
- (2) Notice of Members' Meetings shall be sent to each Member entitled to vote at such Meeting and who has elected to receive such notice.
- (3) Heron Hill Home Owners Association (NPC) shall hold a Members' Meeting or put the proposed Resolution to Members entitled to vote:
 - (3.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members entitled to vote for decision;
 - (3.2) whenever the number of Directors fall below the minimum number prescribed in the Act and the Company is required to fill a vacancy on the Board.

Except at any time when there is only 1 (one) Member or when a Resolution may be passed otherwise than at a Meeting of Members, the Company shall hold a Members' Meeting:

 - (3.3) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
 - (3.4) whenever required in terms of the Act to fill a vacancy on the Board;
 - (3.5) when demanded by Members;
 - (3.6) when required by any other provision of this Memorandum of Incorporation. *Section 61(2)(a)(b)*
- (4) This Memorandum of Incorporation does not provide a different period of notice of Members' Meetings to the period prescribed by the Act and this does not prejudice the Company rights to call a Meeting on less notice pursuant to section 62(2A) of the Act. *Section 62(1)(2)*
- (5) Heron Hill Home Owners Association (NPC) shall, as determined by the Board either hold a Members' Meeting in order to consider 1 (one) or more Resolutions, or as regards such Resolution(s) that could be voted on at a Members' Meeting, other than an Annual General Meeting, instead require them to be dealt with by Round-Robin Resolution of Members entitled to vote. Within 10 (ten) business days after the Members entitled to vote by Round-Robin Resolution, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the Round-Robin Resolution. *Section 61*

- (6) The Board or any Director of the Company authorised by the Board to do so may call a Meeting of Members at any time and must do so if and when required by the Companies Act or this Memorandum of Incorporation to do so. The Board must call a Meeting of Members demanded by Members in terms of section 61(3). If there are no Directors or all of the Directors of the Company are incapacitated, the Company hereby authorises any Member of the Company to call a Members' Meeting for purposes of and in the circumstances contemplated in section 61(11). *Section 61(1)(2)(3) and section 61(11)*
- (7) The Board of the Company or any Member or any other person specified in the Company's Memorandum of Incorporation or Company Rules, shall call a Members' meeting if 1 (one) or more written and signed demands for such a Meeting are delivered to the Company and each such demand describes the specific purpose for which the Meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting rights entitled to be exercised in relation to the matter proposed to be considered at the Meeting, in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, and the right of Members to requisition a Meeting as set out in section 61(3) may be exercised by the Members of a lower percentage of the Voting rights entitled to be exercised in relation to the matter to be considered at the Meeting, despite the provision of section 61(3). *Section 61(3)(a)(b) and section 61(4)*
- (8) At any time before the start of a Members' Meeting a Member who submitted a demand for that Meeting may withdraw that demand and the Company shall cancel the Meeting if, as a result of 1 (one) or more demands being withdrawn, the Voting rights of any remaining Members continue to demand the meeting, in aggregate, fall below the minimum percentage of Voting rights required to call a Meeting. *Section 61(6)(a)-(b)*
- (9) The authority of either the Board or Members to determine the location of any Members' Meeting, and to hold any such Meeting in the Republic of South Africa, or in any foreign country, is not limited or restricted by this Memorandum of Incorporation. *Section 61(9)(a)(b)*
- (10) With respect to the location(s) and venue(s) of a Members' Meeting, the Board may determine that a Meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion appropriate and practical in any circumstances to address the location and venue where the Chairman of the Meeting will preside ("the main Meeting place") the numbers of persons attending at any particular location or venue, the safety of persons attending at any particular location or venue, the facilitators of attendance of persons at any particular location or venue, the entitlement of persons to attend at any particular location or venue, and the electronic participation of persons in the Meeting, and may from time to time vary any such arrangements. A Member who in person or as represented attends a Members' Meeting physically at any of the various locations and venues for a Meeting shall be deemed to be present at the Meeting in question, and counted towards the quorum, while so attending. *Section 62(9)*
- (11) In regards to Members' Meetings the Board may convene a Members' Meeting whenever it thinks fit. If, at any time, there are insufficient Members within the Republic of South Africa capable of acting to form a quorum, any Director or any Member of the Company may convene a Members' Meeting in the same manner as nearly as possible as that in which Meetings may be convened by the Board. *Section 61(11)(a)*
- (12) Heron Hill Home Owners Association (NPC) is not required to hold any Members' Meetings other than those specifically required by the Act.
- (13) Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all Members' Meetings that are called for may be held in person.
- (14) Any failure to hold a Meeting does not affect the existence of the Company, or the validity of any action by the Company. *Section 61(14)*
- (15) Each Director of the Company shall be present for the entire duration of each Members' Meeting, unless a Member or his representative or proxy requests 1 (one) or more or all the Directors to withdraw and leave the Meeting or any part of the

Meeting in which event, such Director(s) as have been requested to leave, shall leave the Meeting for the period as requested.

2.6 Notices

- (1) Each Member (or the agent) shall notify the Company in writing of an electronic mail address, a fax number, and a physical or postal address, each of which shall be deemed to be the Members' registered address within the meaning of this Memorandum of Incorporation, and if the Member has not notified the Company of at least 1 (one) of the above, the Member shall be deemed to have waived his right to be served from any notice of the Company.
- (2) Any Notices for all purposes of this Memorandum of Incorporation including the cancellation thereof, shall –
 - (2.1) be in writing
 - (2.2) be sent by registered post or delivered or by telex or telefax or by electronic mail (email);
 - (2.3) be addressed to the respective party at his address shown in the register of Members; and
 - (2.4) be deemed to have been received by the party to whom it is addressed at the time of delivery thereof, or on the 7th day following the posting thereof (excluding the day upon which it is posted) in the Republic of South Africa, or in the case of a telex or telefax on the acknowledgement slip thereof.

2.7 Notice of Members' Meetings

- (1) A notice of a Meeting of any class of Members must be delivered contemporaneously to each Member registered as such as of the applicable record date for delivery of that notice, determined in terms of the record date, read with section 59(1)(a) of the Act, of the class of Member entitled to vote on any of the Resolutions to be considered at the Meeting, and to the Auditors for the time being of the Company in terms of section 93(1)(c)(ii) of the Act; and if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a Member (section 58(6) of the Act), in form and content as prescribed in section 62(3), at least 10 (ten) business days before the date on which the Meeting is to begin. Any failure to comply with this clause shall not affect the validity of the General Meeting. *Section 58(6), section 59(1)(a), section 62(1)(a)(b) and section 93(1)(c)*
- (2) Heron Hill Home Owners Association (NPC) may call a Meeting with less notice than required by this Memorandum of Incorporation, but such a Meeting may proceed only if every person who is entitled to exercise Voting rights in respect of any item on the Meeting agenda is present at the Meeting and votes to waive the required minimum notice of the Meeting. *Section 62(2A)*
- (3) A notice of a Members' Meeting shall be in writing in plain language and shall include:
 - (3.1) the date, time and place for the Meeting, and the record date for the Meeting;
 - (3.2) the general purpose of the Meeting, and any specific purpose if applicable:
 - (3.2.1) a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete Financial Statements for the preceding financial year;
 - (3.2.2) a copy of any proposed Resolution of which the Company has received notice, and which is to be considered at the Meeting, and a notice of the percentage of Voting rights that will be required for that Resolution to be adopted;
 - (3.3) a reasonably prominent statement that:

(3.3.1) a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by Round-Robin Resolution of the relevant holders entitled to vote;

(3.3.2) a proxy need not be a Member entitled to vote; and

(3.3.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Members' Meeting.
Section 62(3)(a)-(e)

(4) The notice of a Meeting or of an adjourned Meeting:

(4.1) must inform Members of the availability of participation in the Meeting and of participation in any postponement or adjournment of the Meeting, by electronic communication and must provide the necessary information to enable Members or their proxy or proxies to access the available medium or means of electronic communication for the Meeting and for any postponement or adjournment thereof in terms of section 63(3)(a) of the Act;

(4.2) should, for the sake of clarity, specify the record date determining which Members are entitled to receive the notice of the Meeting (section 59(1)(a) and 59(2)(b) of the Act);

(4.3) must comply with the requirements set out in section 62(3) as to formalities and content, including specifying the record date for determining which Members are entitled to attend, participate in and vote at the Meeting (section 59(1)(b) and 59(3)(b) of the Act);

(4.4) must specify whether any proposed Resolution is to be voted on by polling; and

(4.5) should, for the sake of clarity, specify the applicable record dates which would be applicable in terms of section 59(1)(a) and (b) of the Act should the Meeting be postponed or adjourned.

2.8 Conduct of Meetings

(1) A person wishing to attend or speak at or participate in or vote at a Members' Meeting as a Member personally or as an authorised representative or as a proxy for a Member, or as the legal representative of a Member, or as the Auditors or representative of the Auditors, must for purposes of identification, present reasonably satisfactory identification and evidence of their authority or entitlement to represent the Member in question or to attend the Meeting, to the Chairman of the Meeting 30 (thirty) minutes before the appointed time for that Meeting to begin or, if the Meeting is adjourned, 30 (thirty) minutes before the appointed time for that adjourned Meeting to resume, as the case may be, stipulated in the notice of the Meeting or adjourned Meeting in question.

If applicable, the auditors for the time being of the Company shall be entitled to attend any Members' Meeting and be heard on any part of the business of the Meeting that concerns the Auditor's duties or functions. *Section 63(1)(a) and section 93(1)(c)(i)(iii)*

(2) In terms of the Act and this Memorandum of Incorporation the Company has the authority to conduct a Members' Meeting entirely by electronic communication or to provide for participation in a Meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation.

Heron Hill Home Owners Association (NPC) entitles a Members' Meeting to be conducted entirely by electronic communication, or 1 (one) or more Members, or proxies for Members, to participate by electronic communication in all or part of a Members' Meeting that is being held in person, as long as 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 in the Meeting.

Every Meeting of Members must be reasonably accessible within or outside the Republic of South Africa for electronic participation by Members, irrespective of the physical location of the Meeting.

Members (or if applicable their representatives or proxies) may participate in all or part of a Meeting (including the Meeting as adjourned) which they are entitled to attend, by electronic communication, at their own expense.

The electronic communication employed by the Company must ordinarily enable all participants in the Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Meeting.

A Resolution adopted by Members, some or all of whom were connected electronically, where:

- (2.1) Members connected electronically remained connected for the duration of that part of the Meeting during which the Resolution was discussed; and
- (2.2) the subject matter of the Resolution has been discussed; and
- (2.3) the Chairman of the Meeting or any other person present in person or electronically at the Meeting certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the Resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a Resolution at a Meeting or where some or all of the Members were connected and participated electronically, the Company shall:

- (2.4) deliver to each Member a copy of the Resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be; and
- (2.5) insert a copy of the said Resolution and statement in the minute book of the Company.

A Member who in person or as represented participates in a Meeting at any time electronically in terms of this article shall be deemed to be present at the Meeting in question, and counted towards a quorum, while so participating. *Section 60(4), section 61(10), section 63(2)(a)(b) and section 63(2)(b)*

- (3) In the event that the Company provides for participation in a Meeting by electronic communication, as set out in clause 2 of this sub-article, the notice of that Meeting shall inform Members of the availability of that form of participation and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication, and access to the medium or means of electronic communication is at the expense of the Members or proxy. *Section 63(3)(a) and section 63(3)(b)*

2.9 Meeting Quorum and Postponement

- (1) In terms of the Act, this Memorandum of Incorporation specifies that at least 25% (twenty five percent) of all the Voting rights that are entitled to be exercised in respect of:
 - (1.1) at least 1 (one) matter to be decided at any Members' Meeting must be present for that meeting to begin; and
 - (1.2) a matter to be decided at any Members' Meeting for that matter to begin to be considered at that Meeting, provided that 3 (three) Members entitled to attend and vote are present at the time of the Meeting.

After a quorum has been established for a Members' Meeting, or for a matter to be considered at a Members' Meeting, the Members' Meeting may continue, or the matter may be considered, so long as all the Members for such quorum are present at the Members' Meeting.

The quorum shall be sufficient persons present at the Members' Meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the Voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at the Members' Meeting but if the Company has more than 2 (two) Members entitled to vote, the Members' Meeting may not begin unless in addition at least 3 (three) Members entitled to vote are present.

2.10 Adjournment of Members' Meetings

- (1) In terms of the Act and this Memorandum of Incorporation an adjournment of a Meeting, or of consideration of a matter being debated at the Meeting shall be either to a fixed time and place, or until further notice, as agreed at the Meeting and requires that a further notice be given to Members only if the Meeting determined that the adjournment was until further notice.

Heron Hill Home Owners Association (NPC) shall not be required to give further notice of a Meeting that is postponed or adjourned unless:

- (1.1) the location for the Meeting is different from:
- (1.1.1) the location of the postponed or adjourned Meeting (section 64(7)(a) of the Act); or
 - (1.1.2) the location announced at the time of adjournment, in the case of an adjourned Meeting (section 64(7)(b) of the Act); or
- (1.2) it is necessary to inform registered Members of the availability of participation in the postponed or adjourned Meeting by electronic means; or
- (1.3) the Meeting has been adjourned "until further notice" in terms of this Article of this Memorandum of Incorporation.
Section 64(7)(a)(b) and section 64(11)

If the location of the Meeting is different from the location of the adjourned Meeting, the Company shall publish a notice in the newspaper circulating in the province, where the head office of the Company is situated stating the date, time and place to which the set Meeting has been adjourned.

- (2) In terms of the Act and this Memorandum of Incorporation subject to any requirements of this Memorandum of Incorporation, the quorum at any adjourned Meeting shall be the Members present thereat personally or by proxy, who may transact the business for which the Meeting was called.

If at any adjourned Meeting a quorum is not present within 30 (thirty) minutes from the appointed time for such Meeting to commence, the Members who are present or represented by proxy and entitled to vote shall constitute a quorum and may proceed to transact the business of the Meeting.

- (3) No business shall be transacted at any adjourned Members' Meeting of the Company other than business left unfinished at the Meeting from which the adjournment took place.
- (4) After a quorum has been established for a Meeting or for a matter to be considered at a Meeting, the Meeting may continue or the matter may be considered, so long as at least 1 (one) registered Member with Voting rights entitled to be exercised at the Meeting, or on that matter, is present or presented at the Meeting. *Section 64(9)*

2.11 Votes of Members

- (1) In terms of the Act and this Memorandum of Incorporation subject to any special rights or restrictions as to Voting by or in accordance with this Memorandum of Incorporation, at a Meeting of the Company:

- (1.1) every person present, either personally or by proxy, and entitled to exercise Voting rights shall be entitled to 1 (one) vote on a show of hands, for each erf or unit registered in his name, irrespective of the number of Voting rights that person would otherwise be entitled to exercise;
- (1.2) on a poll any person who is present at the Meeting, whether as a Member or as a proxy for a Member, has the number of votes determined in accordance with Voting rights held by that Member;
- (1.3) Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a Meeting of Members if a demand is made for such a vote by:
 - (1.3.1) at least 5 (five) persons having the right vote on that matter, either as Members or as proxies representing Members; or
 - (1.3.2) a Member who is, or Members who together are, entitled, as Members or proxies representing Members, exercise at least 10% (ten percent) of the Voting rights entitled to be voted on that matter; or
 - (1.3.3) the Chairman of the Meeting,
- (1.4) Co-owners having rights or interests relative to same unit or share blocks relating to the same unit shall, unless otherwise determined by prior Resolution of the Board jointly have one vote; and
- (1.5) The Developer shall have one vote for each erf or unit still registered in its name.
- (1.6) No member shall be able to vote at any meeting unless his levies are paid up to date.

At any Meeting of the Company a Resolution put to the vote of the Meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of this clause, 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 defeated, 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 proportion of the votes recorded in favour of or against such Resolution. The demand for a poll may be withdrawn.

If a poll is duly demanded, it shall be taken in such a 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. In computing the majority on the poll, regard shall be had to the number of votes to which each Member is entitled.

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the Meeting directs. The demand for a poll shall not prevent the continuation of a Meeting for the transaction of any business other than the question upon which the poll has been demanded.

- (2) Every Resolution of Members is either:
 - (2.1) an Ordinary Resolution in terms of the Companies Act (section 65(1)); or
 - (2.2) a Special Resolution in terms of the Companies Act, as required in terms of the Companies Act or as required in terms of this Memorandum of Incorporation (section 65(1) read with section 65(9), (11) and (12)); or

- (2.3) the Board may propose any Resolution to be considered by Members and may determine whether that Resolution will be considered and voted on at a Meeting of Members or by Round-Robin Resolution (section 65(2)).
- (3) The passing of an Ordinary Resolution is to be subject to the approval of at least 51% (fifty one percent) of the votes cast by all Members present in person or represented by proxy, at the General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (4) The passing of a Special Resolution is to be subject to the approval of at least 61% (sixty one percent) of the votes cast by all Members present in person, or represented by proxy, at the General Meeting or the Annual General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (5) A Special Resolution shall be required to:
- (5.1) ratify a consolidated revision of a Company's Memorandum of Incorporation as contemplated in section 18(1)(b) of the Act;
- (5.2) ratify actions by the Company or Directors in excess of their authority in terms of Article: Incorporation and Nature of the Company – Validity of Company's Actions and Article: Members' Rights and Meetings – General Meetings of this Memorandum of Incorporation (section 20(2) of the Act);
- (5.3) approve the voluntary winding-up of the Company in terms of Article: Dissolution and Distribution of Net Value of Company – Winding-up or Dissolution of this Memorandum of Incorporation (section 80(1) of the Act);
- (5.4) approve the winding-up of a Company in terms of Article: Dissolution and Distribution of Net Value of Company – Winding-up or Dissolution of this Memorandum of Incorporation (section 81(1) of the Act);
- (5.5) approve an application to transfer the registration of the Company to a foreign jurisdiction (section 82(5) of the Act);
- (5.6) approve any proposed fundamental transaction to the extent required by Part A of Chapter 5 or 30;
- (5.7) revoke a Resolution (section 164(9)(c) of the Act);
- (5.8) a Special Resolution adopted at a Members' Meeting is required in terms of this Memorandum of Incorporation, in addition to the matters set out above in terms of section 65(11), for:
- (5.8.1) dis-applying pre-emptive rights that would otherwise apply. *Section 65(11)(a)-(m)*
- (6) 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), or elsewhere in either the Act or this Memorandum of Incorporation. *Section 65(11) and section 65(12)*
- (7) In terms of this Act and this Memorandum of Incorporation, Round-Robin Resolution of Members entitled to vote, will be passed if signed by Members entitled to exercise sufficient Voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' Meeting.

If a Member entitled to vote is a Body Corporate, represented, at any Members' Meeting shall have only 1 (one) vote, a proxy shall only have 1 (one) vote on a show of hands.

Within 10 (ten) business days after the adoption or failing of a Round-Robin Resolution, the Company shall:

- (7.1) deliver to each Member a copy of the Resolution proposed, accompanied, by a statement describing the results of the vote, consent process or election, as the case may be (section 60(4)); and
- (7.2) insert a copy of the Resolution and statement referred to in the minute book of the Company.
- (8) Any 2 (two) or more Members may by notice to the Board require the Board to propose a Resolution concerning a matter in respect of which such Members are each entitled to exercise Voting rights, and when proposing the Resolution may require to Board to determine that the Resolution be submitted to Members for consideration at a Meeting of Members called, or at the next scheduled Members' Meeting, or by Round-Robin Resolution. *Section 65(3)*
- (9) Any Resolution proposed must comply with the requirements as to form and content, and supporting information or explanatory material, specified in section 65(4).
- (10) Heron Hill Home Owners Association (NPC) is not obliged to file with the Commission any Members' Resolution (including any Special Resolution), except if required to do so in terms of the Companies Act or this Memorandum of Incorporation and the Board may decide whether the Company is obliged to file with the Commission any Members' Resolution. *Section 65(11), section 59(1)(c), section 60(1)(a), section 60(1)(b), section 60(2), section 60(3), section 60(4), section 60(5), section 65(1), section 65(2), section 65(3), section 65(4), section 65(9), section 65(11) and section 65(12)*

2.12 General Meetings

- (1) Except at any time when there is only 1 (one) Member or when a Resolution may be passed, otherwise, than at a Meeting of Members, the Company shall hold a Members' Meeting:
 - (1.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
 - (1.2) whenever required in terms of the Act to fill a vacancy on the Board;
 - (1.3) when demanded by Members; or
 - (1.4) when required by any other provision of this Memorandum of Incorporation *Section 61(2)(a)(b)*
- (2) The Home Owners Association shall within 6 (six) months after the end of each financial year hold a general meeting as its Annual General Meeting, in addition to any other general meetings during that year and shall specify the meeting as such in the Notice in terms of this Article of the Memorandum of Incorporation.

Such Annual General Meeting shall be held at such time, subject to the foregoing provisions, as the Directors shall decide from time to time. Every Meeting of Members shall, unless otherwise resolved by the Directors, be held in the city in which the Home Owners Association's registered office is for the time being situated.
- (3) The business of the Members' Meeting shall be to receive and consider the following:
 - (3.1) the presentation of the Directors' report;
 - (3.2) the election of Directors to the extent required by section 66(4)(b) of the Act or this Memorandum of Incorporation;
 - (3.3) the presentation of a summarised form of Audited Annual Financial Statements, for the immediate preceding financial year of the Company and directions for obtaining a copy of the complete Financial Statements for the preceding financial year of the Company, if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
 - (3.4) the presentation of the Audit Committee report if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;

- (3.5) the appointment of an Auditor for the ensuing financial year if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
- (3.6) the appointment of an Audit Committee for the ensuing financial year if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
- (3.7) the appointment of a Social and Ethics Committee for the ensuing financial year if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
- (3.8) the presentation of the Social and Ethics Committee report, if so required by the Act or this Memorandum of Incorporation, if applicable for the Company;
- (3.9) the election of other Prescribed Officers of the Company in the place of those retiring by rotation or otherwise;
- (3.10) any other matter or business determined by the Board;
- (3.11) any matters raised by the Members, with or without advance notice to the Company;
- (3.12) any other business which ought to be transacted at an Annual General Meeting, and any business which is brought under consideration by the reports of the Board laid before such Meeting;
- (3.13) all other business transacted at the Annual General Meeting and all business transacted at any other Members' Meeting shall be deemed special; and/or
- (3.14) a copy of any proposed Resolution of which the Company has received notice, and which is to be considered at the Meeting;
- (3.15) a notice of the percentage of Voting rights that will be required for that Resolution to be adopted;
- (3.16) a reasonably prominent statement that:
 - (3.16.1) a Member entitled to attend and vote at the Members' Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by Round-Robin Resolution of the relevant Members entitled to vote;
 - (3.16.2) a proxy need not be a Member entitled to vote; and
 - (3.16.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Act in order to reasonably satisfy the person presiding at the Members' Meeting.
- (3.17) the consideration of the Chairman's report to the Directors;
- (3.18) the consideration of any other matters raised at the meeting including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;
- (3.19) the consideration of the report of the remuneration for the auditors;
- (3.20) the noting of contributions and/or levies for the financial year during which such Annual General Meeting takes place;
- (3.21) the consideration of a report in respect of the development scheme and the conduct thereof;
- (3.22) the consideration of a report in respect of the enforcement of rights and interests of purchasers.

- (4) At least 10 (ten) business days before the date of the Members' Meeting, a copy of the Annual Financial Statements of the Company shall be delivered to all Members, save for any Member who waives his right to receive such Statements.

2.13 Termination of Membership

- (1) When a Member ceases to be the registered owner of (or ceases to have a right to or interest in) an erf or unit, he shall, ipso facto cease to be a Member of the Home Owners Association.
- (2) The Developer or its successors in title shall be entitled to cede all its rights in terms of this Memorandum of Incorporation and the transferee shall be entitled to exercise all such rights so ceded.
- (3) Developer or its successors in title may at any time abandon, in whole or in part, any rights conferred upon it and shall be deemed to have done so at the end of the development period, provided that nothing herein before contained shall be construed as depriving the Developer or any rights it may have in terms hereof as an ordinary Member of the Home Owners Association.
- (4) The Developer or its successor in title shall, when it ceases being entitled to exercise the Developer's rights, cease to be a Member of the Home Owners Association.
- (5) A Member may, with the prior written consent of the Board and upon such conditions as the Board may impose, cede such rights as may vest in him to this Memorandum of Incorporation as security to the mortgages of that Member's erf or unit.
- (6) A registered owner of an erf or unit may not resign as a Member of the Home Owners Association.
- (7) Every Member shall to the best of his ability further the objects and interests of the Home Owners Association and observe all Rules made by the Home Owners Association.
- (8) No Member ceasing to be a Member of the Home Owners Association for any reason (nor shall any such Members, their executors, curators, trustees or liquidators) have any claim upon or interest in or right to the funds or other property of the Home Owners Association.
- (9) The Home Owners Association may claim from any Member or his estate any arrear contributions and interest or other sums due from him to the Home Owners Association at the time of his ceasing to be a Member.

2.14 Alienation

- (1) A Member shall not in any manner alienate an erf or unit or, right or interest therein, without prior written consent (which consent or ratification shall not unreasonable be withheld) of or subsequent written ratification by the Board and unless it is a condition of the agreement of alienation that:
 - (1.1) the proposed transferee has bound himself to become and remain a Member of the Home Owners Association for the duration of his ownership of the erf or unit or interest therein, and a clearance certificate has been issued by the Home Owners Association to the effect that its Memorandum of Incorporation has been complied with and;
 - (1.2) the transfer of that erf or unit or interest therein into the name of that transferee shall ipso facto constitute the transferee as a Member of the Home Owners Association.
- (2) This Memorandum of Incorporation and any Management Regulations and Management or Rules made shall further be binding on any person having possession or occupying an erf or unit, and no Member shall let or otherwise part with the occupation of an erf or unit whether temporarily or otherwise, unless the proposed occupier has agreed to be bound by this Memorandum of Incorporation and any Management Regulations and Rules issued in terms hereof and the Board's approval has been obtained.

- (3) The Directors may by regulation provide for the issue of a membership certificate which certificate shall be in such form as may be prescribed by the Directors.
- (4) No Member shall alienate (other than to permit temporary occupation thereof by others) any erf or unit or rights thereto until the Finance Committee under the hand of one of its Members or the managing agent on its behalf has certified that the Member has at date of transfer fulfilled all his financial obligations to the Home Owners Association.
- (5) Before an erf or an unit is transferred, a Member who has alienated the same shall pay to the Home Owners Association an administration fee for issuing a clearance certificate in respect of the proposed transfer, such as may be determined by the Directors of the Finance Committee from time to time.

2.15 Common Property

- (1) The common property in the case of a sectional scheme vests in the body corporate of that scheme subject to the powers and obligations of the Home Owners Association.
- (2) All common property forming part of the development scheme and which is as set out in the Development Plan and any other common property which may vest in the Home Owners Association is subject to the provisions of these articles and Management Regulations and Rules issued pursuant hereto.

3.1 First Director or Directors

- (1) Each Incorporator of the Company is a first Director of the Company and serves until sufficient other Directors have first been elected to satisfy the minimum requirements of this Memorandum of Incorporation. *Section 67(1)(a)(b)*
- (2) In the event of the number of Incorporators of the Company together with any *ex officio* Directors, or Directors to be elected in terms of clause 1 of this sub-article is fewer than the minimum number of Directors required for the Company in terms of the Act, or the Company's Memorandum of Incorporation, the Board shall call a Members' Meeting within 40 (forty) business days after incorporation of the Company for the purpose of electing sufficient Directors to fill all vacancies on the Board at the time of the election. *Section 67(2)*
- (3) The Board must comprise in the case of this Non-Profit Company at least 3 (three) and not more than 7 (seven) Directors. *Section 66(2)(a)*
- (4) This Memorandum of Incorporation provides for the Company to have Directors and Voting Members and since the Directors are to be elected by the Voting Members, this Memorandum of Incorporation provides for the election of at least one-third of those elected Directors each year. *Item 5(1)(b) of Schedule 1*
- (5) A Director shall be an individual, but need not himself be a Member of the Home Owners Association. A Director however by accepting his appointment to office as such be deemed to have agreed to be bound by all the provisions of this Memorandum of Incorporation.
- (6) The Board shall during the development period consist of not less than 2 (two) nominees of the Developer and appointed by it.
- (7) Any other Directors to be appointed to office shall be elected by the Members in general meeting, the Developer being entitled in voting on the election of such Directors, to exercise the voting rights conferred upon it by the Memorandum of Incorporation. The first Directors shall on registration of the Home Owners Association be appointed by the Developer.

3.2 Election of Directors

- (1) This Memorandum of Incorporation provides for:
 - (1.1) the election of executive and non-executive Directors by the Board or the election each year of at least one-third of those elected Directors by Voting Members;
 - (1.2) a person to be an *ex officio* Director of the Company as a consequence of that person holding some other office title, designation or similar status;
 - (1.3) the election of 1 (one) or more persons as alternate Directors of the Company. *Section 66(4)(a)(i)–(iii) and Item 5 of Schedule 1*
- (2) A person becomes entitled to serve as a Director of this Company when that person:
 - (2.1) has been elected in accordance with Item 5 of Schedule 1, or holds and office, title, designation or similar status, entitling that person to be an *ex officio* Director of the Company; and
 - (2.2) has delivered to the Company a written consent to serve as its Director. *Section 66(7)(a)(b) of the Act and section 44(b) of Act 3 of 2011*
- (3) Any particular Director may be elected to more than 1 (one) Committee of the Company and when calculating the minimum number of Directors required for this Company, being not less than 3 (three) Directors, a Director who has been elected to more than 1 (one) Committee must be counted only once. *Section 66(12)*

- (4) A person contemplated in clause 1 of this sub-article who holds office or acts in the capacity of an *ex officio* Director of a company has all the:
- (4.1) powers and functions of any other Director of the Company, except to the extent that the Company's Memorandum of Incorporation restricts the powers and functions or duties of an *ex officio* Director; and
- (4.2) duties, and is subject to all of the liabilities, of any other Director of the Company. *Section 66(5)(b)(i)(ii)*
- (5) In any election of Directors the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and in each vote to fill a vacancy where each Voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the Voting rights exercised support the candidate. *Section 66(2)(a)(b)(i)(ii)*
- (6) The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of this Memorandum of Incorporation. During that period, any person so appointed has all the powers, functions and duties and is subject to all of the liabilities of any other Director of the Company. *Section 68(3)*
- (7) A person elected or appointed as an alternate for a Director acts for all intents and purposes in the place of, and not for or as a representative of, the Director for whom he is an alternate, and shall be treated as a Director of the Company while he acts in the place of the Director for whom he is an alternate.

While acting in the place of the Director for whom he is an alternate, the alternate Director may generally exercise all the rights of that Director and shall, in all aspects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as Director and the holding of office of that Director, and shall not have any claim of any nature whatsoever against the Company for any remuneration with respect to his services as a Director or his appointment as an alternate.

A person may be elected or appointed as an alternate for 1 (one) or more Directors. *Section 66(4)(b)*

- (8) An alternate shall only be entitled to vote at any Meeting if the Director for whom he is an alternate is not present at that Meeting, provided that the alternate may also attend a Meeting at which the Director for whom he is an alternate is present if the other Directors present at the Meeting, resolve that he may attend, provided further, that in the circumstances when the Director for whom he is an alternate, is present, then the alternate shall not be counted towards a quorum and shall recuse himself from the Meeting if requested by any Director to do so.

Any person attending a Meeting of Directors as an alternate for 1 (one) or more Directors in the absence of such Director(s) shall only have 1 (one) vote and shall not be entitled to more than 1 (one) vote at any such Meeting.

An alternate shall only be entitled to sign a Round-Robin Resolution if the Director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.

The appointment of an alternate shall cease, and he shall vacate his office as an alternate, if:

- (8.1) the alternate was appointed by the Board and the Board gives notice to that alternate terminating his appointment;
- (8.2) the person, for whom another person has been elected or appointed as an alternate, ceases to be a Director of the Company or ceases to be entitled to serve as a Director, for any reason; or
- (8.3) an event occurs or circumstances arise, in relation to an alternate, which if he were a full Director would cause him to cease to be entitled to serve as a Director in terms of the Companies Act or this Memorandum of Incorporation. *Section 66(4)(b)*

3.3 Governance of the Board

- (1) In terms of the Act and this Memorandum of Incorporation the business and affairs of the Company shall be managed by or under the direction of its Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1), is limited, restricted and qualified by this Memorandum of Incorporation except to the extent that the Act and this Memorandum of Incorporation provides otherwise in terms of section 66(1) and to the extent set out in Item 11(1) of Schedule 5 of the Act. *Section 66(1)*
- (2) The Directors may, at any time and from time to time, by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation including the right of sub-delegation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any Company, the Members, Directors, Nominees or Managers of any Company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such Power of Attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them. Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- (3) The Directors shall further have power to:
 - (3.1) require any works constructed within a township shall be supervised to ensure that the provisions of this Memorandum of Incorporation and the Rules are complied with and that all work is performed in a proper and workmanlike manner. "Works" for the purposes of this sub-article shall mean construction works of any sort in relation to any improvement within the township including, without limiting the generality of the foregoing, the construction of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts, walls, fences and landscape architectural features; and
 - (3.2) issue an architectural and environmental design and maintenance manual in respect of the township.
- (4) Without prejudice to the generality of the foregoing, the Directors may in their discretion from time to time for the purposes of the Home Owners Association borrow or raise such a sum or sums of money from Members of the Home Owners Association or from such other persons as the Directors may determine. The Directors may (but shall not be obliged to) further secure the repayment of any sums so raised in such manner and upon such terms as they may deem fit, whether by the mortgaging of any fixed property belonging to or in respect of which the Home Owners Association has a mortgageable interest or otherwise.
- (5) The Board of Directors shall have the right to vary, cancel or modify any of its decisions and Resolutions from time to time.
- (6) The levies due by a Director in his capacity as a member must at all times be paid up to date,

3.4 Vacancies on the Board

- (1) In terms of this Memorandum of Incorporation, a person shall cease to be a Director and a vacancy arises on the Board of the Company:
 - (1.1) when the person's term of office as Director expires, or
 - (1.2) in any case, if the person:
 - (1.2.1) resigns or dies;

- (1.2.2) in the case of an *ex officio* Director, ceases to hold the office, title, designation or similar status that entitled the person to be an *ex officio* Director;
- (1.2.3) becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time subject to section 71(3);
- (1.2.4) is declared delinquent by a court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company in terms of section 162;
- (1.2.5) becomes ineligible or disqualified in terms of section 69 subject to section 71(3); or
- (1.2.6) is removed:
 - (1.2.6.1) by Resolution of the Members in terms of section 71(1);
 - (1.2.6.2) by Resolution of the Board in terms of section 71(3); or
 - (1.2.6.3) by order of the court in terms of section 71(5) or (6). *Section 70(1)(a)(b)(i)-(vi)*

- (2) If a vacancy arises on the Board, the Board may in terms of section 68(3) elect a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the earlier of the vacancy being filled by election by the Members in terms of section 68(2) or the conclusion of the next General Meeting of the Company after the temporary filling.

If a vacancy arises on the Board, and as a result thereof, the Company does not have the minimum number of Directors required by the Act or this Memorandum of Incorporation, the Board shall within the period of 3 (three) months from the date such a vacancy arose, continue to function in terms of section 66(11) and shall fill the vacancy on a temporary basis as provided for above or convene a General Meeting or propose a Round-Robin Resolution for the purposes of the Members conducting an election to fill such vacancy in terms of section 68(2).

After the expiry of the 3 (three) month period, the remaining Directors on the Board shall only be permitted to act for the purposes of filling the vacancy or calling a General Meeting of Members or proposing a Round-Robin Resolution for purposes of an election in terms of section 68(2).

If at any time the number of Directors falls below the number required as a quorum the continuing Directors may act for the purpose of appointing sufficient Directors to constitute a quorum or for convening a General Meeting but for no other purpose.

- (3) If a person has ceased to be a Director of the Company and a vacancy on the Board has arisen, such vacancy must be filled as provided for in section 70(3), subject to section 70(4) as follows:

- (3.1) the Company is not required to hold a General Meeting, the vacancy must be filled within six (6) months after the vacancy arose:
 - (3.1.1) at a Members' Meeting called for the purpose of electing the Director; or
 - (3.1.2) by a poll of the persons entitled to exercise Voting rights in an election of the Director in terms of section 60(3). *Section 70(3)(a)(b)(i)(ii)*

3.5 Removal of Directors

(1) In terms of section 71(1) a Director elected by Members may be removed by an Ordinary Resolution adopted at a Members' Meeting entitled to exercise Voting rights in the election of that Director, despite anything to the contrary in this Memorandum of Incorporation, or any agreement between the Company and that Director, or between any Members and that Director as follows:

(1.1) before the Members of a Company consider the above Resolution:

(1.1.1) the Director concerned must be given notice of the Meeting and the Resolution. The notice must be equivalent to that which a Member is entitled to receive, irrespective of whether or not the Director is a Member of the Company; and

(1.1.2) the Director must be afforded a reasonable opportunity to make a presentation to the Meeting either in person or through a representative before the Resolution is put to a vote. *Section 71(1) and section 71(1)(2)(a)(b)*

(2) Heron Hill Home Owners Association (NPC) has at least 3 (three) Directors, and if a Member or a Director contends that a person should be removed as a Director of the Company by the Board on any of the following grounds set out in section 71(3):

(2.1) has become:

(2.1.1) ineligible or disqualified in terms of section 69; or

(2.1.2) incapacitated to the extent that the Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time;

(2.2) or has neglected or been derelict in the performance of the functions of a Director;

that Member or Director shall first submit to the Board each of its contentions and the specific grounds of each such allegation and shall submit to the Board all evidence available on which the Member or Director relies on for making the contention and allegation. On receipt thereof the Board must study such submission, investigate the allegation and determine the matter by Resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

(3) This Memorandum of Incorporation prohibits the removal of a Director by Round-Robin Resolution of Members in terms of section 60 or Directors acting other than at a Meeting in terms of section 74 where a decision may be adopted by written consent of the majority of Directors, given either in person or by electronic communication, since the Director concerned must be afforded a reasonable opportunity to make a presentation at a Board Meeting, in person or through a representative, before the Resolution to remove him is put to a vote. *Section 71*

(4) A Director shall be entitled to resign as Director on 30 (thirty) days' written notice to the Company or on such shorter notice as the Board may determine.

3.6 Board Committees

(1) This Memorandum of Incorporation does not limit, restrict or qualify the authority of the Board to appoint any number of Committees of Directors, or to delegate to any such Committee any of the authority of the Board.

Except to the extent that the Board or a Members' Resolution establishing a Committee provides otherwise, the Members of the Board Committee:

- (1.1) may include persons who are not Directors of the Company but any such persons must not be ineligible or disqualified to be a Director in terms of section 69 of the Act;
 - (1.2) may consult with or receive advice from any person;
 - (1.3) may be remunerated for their services as such; and
 - (1.4) provided that the Committee is duly constituted, have the full authority of the Board in respect of any matter referred to it. *Section 72(1)(a)(b) and section 72(2)(a)(b)*
- (2) The Members of each Board Committee shall hold and conduct their Meetings in accordance with the provisions of the Board and Board Committees Charter and the Rules of the Company governing the holding and conduct of such Meeting, which provisions are binding on each Board Committee Member in terms of section 15(6)(c)(ii). Any Board Committee formed shall conform to any regulations that may from time to time be imposed upon it by the Board, provided that the Meetings and proceedings of any Board Committee consisting of 2 (two) or more Members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the Meetings and proceedings of the Board, so far as the same are applicable thereto, and are not superseded by any regulation made by the Board.
- (3) If the Company has in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) points in terms of its Public Interest Score, the Company shall appoint a Social and Ethics Committee, unless it is a subsidiary of another Company that has a Social and Ethics Committee and the Social and Ethics Committee of that other Company which will perform the functions required by this regulation on behalf of that subsidiary Company; or it has been exempted by the Tribunal. *Regulation 43(2)(a)(b)*
- (4) If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Company is exempted from doing so by the Tribunal, in terms of section 72(5) of the Act, the Board may appoint a Social and Ethics Committee having the powers and functions prescribed in terms of section 72(4) of the Act and Regulation 43(2), which Committee shall comprise not less than 3 (three) Directors or Prescribed Officers of the Company, at least 1 (one) of whom must be a Director who is not involved in the day to day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years. (Regulations 43(2) and (4)). The Social and Ethics Committee is governed by, and is subject to, the terms and conditions of the Board and Board Committees Charter read with the Act and the Regulations. *Section 15(6)(c)(ii), section 72(1), section 72(2)(a)(i)(ii), section 72(2)(b)(c), section 72(4), Regulation 43(2) and Regulation 43(4)*
- (5) If a Company exists on the effective date and is required to have a Social and Ethics Committee, it shall appoint the first Members of the Committee within 12 (twelve) months after the effective date, or the determination by the Tribunal of the Company's application. *Regulation 43(3)(i)(ii)*
- (6) In the event the Company has a Social and Ethics Committee, the said Committee is entitled to:
 - (6.1) require from any Director or Prescribed Officer of the Company any information or explanation necessary for the performance of the Committee's functions;
 - (6.2) request from any employee of the Company any information or explanation necessary for the performance of the Committee's functions;
 - (6.3) attend any Members' Meeting;
 - (6.4) receive all notices of and other communications relating to any Members' Meeting; and
 - (6.5) be heard at any Members' Meeting on any part of the business of the Meeting that concerns the Committee's functions. *Section 72(8)(a-e)*

Heron Hill Home Owners Association (NPC) shall pay all the expenses reasonably incurred by its Social and Ethics Committee including, if the Social and Ethics Committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the Social and Ethics Committee in the performance of its functions. *Section 72(9)*

- (7) The Board shall have the power to appoint, and at its discretion to remove or suspend, a local Board Committee or Board Committees in any foreign country whatsoever and to fix and vary their remuneration; to establish and keep registered offices and branch registers in any foreign country whatsoever and to close same at its discretion; and to appoint and remove agents who represent the Company for such purposes as the Board may determine. The Board shall have the power to, at any time and from time to time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes of this item with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board in terms of the Act and this Memorandum of Incorporation) for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment, may if the Board thinks fit, be made in favour of the Members of any foreign Committee established as aforesaid, or in favour of any company, or of the Members, Directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such Power of Attorney may contain provisions for the protection or convenience of persons dealing with such attorneys as the Board thinks fit. Any such delegates as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it. *Section 72(1)(a)*

3.7 Finance Committee, Executive Committee, Levies and Contributions

- (1) There shall be established in terms of this article a Finance Committee and/or Executive Committee either or both of which shall consist of at least one Director and such other person or persons as the Board may determine.
- (2) The Finance Committee shall from time to time levy contributions upon Members for the purpose of meeting all the expenses which the Home Owners Association has incurred or to which the Finance Committee reasonably anticipates the Home Owners Association will be put (including expenditure of a capital nature) in the pursuance of its main object and whether by way of maintenance, repair, improvement, and (under circumstances where the Home Owners Association has ownership or possession and/or control of the land or any part thereof) keeping in good order and condition of the roads, boundary wall, security fence, reception and/or security building, parking areas, common property and services of the Home Owners Association or for payment of all rates and other charges payable by the Home Owners Association in respect of any land or portion thereof so vested in it, and/or for the services rendered to it or by it and/or for payment of the salaries and/or wages of the employees of the Home Owners Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Home Owners Association, the scheme or any part thereof, and the Home Owners Association's affairs, including all and any expense reasonably or necessarily incurred in the attainment of the objects of the Home Owners Association or the pursuit of its business.
- (3) The Finance Committee shall include in such estimate an amount to be held in reserve ("the reserve fund") to meet anticipated future expenditure not of an annual rate, including without limitation reasonable provision for the future maintenance, repairs and replacements.
- (4) In computing and levying contributions, whether as levy or otherwise, the Finance Committee shall take into account the nature of each scheme and expense relating to it as prescribed by the Board as well as the extent of each Member's erf or unit.
- (5) The Finance Committee shall whenever it shall consider appropriate be entitled to levy contributions against Members and in any event not less than 30 days prior to the end of each financial year, or as soon thereafter as reasonably possible, notify every Member at the address chosen by him, of the nature and amount of contributions paid and required to be paid by Members and required by the Home Owners Association to meet expenses during the then following financial year, and shall specify separately any estimated deficiency, if any as may at any time ensue and the reasons therefor.
- (6) Each Notice to Members advising of any contribution levied, shall specify the amount payable by that Member in respect of expenses and reserve fund.

- (7) Every contribution, regardless as to the nature thereof, shall be payable in such manner as the Directors may from time to time decide and the Directors may in their discretion discriminate between one type of scheme to another and they may similarly determine that the portion of the total expenses be apportioned in differing ratios in respect of differing schemes or units utilised for differing schemes, depending on the nature of the intended or actual use thereof.
- (8) In the event of the Finance Committee for any reason whatsoever failing to prepare and serve Notice timeously, every Member shall until receipt of such Notice continue to pay the levy or other contribution previously imposed, and shall after such Notice pay such additional contribution as may be specified in the Notice.
- (9) The Finance Committee may, from time to time levy special contributions upon the Members in respect of all such expenses as are mentioned in this Article, but not limited thereto, and whether included or not in any estimate and the Finance Committee may in imposing such levies further determine the terms of payment thereof on a basis other than set out in this Article.
- (10) The Finance Committee shall be empowered, in addition to such other rights as the Home Owners Association may have in law as against its Members, to determine the rate of interest from time to time chargeable upon arrear contributions levied, provided that such rate of interest shall not exceed the rates laid down in terms of the Usury Act no 73 of 1968 as amended, as if the arrear contribution were a money lending transaction as defined in the said act.
- (11) Any amount due by a Member by way of a contribution levied and interest shall be a debt due by him to the Home Owners Association. The obligation of a Member to pay contributions and interest shall cease upon his ceasing to be a Member without prejudice to the Home Owners Association's right to recover arrears and interest. No contributions or interest paid by a Member shall under any circumstances be repayable by the Home Owners Association upon his ceasing to be a Member unless so determined by the Directors in their sole and absolute discretion. A Member's successor in title shall be liable as from date upon which he becomes a Member, to pay the levied contribution and interest thereon attributable to the interest to which he succeeds.
- (12) In calculating the contributions payable by any Member the Finance Committee shall as far as reasonably practical:
- (12.1) assign costs arising directly out of an erf or unit itself to the Member owning such erf or unit or interest therein of the Member;
- (12.2) assign a proportion of costs attributable generally to a particular development scheme, eg, sectional title or group housing scheme, to the owners of units in that sectional title or group housing scheme as the case may be:
- (12.2.1) *pro rata*, in the case of a sectional title development scheme to the participation quota of the Member concerned;
- (12.2.2) in the case of each development scheme other than a sectional title scheme, pro-rata to the fraction which would have been assigned to each unit as a participation quota in terms of the Sectional Titles Act had the development scheme been a sectional title development and all the subdivisinal lots thereon, if any, sectional title sections; and
- (12.2.3) assign those costs for services attributable to the land as a whole, generally to the owners of all units equally, subject, however, to the proviso, that duet stands, where two dwellings have been erected, will contribute 1½ (one and a half) the amount of other stands.
- The following stands in the Township have been earmarked as duet stands. Stands numbers: 235 - 256; 280 - 289; 292; 400 - 427; 437; 439; 440 - 441.
- (13) The Directors of the company and/or Finance Committee or Executive Committee, as the case may be shall at all times and notwithstanding anything to the contrary contained in this Memorandum of Incorporation where they consider it equitable to do so, have the right and discretion to:

- (13.1) assign to the Members such greater or lesser share of costs as they may consider as reasonable in the circumstances including further to arrange for separate metering of units for the supply of electricity and water and other services;
- (13.2) assign to any business unit such greater or lesser share of the expenses as it may consider reasonable in the circumstances;
- (13.3) assign to any Member a greater or lesser proportion of the costs of maintaining any facilities on the land as it may consider reasonable in the circumstances;
- (13.4) assign to the registered owner of a subdivision for development purposes or a single residential erf a greater or lesser share of the costs as may be reasonable in the circumstances having regard to the value of such subdivision or erf or without improvements as determined by a valuator appointed specifically for that purpose.
- (14) No Member shall, unless otherwise determined by the Board, be entitled to any of the privileges of membership unless and until he shall have paid every contribution levied, interest thereon in terms of this Article and any other sum, if any, which may be due and payable to the Home Owners Association from whatsoever cause arising.
- (15) The Directors or the Finance Committee shall not be entitled to undertake on behalf of the Home Owners Association any permanent works of a capital nature exceeding an amount to be determined by the general meeting on an annual basis without the sanction of a Resolution of the Home Owners Association in general meeting.
- (16) The Finance Committee shall for the period from the date of commencement of business of the Home Owners Association raise contributions in accordance with the principles set out above, mutatis mutandis.
- (17) The establishment of a Finance Committee shall be in the discretion of the Directors of the Home Owners Association and in the absence of a Finance Committee being established, the powers and responsibilities set out above as being vested on the Finance Committee shall mutatis mutandis apply to and vest in the Executive Committee.
- (18) The Executive Committee and/or Finance Committee shall act under delegated authority of the Directors of the Home Owners Association.
- (19) Notwithstanding anything to the contrary herein, the Developer shall not be liable for payment of any levies in his capacity as owner of any unit or erf which remains registered in its name. For purposes of this article of the Memorandum of Incorporation, the Developer shall mean Ajax Avenue Developments (Pty) Ltd No 2005/034073/07 only and shall not include its successors in title, nominees and assigns. This clause is irrevocable and may not be amended or substituted without the written consent of the Developer.

3.8 Board Meetings

- (1) A Director authorised by the Board of the Company may call a Meeting of the Board at any time, and shall call such a Meeting if required to do so by at least 25% (twenty five percent) of the Directors where the Board has 12 (twelve) Members or more, or 2 (two) Directors in any other case. *Section 73(1)(a)(b)*
- (2) The Directors of the Company convening a Board Meeting may determine the location of the Meeting, including the location of a Meeting which has been adjourned, provided that the location shall be the Registered Office of the Company or a suitable venue in the Republic of South Africa which is reasonably accessible to each Director.
- (3) In terms of the Act and this Memorandum of Incorporation, the authority of the Board to conduct a Meeting entirely by electronic communication, or to provide for participation in a Meeting by electronic communication, is not limited or restricted by this Memorandum of Incorporation.

The electronic communication facility employed by the Company must ordinarily enable all persons participating in that Meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the Meeting. *Section 73(3)*

A Resolution adopted by Directors, some or all of whom were connected electronically, where:

- (3.1) Directors connected electronically remained connected for the duration of that part of the Meeting when the Resolution was discussed;
- (3.2) the subject matter of the Resolution has been discussed; and
- (3.3) the Chairman of the Meeting or any other Director present in person or electronically certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the Resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a Resolution at a Meeting or where some or all of the Directors were connected and participated electronically in terms of this clause the Company shall:

- (3.4) deliver to each Director of the Company a copy of the Resolution proposed, accompanied by a statement describing the results of the vote; and
- (3.5) insert a copy of the Resolution proposed and statement in the minute book of the Company.

A Director who participated in a Meeting at any time electronically in terms of this article shall be deemed to be present at the Meeting in question, and counted towards a quorum, while so participating.

The Board determines the manner, form and time of providing notice of its Meetings as set out in section 73(4) and is not limited or restricted by this Memorandum of Incorporation. The Directors may meet together for the dispatch of business, adjourn or otherwise regulate their Meetings as they see fit, subject to the provisions of the Act and this Memorandum of Incorporation.

In terms of item 11(2) of Schedule 5, a notice given by any person to another person in terms of any provision of the previous Act, shall be considered as notice given in terms of any comparable provision of the Act, as from the date that the notice was given under the previous Act. *Section 73(4)(a)(b)*

- (4) If all of the Directors of the Company acknowledge actual receipt of the notice, are present at a Meeting, or waive notice of the Meeting, the Meeting may proceed even if the Company failed to give the required notice of that Meeting, or there was a defect in the giving of the notice. *Section 73(5)(b)(c)(d)(e)*
- (5) In terms of the Act and this Memorandum of Incorporation, minutes of Board and Board Committee Meetings must include all Resolutions adopted by the Board or Board Committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75. *Section 73(6)*
- (6) Each Resolution adopted by the Board must be dated and sequentially numbered and are effective as of the date of the Resolution, unless the Resolution states otherwise. *Section 73(7)(a)*
- (7) Signature of the minutes or of a Resolution by the Chair of the Meeting (or by the Chair of the next Meeting) is evidence of the proceedings of that Meeting, or adoption of the Resolution, as the case may be. An extract from such minutes or extract from any Resolution in writing, if signed by any Director or the Company Secretary, shall be evidence of the matters stated in such minutes or extract. *Section 73(8)*

- (8) The Directors shall cause Minutes to be taken of every Directors' Meeting, although not necessarily verbatim, which Minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the Meeting. All Minutes of Directors' Meetings shall after certification as aforesaid be placed in a Directors Minutes Book to be kept in accordance with the provisions of the law relating to the keeping of Minutes of Meetings of Directors of the Home Owners Association. The Director's Minutes Book shall be open for inspection at all reasonable times by a Director, the Auditors and the Members.

3.9 Board Quorum

- (1) A Board Meeting may not begin unless the majority of the Directors are present in terms of section 73(5)(b).

A matter to be decided at the Board Meeting may not begin to be considered unless the majority of the Directors are present.

For purposes of counting a quorum at any time, a Director or his alternate who is personally present at the Meeting, or who participates in person electronically in terms of Article: Board, Directors and Prescribed Officers – Board Meetings at that time, shall be counted towards a quorum at that time.

A person whose election as Director including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors.

3.10 Board Resolutions

- (1) The Board may propose any Resolution to be considered by Members and may determine whether that Resolution will be considered and voted on at a Meeting of Members or by Round-Robin Resolution. *Section 65(2)*

- (2) Each Director has 1 (one) vote on a matter before the Board in terms of section 73(5)(c) except that:

(2.1) a Director whose ineligibility to serve as a Director has been determined in terms of this Memorandum of Incorporation, shall not have a vote in respect of that matter in terms of section 71(3);

(2.2) a Director who has been suspended in terms of section 70(2) shall not have a vote on any matter before the Board;

(2.3) a Director who has a personal financial interest in respect of a matter to be considered by the Board or who knows that a related person has a personal financial interest in the matter in terms of section 75(4) or 75(5), shall not have a vote in respect of that matter in terms of section 75(5)(f)(ii).

A majority of the votes of the Directors present and entitled to exercise and exercising their vote on a matter is sufficient to approve a Board Resolution, provided that there is at least a quorum of Directors present and so exercising their votes on a matter.

An abstention from Voting shall not be counted as an exercise of a vote, and shall in terms of section 73(5)(d) be disregarded for purposes of calculating whether or not a majority has been obtained.

If a Resolution of the Directors has failed because of a tie contemplated in this clause, the Board or any Director of the Company or any registered Member may refer the matter to the Members for the Members to resolve and facilitate the breaking of any deadlock at Director level, failure of which by the Members and/or Directors shall not constitute grounds for the winding-up of the Company except in terms of section 81(1)(d), subject to section 81(2).

The vote of any person whose election as a Director, including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not with effect from the time that vote is cast be counted towards any vote of Directors.

A Director unable to attend a Board or Board Committee Meeting may, notwithstanding that this Director has an alternate, authorise any other Director to vote for him at that Meeting, and in the event that the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. If both the Directors so authorised and an alternate of the Director who granted the authority, are present at the Meeting, the alternate shall not be entitled to vote in the place of the absent Director. Authority in terms of this clause must be in writing and must be handed to the person presiding at the Meeting at which it is to be used.

(3) A Resolution that could be voted on at a Board Meeting other than a Board Resolution that the Company voluntarily begin Business Rescue Proceedings and place the Company under supervision in terms of section 129(1), may instead of being voted on at a Meeting be:

(3.1) submitted by the Directors proposing the Resolution for consideration to each Director in terms of section 74(1); and

(3.2) voted on in writing by Directors entitled to exercise Voting rights on that matter within 10 (ten) business days after the Resolution was submitted to them.

A Resolution will have been adopted as a Board Resolution if it has been supported in writing by the requisite majority of the Directors in person or their alternates who are entitled to exercise Voting rights on the Resolution proposed, and, if so adopted, such a Resolution will have the same effect as if it had been adopted at a quorate Board Meeting. *Section 74(1)(2)*

A Round-Robin Resolution of Directors shall be deemed to have been passed on the date specified in the Resolution as the effective date of the Resolution provided that the effective date is not a date earlier than the date the Resolution was submitted to Directors for their consideration and, if deemed fit, adoption or, failing any such effective date being specified in the Resolution, shall be deemed to have been passed on the date on which the Resolution was approved in writing by the last of the Directors or their alternates entitled to do so Voting. *Section 73(7)(b)*

Within 10 (ten) business days after the adoption or failing of a Round-Robin Resolution, the Company shall:

(3.3) deliver to each Director a copy of the Resolution proposed, accompanied by a statement describing the results of the vote; and

(3.4) insert a copy of the Resolution and statement in the minute book of the Company.

3.11 Directors acting other than at Meeting

(1) A decision that could be voted on at a Meeting of the Board of the Company 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. *Section 74(1)*

(2) A decision made in the manner in terms of this Article is of the same effect as if it had been approved by Voting at a Meeting. *Section 74(2)*

3.12 Register of Directors

(1) Heron Hill Home Owners Association (NPC) must establish and maintain a record of its Directors, including all the details about each Director (including that Director's email address) required in terms of and for the period stipulated in the Act and the Companies Regulations in a register of Directors in terms of section 24(3)(b), section 24(5) and regulation 23.

(2) For purposes of the Act and in relation to the register of Directors required to be kept by the Company in terms of section 24(3)(b), a Director is defined in section 1 to mean:

- (2.1) a Member of the Board, being a person previously appointed in terms of the Companies Act 1973 or elected as a Director of the Company in terms of the Act;
- (2.2) an alternate Director for a Member of the Board;
- (2.3) any person, if any, occupying the position of Director or alternate Director but by whatever name designated;

and accordingly, the prescribed details of each such person is required to be included by the Company in the register of Directors of the Company.

3.13 Directors' Remuneration

- (1) Heron Hill Home Owners Association (NPC) shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except:
 - (1.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - (1.2) as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
 - (1.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the Company; or
 - (1.4) in respect of any legal obligation binding on the Company. *Item 1(3) of Schedule 1 of the Act and section 122(b) of Act 3 of 2011*

3.14 Financial Assistance

- (1) Heron Hill Home Owners Association (NPC) is prohibited from providing a loan to, securing a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director. *Item 5(3) of Schedule 1*
- (2) This Memorandum of Incorporation does not limit, restrict or qualify the said financial assistance, loan or securing a debt or obligation if it is in the ordinary course of the Company's business and for fair value; constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Company or anticipated expenses to be incurred by the person on behalf of the Company, is to defray the person's expenses for removal at the Company's request; or is in terms of an employee benefit scheme generally available to all employees or a specific class of employees. *Item 5(4) of Schedule 1 of the Act and section 122(a) of Act 3 of 2011*

3.15 Directors' Personal Financial Interests

- (1) At any time, a Director shall disclose any personal financial interest in advance, by delivering to the Board, a notice in writing setting out the nature and extent of that interest, to be used generally until changed or withdrawn by further written notice from that Director. *Section 75(4)*
- (2) The Director:
 - (2.1) shall disclose the interest and its general nature before the matter is considered at the Meeting;
 - (2.2) shall disclose to the Meeting any material information relating to the matter, and known to the Director;
 - (2.3) shall disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

- (2.4) if present at the meeting, shall leave the Meeting immediately after making any disclosure;
- (2.5) not take part in the consideration of the matter;
- (2.6) while absent from the Meeting is to be regarded as being present at the Meeting for the purpose of determining whether sufficient Directors are present to constitute the Meeting, and is not to be regarded as being present at the Meeting for the purpose of determining whether a Resolution has sufficient support to be adopted; and
- (2.7) shall not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board. *Section 74(2)*

3.16 Standards of Directors' Conduct

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a Committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company. *Section 76(1)(a)(b)*
- (2) A Director of the Company shall not use the position of Director, or any information obtained while acting in the capacity of a Director to gain an advantage for the Director or for another person other than the Company or a wholly-owned subsidiary of the Company or to knowingly cause harm to the Company or a subsidiary of the Company and communicate to the Board at the earliest practicable opportunity any information that comes to the Director's attention, unless the Director reasonably believes that the information is immaterial to the Company or generally available to the public, or known to the other Directors; or is bound not to disclose that information by a legal or ethical obligation of confidentiality. *Section 76(2)(a)(i)(ii) and section 76(2)(b)(i)(ii)*
- (3) A Director of the Company shall exercise the powers and perform the functions of Director in good faith and for a proper purpose, in the best interests of the Company and with the degree of care, skill and diligence that may reasonably be expected of a person, carrying out the same functions in relation to the Company as those carried out by that Director, and having the general knowledge, skill and experience of that Director. *Section 76(3)(a)(b) and section 76(3)(c)(i)(ii)*
- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of Director in terms of in the best interest of the Company and with the necessary degree of care, skill and diligence of that Director:
 - (4.1) the Director shall take reasonably diligent steps to become informed about the matter;
 - (4.2) the Director has no material personal financial interest in the subject matter of the decision, and has no reasonable basis to know that any related person has a personal financial interest in the matter; or
 - (4.3) the Director shall disclose any personal financial interest in advance to either the Board, with regard to that matter, and the Director has a rational basis for believing and shall believe, that the decision was in the best interests of the Company and is entitled to rely on:
 - (4.3.1) the performance by 1 (one) or more employees of the Company whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
 - (4.3.2) legal counsel, accountants or other professional persons retained by the Company, the Board or a Committee as to matters involving skills or expertise that the Director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence. *Section 76(4)(a)(i)-(iii), section 76(4)(b)(i)(ii), section 76(5)(a), section 76(5)(b)(i)(ii) and section 76(5)(c)*

3.17 Indemnification and Directors' Insurance

- (1) In terms of the Act and this Memorandum of Incorporation the authority of the Company to purchase market related insurance to protect the Company or a Director, as contemplated in section 78(7) in the Act, is not limited, restricted or extended by this Memorandum of Incorporation, giving authority to the Company to purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director or the Company against any contingency including, but not limited, to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director.

Heron Hill Home Owners Association (NPC) may purchase insurance to protect the Company or a Director as set out in section 78(7) of the Act, and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

- (2) Heron Hill Home Owners Association (NPC) shall be entitled to claim restitution from a Director of the Company or of a related Company for any money paid directly or indirectly by the Company to or on behalf of that Director, in any manner inconsistent with this clause of this Memorandum of Incorporation. *Section 78(8)*

- (3) Heron Hill Home Owners Association (NPC) is prohibited from indemnifying a Director, a Prescribed Officer, a person who is a member of a Board Committee or of the Audit Committee (if applicable) of the Company, irrespective of whether or not the person is also a member of the Company's Board in respect of:

- (3.1) any fine that may be imposed on a Director of the Company or on a Director of a related company, as a consequence of that Director having been convicted of an offence unless a single individual is the sole Member and sole Director of the Company, or if 2 (two) or more related individuals are the only Members of the Company and there are no Director of the Company other than 1 (one) or more of those individuals;

- (3.2) a duty contemplated in section 75 relating to the disclosure requirements in terms of the Director's personal financial interests;

- (3.3) a duty contemplated in section 76 relating to the standards of the Director's conduct;

- (3.4) any legal consequence arising from an act or omission which constitutes wilful misconduct or wilful breach of trust on the part of the Director;

- (3.5) liability of Directors and Prescribed Officers is contemplated in section 77(3) relating to the following:

- (3.5.1) acted in the name of the Company, signed anything on behalf of the Company or purported to bind the Company or authorise a taking of any action by or on behalf of the Company, despite knowing that the Director lacked the authority to do so;

- (3.5.2) consented to the carrying on of the Company's business despite knowing that it was being conducted in a manner prohibited by section 22(1), in terms of reckless trading;

- (3.5.3) been a party to an act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Company, or had another fraudulent purpose. *Section 78(2)(a)(b), section 78(6) and section 77(3)(a)(b)(c)*

3.18 Chairman and Vice-Chairman

- (1) Within 7 (seven) days of the holding of each Annual General Meeting, the Board of Directors shall elect a Chairman who shall hold office until the Annual General Meeting held next after their said appointments; provided that the office of the Chairman and Vice-chairman shall ipso facto be vacated by the Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be appointed to the office of both Chairman and Vice-Chairman, should the Board determine to appoint a Vice-Chairman. In the event of a vacancy occurring in any of the aforesaid offices at any time, the Board of Directors shall immediately appoint one of their number as a replacement in such office.

- (2) Save as otherwise provided in this Memorandum of Incorporation, the Chairman shall preside at all meetings of the Board of Directors, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Board of Directors or by Members.
- (3) If a Vice-Chairman is appointed, he shall assume the powers and duties of the Chairman in the absence of the Chairman or his inability or refusal to act as Chairman, and failing the appointment of a Vice-Chairman, then a Director nominated by the majority of the remaining Directors of the Board shall perform such other duties as may from time to time be assigned to him by the Chairman of the Board of Directors.

3.19 Management Regulations and Rules

- (1) Subject to any restriction imposed or direction given at a general meeting of the Home Owners Association, the Directors may from time to time make Rules in regard but not limited to –
 - (1.1) the use by Members, the members of their households, their guests and lessees of any roads, driveways, water areas and open spaces including the right to prohibit, restrict or control the use of any roads, driveways and open spaces or any spaces or any portions thereof as may from time to time be necessary or expedient;
 - (1.2) the use of parking areas wheresoever situated;
 - (1.3) the use of any erven and units in the development scheme;
 - (1.4) the placing of movable objects upon the outside of the building, including the power to remove any such objects;
 - (1.5) the preservation of the environment including the right to control vegetation and the right to prohibit and/or control the erection of fences, whether upon or within the boundaries or any part of the land;
 - (1.6) the right to prohibit, restrict or control the keeping of pets in and upon the land or any animal regarded as dangerous or a nuisance;
 - (1.7) the conduct of any person within the development scheme for the prevention of nuisance of any nature to any Member;
 - (1.8) the presentation of any natural environment, vegetation and fauna including the right to prohibit and/or control the erection of fences, whether upon or within the boundaries of any erf or unit or of the township;
 - (1.9) the use of all common areas, water areas, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
 - (1.10) the furtherance and promotion of any of the objects of the Home Owners Association and/or for the better management of the affairs of the Home Owners Association and/or for the prevention and advancement of the interest of Members and/or residents in the scheme;
 - (1.11) the standards and guidelines for architectural design of all buildings, outbuildings, structures erected or to be erected in the township, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the materials used on such exteriors to ensure an attractive, aesthetically pleasing character to all the buildings in the township;
 - (1.12) the siting of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any thereof;

- (1.13) the standards and guidelines for the design of all siteworks, buildings, structures, installations and projections on the properties in the township, including aeriels, pergolas, side walls, swimming pools, tennis courts, awnings, jacuzzis, carports, paved pathways and landscaping features and works.
- (2) For the enforcement of any of the Rules made by the Directors in terms hereof, the Directors may:
- (2.1) give Notice to any Member requiring him to remedy any such breach within such period (which may not be less than seven days) as the Directors may determine;
- (2.2) take or cause to be taken such steps as they may consider necessary to remedy any breach of which the Member may be guilty and debit the costs of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Home Owners Association; and/or
- (2.3) impose a system of fines or other penalties, the amounts of which fines shall be reviewed and confirmed at each Annual General Meeting of the Home Owners Association; and/or
- (2.4) take such action including proceedings in court as they may deem fit.
- (3) In the event of the Directors instituting any legal proceedings against any Member resident within the development scheme for the enforcement of any of the rights of the Home Owners Association in terms hereof, the Home Owners Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and own client.
- (4) In the event of any breach of the Management or Rules by any member of any Member's household or his guests or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing the Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- (5) In the event of any Member disputing the fact that he has committed a breach of any Management or Rule, a Committee of three Directors appointed by the Chairman of the Board of Directors for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairman may direct.
- (6) Any fine imposed upon any Member will be deemed to be a debt to the Home Owners Association and shall be recoverable by ordinary civil process.
- (7) Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Home Owners Association enforce the provisions of any Rules by civil application or action in a court of competent jurisdiction and for the purpose may appoint such attorneys and counsel as they may deem fit.
- (8) The Home Owners Association may in general meeting vary or modify any Rules made by it or by the Directors from time to time.

ARTICLE 4 – TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE COMPANY

4.1 Access to the Company's Records and Financial Statements

- (1) In terms of the Act and this Memorandum of Incorporation, no person, other than a Director and every holder of a beneficial interest in this Company, shall have any right to inspect any accounting records or document of the Company, except the right to do so as conferred by the Companies Act or as authorised by the Board or as authorised by an Ordinary Resolution of the Members or as permitted in terms of this clause of this Memorandum of Incorporation.

The accounting records shall be kept at or be accessible from its Registered Office. The accounting records shall be open to inspection by any of the Directors at any time. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions, the accounting records of the Company or any of them shall be open to inspection by holders, not being Directors, and subject to the rights granted to holders in terms of the Companies Act. No holder, other than a Director, shall be entitled to inspect the accounting records, unless authorised by the Directors.

The Board may from time to time in its discretion, grant any Member, on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing, the right to access (inspect and/or copy) any information pertaining to the Company, but no such right if conferred may negate or diminish any mandatory protection of any record, as set out in Part 3 of the Promotion of Access to Information Act, No.2 of 2000, as amended, provided further that the confidential information of the Company is adequately safeguarded and protected.

A person not contemplated in this sub-article, has a right to inspect or copy the Members register of a Non-Profit Company that has Member, or the register of Directors of the Company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection. *Section 24(5), section 26(1)(2)(3), section 50(3)(b) and Regulation 23*

4.2 Financial Year End of the Company

- (1) The Company's financial year which is its annual accounting period, ends on a date set out in the Company's Notice of Incorporation, subject to any change made in terms of this sub-article.

The first financial year of the Company begins on the date that the incorporation of the Company is registered, as stated in its registration certificate, and ends on the date set out in the Notice of Incorporation, which may not be more than 15 (fifteen) months after the date that the Incorporation of the Company is registered.

The second and each subsequent financial year of the Company begins when the preceding financial year ends; and ends on the first anniversary of the date that the incorporation of the Company is registered, unless the financial year end has been changed in terms of this sub-article. *Section 27(1), section 27(2)(a)(b), section 27(3)(a)(b) and section 27(6)*

- (2) The financial year end of the Company, or any changes to the financial year end, shall be such period or adjusted period as the Members by Ordinary Resolution from time to time approve. The Board, may, with the prior approval of Member by Ordinary Resolution, change the financial year of the Company in terms of section 27(4). *Section 27(4)*
- (3) The Board of the Company may change its financial year end at any time, by filing a notice of that change by filing Form CoR 25, but the Company is prohibited in terms of this Memorandum of Incorporation to do so more than once during any financial year, the newly established financial year end shall be later than the date on which the notice is filed, and the date as changed shall not result in a financial year ending more than 15 (fifteen) months after the end of the preceding financial year. *Section 27(4)(a)(b)*

4.3 Accounting Records of the Company

- (1) In terms of the Act and this Memorandum of Incorporation the Company shall keep accurate and complete accounting records in one of the official languages of the Republic, as necessary to provide an adequate information base sufficient to enable the Company to satisfy all reporting requirements applicable to it, as set out in this sub-article, and to provide for the compilation of Financial Statements.

Heron Hill Home Owners Association (NPC) shall maintain the necessary Accounting Records in accordance with section 28 of the Companies Act. *Section 28, section 28(1)(a) and Regulation 25(2)(a)(b)*

- (2) The accounting records shall include a record of any property held by the Company in a fiduciary capacity, or in any capacity or manner contemplated in section 65(2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) *Regulation 25(3)(b)(i)(ii)*

4.4 Financial Statements and Financial Year

- (1) The Company's Financial Statements, including any Annual Financial Statements, shall satisfy the financial reporting standards as to form and content, present fairly the state of affairs and business of the Company, show the Company's assets, liabilities and equity, as well as its income and expenses, set out the date on which the statements were published, and the accounting period to which the statements apply, and bear, on the first page of the statements, a prominent notice indicating whether the statements have been audited in compliance with any applicable requirements of this Act, if not audited, have been independently reviewed in compliance with any applicable requirements of this Act, or have not been audited or independently reviewed, and the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements. *Section 29(1)(a)–(d), section 29(1)(e)(i)(aa)(bb)(cc) and section 29(i)(e)(ii)*
- (2) Any Financial Statements prepared by the Company, including any Annual Financial Statements of the Company in terms of Article: Transparency, Accountability and Integrity of the Company – Annual Financial Statements of this Memorandum of Incorporation, shall not be false or misleading in any material respect, or incomplete in any material particular, subject only to clause 3 of this sub-article. *Section 29(2)(a)(b)*
- (3) Heron Hill Home Owners Association (NPC) is not limited or restricted by this Memorandum of Incorporation to provide any person with a summary of any particular Financial Statements, but any such summary shall comply with any prescribed requirements, and the first page of the summary shall bear a prominent notice stating that it is a summary of particular Financial Statements prepared by the Company, and setting out the date of those statements, stating whether the Financial Statements that it summarises have been audited, independently reviewed, or are unaudited, in terms of clause 1 of this sub-article, stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the Financial Statements that it summarises, and setting out the steps required to obtain a copy of the Financial Statements that it summarises. *Section 29(3)(a) and section 29(3)(b)(i)–(iv)*
- (4) This Memorandum of Incorporation permits the Company the flexibility to have its Financial Statements internally or independently compiled and reported. In the event that the statements are independently compiled and reported, it should be prepared by an independent accounting professional, on the basis of financial records provided by the Company, and in accordance with any relevant financial reporting standards. *Regulation 26(1)(e)(i)(ii)(iii) and Regulation 27(1)*
- (5) In terms of this Memorandum of Incorporation, any Financial Statements in terms of this sub-article and Article: Transparency, Accountability and Integrity of the Company – Accounting Records of the Company, of this Memorandum of Incorporation shall comply with the applicable standards for the category of the Company as follows:
 - (5.1) where the Company's Public Interest Score for a particular financial year is at least 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Company meets the scoping requirements outlined in the IFRS for SMEs;
 - (5.2) where the Company's Public Interest Score for a particular financial year is at least 100 (one hundred) but less than 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Company meets the scoping requirements outlined in the IFRS for SMEs;
 - (5.3) where the Company's Public Interest Score for a particular financial year is less than 100 (one hundred) and whose statements are internally compiled, the Financial Reporting Standards as determined by the Company for as long as no Financial Reporting Standards is prescribed.

"IFRS" means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body, and

"IFRS for SMEs" means the International Financial Reporting Standards for Small and Medium Enterprises, as issued from time to time by the International Accounting Standards Board or its successor body. *Regulation 27(4)(5)*

- (6) The Directors shall, in accordance with sections 30 and 31 of the Companies Act, cause to be prepared and laid before the Company at its Annual General Meeting its audited or independently reviewed Financial Statements, subject to the Article: Transparency, Accountability and Integrity of the Company – Annual Financial Statements, not less than 10 (ten) business days before the date of any Annual General Meeting, a summarised form of the Financial Statements to be presented at such Meeting and directions for obtaining a copy of the complete Financial Statements for the preceding financial year shall be sent to every Member, subject and in accordance with the provisions of the Companies Act and this Memorandum of Incorporation. Nothing contained in this clause, shall impose a duty on the Directors to send copies of such documents to any person whose address is not known to the Company. If a Member requests a copy of the Annual Financial Statements, the Company shall make same available to such Member free of charge.

4.5 Annual Financial Statements

- (1) Heron Hill Home Owners Association (NPC)'s Annual Financial Statements shall be prepared in accordance with the provisions of section 30 of the Act and is subject to either a statutory audit or non-statutory audit by Board Resolution or Shareholders' Resolution or independent review, if so required in terms of sections 30(2), 30(2A) and 30(7) and Regulations 26, 28 and 29.
- (2) In terms of the Act and this Memorandum of Incorporation, a copy of the relevant Annual Financial Statements must be presented at the first Members' Meeting after the statements have been approved by the Board, provided that such copy may be made available electronically as well. *Section 30(3)(d)*

ARTICLE 5 – FUNDAMENTAL TRANSACTIONS

5.1 Disposals, Mergers and Amalgamations

- (1) Heron Hill Home Owners Association (NPC) is prohibited from amalgamating or merging with, or converting to a Profit Company; or disposing any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company. *Item 2(1)(a)(b) of Schedule 1*
- (2) Any proposal to dispose of all or the greater part of its assets or undertaking or amalgamate or merge with another Non-Profit Company shall be submitted to the Voting Members for approval. *Item 2(2)(a)(b) of Schedule 1*
- (3) A notice of a Members' Meeting to consider a Resolution to approve a disposal shall be delivered at least 10 (ten) business days before the date on which the Meeting is to begin and in the prescribed manner, to each Member of the Company and include a written summary of the terms of the transaction to be considered at the Meeting. *Section 112(3)(a)(b)*
- (4) The Resolution shall be effective only to the extent that it authorises a specific transaction. *Section 112(5) of the Act and section 69(b) of Act 3 of 2011*
- (5) A proposed transaction shall be approved by a Special Resolution adopted by persons entitled to exercise Voting rights on such a matter, at a Meeting called for that purpose and at which sufficient persons are present to exercise, in aggregate, at least 25% (twenty five percent) of all of the Voting rights that are entitled to be exercised on that matter as required by the Company's Memorandum of Incorporation and by a Special Resolution by the Members of the Company's holding Company if the holding Company is a Company or an external Company; the proposed transaction concerns a disposal of all or the greater part of the assets or undertaking of the subsidiary; and having regard to the consolidated Financial Statements of the holding Company, the disposal by the subsidiary constitutes a disposal of all or the greater part of the assets or undertaking of the holding Company. *Section 115(2)(a)(b) and section 71(b)(c) of Act 3 of 2011*
- (6) Any part of the undertaking or assets of the Company to be disposed of shall be fairly valued at the date of the proposal. *Section 112(4)*
- (7) After a Resolution approving an amalgamation or merger has been adopted by each Company that is a party to the agreement, each of the amalgamating or merging companies shall cause a notice of the amalgamation or merger to be given in the prescribed manner and form to every known creditor of that Company but does not apply to a Company engaged in Business Rescue Proceedings, in respect of any transaction pursuant to or contemplated in the Company's Business Rescue Plan. *Section 116(1)(a) and section 116(2)*
- (8) A notice of amalgamation or merger shall be filed with the Commission and shall include confirmation that the amalgamation or merger – has satisfied the requirements of the Companies Act; has been approved in terms of the Companies Act, if so required by that Act; has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act, if so required by that Act and is not subject to further approval by any regulatory authority; or any unfilled conditions imposed by or in terms of any law administered by a regulatory authority; and the Memorandum of Incorporation of any Company newly incorporated in terms of the agreement. *Section 116(4)(a)(b)*
- (9) An amalgamation or merger takes effect in accordance with, and subject to any conditions set out in the amalgamation or merger agreement; does not affect any existing liability of a party to the agreement, or of a Director of any of the amalgamating or merging companies, to be prosecuted in terms of any applicable law; civil, criminal or administrative action or proceeding pending by or against an amalgamating or merging Company, and any such proceeding may continue to be prosecuted by or against any amalgamated or merged Company; or conviction against, or ruling, order or judgment in favour of or against, an amalgamating or merging Company, and any such ruling, order or judgment may be enforced by or against any amalgamated or merged Company. *Section 116(6)(a)(b) of the Act and section 72(c) of Act 3 of 2011*
- (10) When an amalgamation or merger agreement has been implemented the property of each amalgamating and merging Company becomes the property of the newly amalgamated or surviving merged Company or Companies; and each newly

amalgamated, or surviving merged Company is liable for all the obligations of every amalgamating or merging Company, in accordance with the provisions of the amalgamation or merger agreement, or any other relevant agreement, but subject to section 116(7)(a) and (b) substituted by section 72(d) of Act 3 of 2011.

- (11) If, as a consequence of an amalgamation or merger, any property that is registered in terms of any public regulation is to be transferred from an amalgamating or merging Company to an amalgamated or merged Company, a copy of the amalgamation or merger agreement, together with a copy of the filed notice of amalgamation or merger, constitutes sufficient evidence for the keeper of the relevant property registry to effect a transfer of the registration of that property. *Section 116(8)*
- (12) If, with respect to a transaction involving a Company that is regulated in terms of the Banks Act, there is a conflict between this sub-article and a provision of section 54 of that Act, the provisions of that Act prevail. *Section 116(9)*

6.1 Winding-Up or Dissolution

- (1) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, no past or present Member or Director of the Company or person appointing a Director of the Company is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied and the entire net value of the Company shall be distributed to 1 (one) or more Non-Profit Companies, registered external Non-Profit Companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object; and as determined in terms of the Company's Memorandum of Incorporation or by its Members or its Directors at or immediately before the time of its dissolution or by the court, if this Memorandum of Incorporation by its Members or its Directors, at or immediately before the time of its dissolution, failing such determination, in terms of the provisions of the Companies Act 2008 or by order of Court. *Item 1(4)(a)(b) of Schedule 1*
- (2) Any Resolution for the winding-up or deregistration of the Company shall be approved by the Commissioner of the South African Revenue Service.

On dissolution or liquidation the excess funds and remaining assets of the Company shall be transferred to 1 (one) or more of the following:

- (2.1) a similar organisation incorporated or established in the Republic of South Africa which has been approved as a Public Benefit Organisation in terms of section 30(3) of the Income Tax Act (*section 30(3)(b)(iii)(aa) of the Income Tax Act*);
- (2.2) an organisation established under any law which is exempt from Tax in terms of section 10(1)(cA) of the Income Tax Act whose sole or principal object is the carrying on of an approved public benefit activity;
- (2.3) a department of State of Administration in the National, Provincial or Local sphere of Government of South Africa.

6.2 Guarantee

- (1) Each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member, or within 1 (one) year afterwards, for payment of the debts and liabilities of the Company contracted before he ceases to be a Member, and of the costs, charges and expenses of the winding-up, and for adjustment of the rights of the contributories among themselves, an amount as determined by the Board from time to time.

ARTICLE 7 – GENERAL

7.1 Common Areas and Security Service

- (1) Members of the Home Owners Association shall be entitled to access to all common areas in respect of which the Home Owners Association holds title or tenancy subject to compliance by Members with the Management Regulations and Rules pertaining to such common areas.
- (2) The Directors may from time to time and whenever they deem it necessary limit, restrict or suspend use in relation to any part as such common areas as defined heretofore.
- (3) The Directors may make Rules relating to access by the general public to certain common areas in order to confine the public to such areas.
- (4) No Resolution for the winding up of the Home Owners Association and the transfer of its assets as set out in this Memorandum of Incorporation of Home Owners Association shall be taken unless with the prior sanction of a Special Resolution of Members.
- (5) The Home Owners Association may require any Member to maintain the sidewalk adjacent to his property and in the event of such Member failing so to maintain such sidewalk to the satisfaction of the Home Owners Association, the Home Owners Association shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge the Member concerned. In the event of the Home Owners Association requiring any Member to maintain the sidewalk as aforesaid, the Directors shall in determining the levy payable by such Member, take into account the saving to the Home Owners Association resulting from the Member himself maintaining such sidewalk.
- (6) In the event of the Home Owners Association electing to provide a security service and/or other services for Members in the township, all Members shall be obliged –
 - (6.1) to permit the installation of any equipment in the units for the purpose of such services as may be determined by the Home Owners Association from time to time;
 - (6.2) to make payment of the charges raised by the Home Owners Association in respect of such services;
 - (6.3) abide by such terms and conditions of the provisions of such services as may be laid down by the Home Owners Association from time to time.
- (7) Where the boundary of any Member's property also constitutes the boundary of the township, such Member shall be obliged to permit the Home Owners Association to erect upon such Member's property immediately adjacent to such boundary, such walling or other fencing as the Developer and/or the Home Owners Association may determine. Such Member shall not be entitled to interfere in any manner whatsoever with any such walling or fencing, and shall permit the Home Owners Association from time to time access to such Member's property in order to inspect such walling or fencing and to effect such repairs as may be necessary from time to time. In the event of any such Member wishing to erect his own walling or fencing, he shall be obliged to erect same within the walling or fencing referred to above and subject to such conditions as the Home Owners Association may lay down to permit the Home Owners Association access to the boundary walling or fencing concerned.

7.2 Risk

- (1) Any person using any of the services, land and facilities of the development scheme does so entirely at his own risk and no person shall have any claim against the Home Owners Association of whatsoever nature arising from such use, nor for anything which may befall any person during the course of such use, whether caused by human or animal agency, natural phenomena or otherwise.

7.3 Claims

- (1) No person shall have any claim against the Home Owners Association as a result of fire or any substance, liquid or gas, escaping from the property of the Home Owners Association and causing damage to any person or property of any Member.

7.4 General Indemnity

- (1) Each and every Member individually shall indemnify and hold harmless the Home Owners Association against any action by the Member, members of his family or any person within the scheme at the invitation of or under the control of the Member concerned, whatsoever the nature of such claim and howsoever arising.

7.5 Amendment of Management and Conduct Rules

- (1) The Members undertake to vote for any proposal made by the Board to amend the management and conduct Rules of any development scheme on the land and to this end appoints the Board of Directors to be the Member's lawful agent and at any meeting convened as may be imposed by the local authority.

ARTICLE 8 – DISPUTES

8.1 Disputes

- (1) Any dispute arising out of or in connection with this Memorandum of Incorporation including the cancellation thereof, except where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction, must be determined in terms of this clause of the Memorandum of Incorporation.
- (2) If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 days of such Notice, either of the parties may refer the dispute for determination in terms of this sub-article of the Memorandum of Incorporation.
- (3) If a party exercises his right to refer the dispute for determination, such dispute shall be referred to -
 - (3.1) a senior advocate practising as such at the Pretoria Bar, if the parties agree that the dispute in question is a legal one; or
 - (3.2) a practising public accountant and auditor, if the parties agree that the dispute in question is an accounting one; or
 - (3.3) a quantity surveyor, if the parties agree that the dispute relates to the measurement in any way of any building construction or any aspect thereof; or
 - (3.4) an architect or engineer, if the parties agree that the dispute relates to any defect in any building construction;
 - (3.5) an appraiser if the parties agree that the dispute relates to the valuation of any immovable property; or
 - (3.6) if the parties cannot agree on the person referred to in the above clauses hereof or whether or not the dispute falls within the framework of the above clauses hereof within 14 (fourteen) days after such dispute has arisen and in regard to which any of the parties has notified the other, the matter shall be referred to an advocate practising at the Pretoria Bar and nominated by the Chairman of the Pretoria Bar Council, who shall act as the expert.
- (4) Any person agreed upon or nominated as aforesaid (“the expert”) shall in all respects act as an expert and not as an arbitrator.
- (5) In regard to costs, the expert shall be bound to follow the general substantive principles of South African law.
- (6) The expert shall be vested with the entire discretion as to the procedure and manner to be followed in arriving at his decision and in this regard shall not be bound to the principles of South African law regarding procedure and evidence.
- (7) The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty one) days or so soon thereafter as possible after it has been demanded.
- (8) The expert’s decision shall be final and binding on all the parties affected in any manner thereby, and shall be carried into effect and may be made an order of any competent court at the instance and cost of any of the parties.
- (9) The provisions of this clause constitutes the irrevocable consent by the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceeding that it is not bound by such provisions.
- (10) The party who exercises his right in terms of this sub-article, shall establish from the expert, what his estimated fees will be and the parties shall in equal shares be liable for payment of such fees irrespective of any other award the expert may make in this regard to any other costs, which amount shall be deposited with the expert prior to the commencement of the proceedings, who shall hold such amount in trust for himself. If any party fails to comply with this obligation, he shall be

deemed to be in breach of the provisions of this Memorandum of Incorporation, which breach is a material one which goes to the root of the agreement and in regard to which obligation time is of the essence.

ARTICLE 9 – COMPANY SIGNATURE

9.1 Company Signature

- (1) All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, shall be made, signed, drawn, accepted and endorsed, or otherwise executed by a person or persons from time to time authorised by a Resolution of the Board of Directors.

- (2) The signature to any notice given by the Company may be:
 - (2.1) written or printed, or partly written and partly printed (section 6(12) of the Act);

 - (2.2) effected in any manner provided for in the Electronic Communications and Transactions Act (ECTA). *Section 6(12)(a) of the Act and section 13 of the ECTA*

SCHEDULE 1 – NUMBER OF DIRECTORS

Heron Hill Home Owners Association (NPC) has the prescribed minimum number of Directors, being 3 (three).

Heron Hill Home Owners Association (NPC) has 7 (seven) Director(s) at the date of adoption of this Memorandum of Incorporation.