



**AMBERLY GROVE HOMEOWNERS ASSOCIATION
NPC**

REGISTRATION NUMBER: 2005/032100/08

**MEMORANDUM OF INCORPORATION OF AMBERLY GROVE
HOMEOWNERS ASSOCIATION NPC**

This Memorandum of Incorporation was adopted by the incorporators of the Company, in accordance with the Companies Act 71 of 2008 ("Act"), as evidenced by the signatures made by each of them, or on their behalf.

Name, address and e-mail address	Identity No	Signature	Date

1. NAME OF COMPANY

The name of the Company is Amberly Grove Homeowners Association NPC, Registration Number 2005/032100/08.

2. INCORPORATION AND NATURE OF THE COMPANY

2.1 The Company is incorporated as a non-profit Company as defined in the Companies Act.

2.2 The Company is incorporated in accordance with and governed by –

2.2.1 The unalterable provisions of the Companies Act, subject to any higher standards, greater restrictions, longer periods of time or more onerous requirements set out in this Memorandum of Incorporation; and

2.2.2 The alterable provisions of the Companies Act, subject to any negation, restriction, limitation, qualification, extension or other alteration contemplated in an alterable provision and noted in this Memorandum of Incorporation; and

2.2.3 The provisions of this Memorandum of Incorporation.

3. DEFINITIONS

3.1 In this Memorandum of Incorporation –

3.1.1 A reference to a section by number refers to the corresponding section of the Companies Act; and

3.1.2 Words that are defined in the Companies Act bear the same meaning in this Memorandum as in that Act.

3.2 In this Memorandum of Incorporation, unless the context indicates otherwise,-

3.2.1 **“Auditors”** mean auditors appointed by the Company from time to time ;

3.2.2 **“the Board”** means the Board of Directors of the Company from time to time;

3.2.3 **“Chairman”** means the chairman of the Board of Directors, elected in accordance with this Memorandum of Incorporation or if that expression is used with reference to a general meeting or

meeting of the Directors at which that person is not present or does not act as chairman, the person acting as chairman in accordance with the provisions of this Memorandum of Incorporation;

- 3.2.4 **“the common Property”** means all those areas that fall outside the residential erven;
- 3.2.5 **“the Company”** means Amberly Grove Homeowners Association NPC Registration No. 2005/032100/08;
- 3.2.6 **“Companies Act”** means the Companies Act No. 71 of 2008;
- 3.2.7 **“Director”** means a Director on the Board of the Company;
- 3.2.8 **“Dwelling”** means any dwelling house and usual outbuildings erected on any subdivision;
- 3.2.9 **“the Estate”** means the development known as Amberly Grove, which includes all the amenities built or to be built on the Property;
- 3.2.10 **“Financial Year”** means the Financial Year of the Company which runs from the first day of March in any year to the last day in February in the subsequent year;
- 3.2.11 **“General Manager”** means any person appointed by the Board of Directors as an employee or as a contracted service provider to undertake the management of the Estate and the affairs of the Company, and designated as General Manager.
- 3.2.12 **“Member”** means a Member of the Company in terms of Clause 7;
- 3.2.13 **“the Municipality”** means the Umgeni Municipality being the local authority having jurisdiction over the Estate;
- 3.2.14 **“the office”** means the registered office of the Company;
- 3.2.15 **“the Property”** means: Erf 2191 Howick (Extension No. 22), in the province of KwaZulu-Natal;
- 3.2.16 **“Residential erf”** means any subdivision of the Property from portions 1 to 19 in the township of Amberly Grove;
- 3.2.17 **“the roads”** means the roads which have been constructed on the Property;

- 3.2.18 **“services”** means the provision of water, sewerage, electricity, storm-water drainage and roads and such other utilities and amenities as may be provided by the Company or the Municipality;
- 3.2.19 **“unit”** means any Residential erf on the Estate;
- 3.2.20 **“VAT”** means value added tax at the ruling rate as defined in the Value Added Tax Act (No. 89 of 1991); and;
- 3.2.21 **“Vice-Chairman”** means the Vice-Chairman of the Board of Directors.
- 3.2.22 Unless the context otherwise requires:
- 3.2.22.1 Words in the singular number shall include the plural and words in the plural number shall include the singular;
- 3.2.22.2 Words importing the masculine gender shall include the female gender; and
- 3.2.22.3 Words importing natural persons, shall include juristic persons, corporate entities and bodies corporate.
- 3.2.22.4 Whenever a number of days is prescribed in this Memorandum of Incorporation, the number of days must be calculated –
- 3.2.22.4.1 By excluding the first day and including the last day; and;
- 3.2.22.4.2 So as to include Saturdays, Sundays and public holidays unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next ensuing day which is not a Saturday, Sunday or public holiday.

4. MAIN OBJECT

- 4.1 The main object of the Company is to manage, promote, advance and protect the communal interests and safety of the Members of the

Company as owners of all residential erven on the Estate, and anything necessary or incidental to this object.

4.2 The Company –

4.2.1 Must apply all of its assets and income, however derived, to advance its main object;

4.2.2 Subject to paragraph 4.1, may directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its main object; and

4.2.3 Is not permitted to distribute any of its funds to any person other than to a similar association of persons.

5. POWERS OF THE COMPANY

In terms of section 19(1)(b) of the Companies Act a Company has all the legal powers and capacity of a natural person except to the extent that a juristic person is incapable of exercising these powers and having these capacities and except to the extent that a Company's Memorandum of Incorporation provides otherwise. This Company's legal powers and capacity are not subject to any restrictions, limitations or qualifications as contemplated in section 19(1) (b), provided that this Company must restrict itself to main object set out in clause 4.

6. ALTERATIONS TO THIS MEMORANDUM OF INCORPORATION

6.1 This Memorandum of Incorporation may be amended only by a special resolution adopted by the Members or in terms of a court order.

6.2 Amendments to this Memorandum of Incorporation may be proposed by –

6.2.1 The Board of Directors; or

6.2.2 Members entitled to exercise at least 20% of the voting rights on the resolution.

6.2.3 The Board shall nevertheless have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in section 17(1) of the Companies Act.

A notice of such alteration must be published by –

6.2.3.1 delivering a copy of the notice of alteration to each Member by ordinary mail; or

6.2.3.2 delivering a copy of the notice of alteration to each Member by e-mail (provided that a Member shall be deemed to have received a copy of the notice if sent to his or her last known e-mail address).

6.2.4 Any amendments to this Memorandum of Incorporation must be submitted to the Commissioner for the South African Revenue Services.

7. MEMBERSHIP

7.1 The Members of the Company shall be any person who is the registered owner of any Unit on the Estate.

7.2 A person signing an agreement or offer to purchase a Unit, will by signing such an agreement or offer to purchase, apply to become a Member of the Company, and upon becoming a registered Owner of a Unit such an application will be successful and the registered Owner will as from that date also be a Member of the Company, and when he ceases to be the owner of any such Unit he shall ipso facto cease to be a Member of the Company. The Owner will ensure that the purchase and sale agreement includes a provision in terms whereof the purchaser consents to become a Member of the Company by making written application for membership, to the Company.

8. TERMINATION OF MEMBERSHIP

8.1 A Member remains a Member for as long as he or she is the registered owner of a Unit on the Estate and may not resign or otherwise terminate Membership.

8.2 A Member does not have any claim to the funds or other Property of the Company when he or she ceases to be a Member of the Company. Nor

shall any Member's executors, curators, trustees or liquidators have such a claim.

- 8.3 The Company may claim from any Member or his or her Estate any arrear levies, special levies, VAT, interest, legal fees or other sums due by him or her to the Company at the time of his or her ceasing to be a Member.
- 8.4 Levies, special levies, VAT, interest, legal fees and any other sums paid and/or due by a Member shall not be repayable by the Company to the Member upon his ceasing to be a Member.
- 8.5 A Member's successor in title to a Unit shall be liable to pay the levies, special levies, VAT, interest, legal fees or any other sums attributable to that Unit as from the date upon which he becomes a Member pursuant to the transfer of that unit.

9. SALE AND TRANSFER OF UNITS

- 9.1 A Member shall not sell or otherwise agree to alienate a Unit on the Estate (or an individual share in a unit) unless it is a condition of the agreement of sale that:
- 9.1.1 The proposed transferee Member shall become a Member of the Company upon registration of transfer of the unit to him, or her; and
- 9.1.2 Registration of transfer of that unit into the name of the Member will automatically constitute the Member as a Member of the Company.
- 9.2 No Member shall transfer a unit of which he is registered owner unless the Company has certified in writing that –
- 9.2.1 All levy contributions and other amounts owing by the Member to the Company have been paid prior to the transfer or that prior provision has been made to the satisfaction of the Directors for payment at registration;
- 9.2.2 The proposed transferee has agreed in writing, to the satisfaction of the Company, to become a Member of the Company; and

- 9.2.3 The purchaser has notified the Company in writing of his or her address and contact details as required in clause 68.
- 9.2.4 A condition of title has been registered against each unit in the Estate to give effect to clause 9.2.
- 9.2.5 The Company shall be entitled to charge an administrative fee for its effort and cost in providing a certificate in terms of this clause. The administrative fee shall be determined by the Board from time to time.

10. CO-OWNERSHIP OF UNITS

- 10.1 Where a Unit is owned by more than one registered owner, all the owners of that unit shall together be deemed to be one Member of the Company.
- 10.2 The co-owners must –
 - 10.2.1 Elect one of the co-owners as the contact person for the Unit; and
 - 10.2.2 Notify the Company of the name and address of the contact person.
- 10.3 Any notices served by the Company on the contact person shall be deemed to be served upon all the co-owners.
- 10.4 If the co-owners fail to elect a contact person, or to notify the Company of the contact person's details, then service of notices by the Company may be upon any one of the co-owners and this shall be deemed to be service upon all co-owners.

11. MEMBER'S RIGHTS

- 11.1 The rights and obligations of a Member are not transferable, but may be ceded as security for a mortgage loan on that Member's unit.
- 11.2 A Member shall at all times further the objects and interests of the Company to the best of his or her ability and shall observe all the rules made by the Company and the Directors.

12. RIGHTS AND BENEFITS OF MEMBERSHIP

- 12.1 A Member who is in full default of his or her obligation to pay any levies,

special levies, VAT, legal fees or any other sums due to the Company, or who is in breach of any rule of the Company or of this Memorandum of Incorporation -

12.1.1 Shall not be entitled to attend, speak or vote at any meeting of the Company, or to hold office as director; and

12.1.2 Shall not be entitled to use the Estate's facilities or any other recreational facilities on the Estate (the Member's guests, tenants and family members shall, likewise, be precluded from these facilities).

12.2 Where a Member has leased out his or her unit, the tenant (and the tenant's guests and family members) shall have the right to the Estate's facilities or any other recreational facilities on the Estate to the exclusion of the Member.

13. MEMBER'S MEETINGS

13.1 The Company Act provides when Members' meetings must be held, but allows for a Company's Memorandum of Incorporation to provide for additional Members' meetings. As contemplated in section 61(2) of the Companies Act, the Company is required, in addition to the Members' meetings required in terms of the Companies Act, to hold its annual general meeting within 6 months after the end of each Financial Year.

13.2 Other general meetings shall be called at the discretion of the Directors (subject to the provisions of the Companies Act and this Memorandum of Incorporation) and shall be called extraordinary general meetings.

14. NOTICE OF MEMBERS' MEETINGS

14.1 The minimum number of days' notice which this Company is required to give for a Members' meeting is as follows:

14.1.1 An annual general meeting and a meeting called for the passing of a special resolution: 21 (Twenty One) clear days' notice in writing; and

14.1.2 Any other extraordinary general meeting: 14 (Fourteen) clear days' notice in writing.

15. MEMBERS RIGHT TO REQUISITION A MEETING

The right of Members to demand a meeting, as set out in Section 61(3), may be exercised by the holders of at least 25% (Twenty Five percent) of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, despite provisions of that section.

16. VENUE OF THE MEMBERS' MEETING

The authority of the Company's Board of Directors to determine the location of any Members meeting, and the authority of the Company to hold any such meeting in the Republic of South Africa or in any foreign country as set out in Section 61(9), is limited or restricted as follows: Members' meetings of this company must be held within the Estate or within a 10 kilometre radius of the Estate.

17. QUORUM FOR MEMBERS' MEETINGS

17.1 A Members' meeting may not begin, and a particular matter shall not begin to be considered at a Members' meeting, unless a quorum is present. The quorum shall be such of the Members entitled to vote, as together for the time being represent the votes of 20% in number of all Members entitled to vote.

17.2 If within thirty minutes after the appointed time for a meeting to begin, the quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within thirty minutes from the time appointed for holding the meeting, the Members present shall be a quorum.

17.3 If within thirty minutes after the appointed time for consideration of a

particular matter the requirements for that matter to begin to be considered have not been satisfied –

17.3.1 If there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; and

17.3.2 If there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, for one week.

17.4 The person intended to chair a meeting that cannot begin because a quorum is not present may extend the thirty minute limit for a reasonable period on the grounds that -

17.4.1 Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting; or

17.4.2 One or more particular members, having been delayed, have communicated an intention to attend the meeting, and those members together with those already present would satisfy the quorum requirements.

17.5 The Company shall not be required to give further notice of a meeting that has been postponed in terms of clauses 17.2 or 17.3, unless -

17.5.1 The location of the meeting is different from the location of the adjourned meeting or from the location as announced at the time of adjournment; or

17.5.2 The starting time of the meeting is different from the starting time of the adjourned meeting or from the starting time as announced at the point of adjournment.

17.6 If, at the time appointed for an adjourned meeting to resume the quorum requirements are again not met, the Members present in person or by proxy will be deemed to constitute a quorum.

17.7 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 three Members with voting rights entitled to

be exercised at the meeting, or on that matter, is present.

18. AGENDA AT ANNUAL GENERAL MEETINGS

The following matters shall be dealt with at every annual general meeting:

- 18.1 The consideration of the Chairman's report;
- 18.2 The election of Directors;
- 18.3 The consideration of any resolutions proposed for adoption by such meeting (including special resolutions), and the voting upon such resolutions;
- 18.4 The consideration of the audited annual financial statements of the Company for the Financial Year of the Company preceding the date of such meeting;
- 18.5 The consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the Company for the ensuing financial year;
- 18.6 The consideration, confirmation or variation of the insurances effected by the Company;
- 18.7 The consideration of the report of the Auditors;
- 18.8 The noting of the levy and budget for the Financial Year during which such annual general meeting takes place; and
- 18.9 The appointment of Auditors and the fixing of their remuneration.

19. PROXIES

- 19.1 A Member may be represented at an annual general meeting or extraordinary general meeting by a proxy who need not be a Member of the Company.
- 19.2 The instrument appointing a proxy must be in writing, dated and signed by the Member or his duly authorised agent, but need not be in any particular form. A proxy appointment remains valid for a period of one year from the date on which it was signed, unless it is revoked in writing or substituted by a later inconsistent appointment and a copy of a revocation instrument is delivered to the Company.

- 19.3 Where a unit is owned by more than one registered owner, the proxy instrument must be signed by a majority of these owners. Where a unit is owned by a Company, the proxy must be signed by a Director of the Company or by its secretary, and where a unit is owned by an association of persons, the proxy must be signed by a duly authorised representative of the association.
- 19.4 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of these documents, must be deposited, e-mailed or faxed to a Member of the Board of Directors at least 24 hours before the time appointed for the commencement of the meeting concerned (or the adjourned meeting), unless the Chairman directs that a lesser period applies
- 19.5 A vote given in terms of an instrument of proxy shall be valid even if the principal has died or has revoked the proxy, provided that the Company has not received any intimation in writing of the death or revocation by 24 hours before the time for the meeting to begin.
- 19.6 The right of a Member of the Company to appoint two or more persons concurrently as proxies, as set out in section 58(3)(a) of the Companies Act, is excluded.
- 19.7 The right of a Member of the Company to appoint more than one proxy to exercise voting rights attached to different securities, as set out in section 58(3)(a), is excluded.
- 19.8 The authority of a Member's proxy to delegate the proxy's powers to another person subject to any restriction contained in the instrument appointing the proxy, as set out in section 58(3)(b) of the Companies Act, is excluded.
- 19.9 The authority of a Member's proxy to exercise, or abstain from exercising, any voting right of the Member without direction from the Member (except to the extent that the instrument appointing the proxy provides otherwise), as set out in section 58(7) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

20. ELECTRONIC PARTICIPATION IN MEMBERS' MEETINGS

- 20.1 Any Members' meeting may be conducted entirely by electronic communication, or one or more Members, or proxies of Members may participate by electronic communication in all or part of any Members' meeting that is being held in person, so long as the electronic communication being used ordinarily enables all persons participating in the meeting to communicate concurrently with each other and without intermediary, and to participate reasonably effectively in the meeting.
- 20.2 Any notice of a Members' meeting at which it will be possible for Members to participate by way of electronic communication shall inform Members of the ability to participate in this way and shall provide the necessary information to enable Members or their proxies to access the available medium or means of electronic communication, provided that such access shall be at the expense of the Member or proxy concerned.

21. MEMBER'S VOTING

- 21.1 At every general meeting every Member, in person or by proxy, and entitled to vote, shall have one vote for each unit registered in his or her name.
- 21.2 The following restrictions apply to voting:
- 21.2.1 A Member who is in arrears with levies or any other sum owed to the Company, as at the record date, may not vote, in person or by proxy, at any general meeting; and
- 21.2.2 If a unit is registered in the name of more than one person, then all such co-owners shall jointly have one vote.

21.3 Every resolution proposed for adoption by a general meeting, and every amendment of a resolution proposed for adoption by a general meeting, shall be -

21.3.1 Provided to the Company in writing at least 7 days before the date of the meeting. Such proposed resolutions are to be communicated to members in an addendum to the meeting agenda not less than 3 days before the date of the meeting; and

21.3.2 Seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.

21.4 At any meeting of the Company a resolution put to the vote shall be decided on a show of hands, unless -

21.4.1 The Chairman of the meeting directs otherwise; or

21.4.2 A Member demands a poll

21.5 If voting is decided on a show of hands, then 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 in the minutes of the meeting recording this fact, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour or against the resolution.

21.6 A demand for a poll may be withdrawn.

21.7 If voting is to be decided by a poll, then voting shall be by way of a secret poll taken during the course of the meeting or alternatively in such other manner as the Chairman of the meeting may direct.

21.8 Voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy and entitled to vote.

21.9 The Chairman shall not have a second or casting vote at a general meeting.

22. MEMBERS' RESOLUTIONS

22.1 For an ordinary resolution to be adopted at a Members' meeting of this Company, it must be supported by the holders of more than 50% of the

voting rights exercised on the resolution at the meeting.

22.2 For a special resolution to be adopted at a Members' meeting of this Company, it must be supported by at least 75% of the voting rights exercised on the resolution at a Members' meeting.

23. MEMBER'S RIGHT TO INFORMATION

Section 26(1) of the Companies Act gives every person who has a beneficial interest in a Company's securities has the right of access to the following information and documents: the Company's Memorandum of Incorporation; the Company's rules; certain records relating to Directors; reports to annual meetings; the annual financial statements; notices and minutes of annual meetings and other Members' meetings and the Members' register. Section 26(3) provides that the Memorandum of Incorporation of a Company may establish additional information rights for persons who have a beneficial interest in a Company's securities. In the case of this Company, every person who has a beneficial interest in this Company's securities has the following right to access information in addition to those rights set out in section 26(1) of the Companies Act: the right to view minutes of the meetings of the Board of Directors after arranging an appropriate time and place to do so with the Chairman or Director acting in his place for the time being.

24. RECORD DATE FOR EXERCISE OF MEMBERS' RIGHTS

If at any time the Company's Board of Directors fails to determine a record date, as contemplated in section 59(3) of the Companies Act, the record date for the relevant matter is as determined in accordance with section 59(3) of the Companies Act, namely:

24.1 In the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; and

24.2 In any other case, the date of the action of the event.

25. COMPOSITION OF THE BOARD OF DIRECTORS

The Board of Directors must comprise of not less than 3 (three) Directors and not more than 7 (seven) Directors.

26. TERM OF OFFICE

The elected Directors of this Company serve for a period of three years, but shall be eligible for re-election for a further period of three years. There will be no maximum period of time that a Director will be entitled to serve the Company.

27. ELECTION OF DIRECTORS

27.1 Where a Director is required to be elected, all the names of the candidates will appear on a ballot paper and the Members will elect in a single vote, their preferred candidate.

27.2 Each vote may be exercised once and the candidates who attract the most votes will be elected.

28. CO-OPTING OF DIRECTORS ONTO BOARD

The Board of Directors may appoint a qualified person to fill any vacancy on the Board on a temporary basis until the next annual general meeting, as contemplated in section 68(3) of the Companies Act.

29. QUALIFICATION TO ACT AS A DIRECTOR

A Director must be a natural person, but need not himself be a Member of the Company.

30. PERSONS DISQUALIFIED AND INELIGIBLE TO SERVE AS DIRECTORS

A Director shall be deemed to be disqualified and ineligible to serve as a Director and deemed to have vacated office if he is one or more of the following:

30.1 a person who has been placed under probation by a Court in terms of Section 162 or in terms of Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984) must not serve as a Director except to the extent

- permitted by the order of probation;
- 30.2 a juristic person;
- 30.3 an unemancipated minor, or is under a similar legal disability;
- 30.4 does not satisfy any qualification set out in the Company's Memorandum of Incorporation;
- 30.5 someone who a Court has prohibited from being a Director, or declared the person to be delinquent in terms of Section 162, or in terms of Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- 30.6 an unrehabilitated insolvent;
- 30.7 prohibited in terms of any public regulation to be a Director of the Company;
- 30.8 has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
- 30.9 has been convicted in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence;
 - 30.9.1 involving fraud, misrepresentation or dishonesty;
 - 30.9.2 in connection with the promotion, formation or management of a Company, or in connection with any act contemplated in subsection (2) or (5); or
 - 30.9.3 under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

31. ELECTRONIC PARTICIPATION IN DIRECTORS' MEETINGS

The authority of the Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

32. NOTICE OF DIRECTORS' MEETINGS

32.1 The Board of Directors may determine the form in which notice of its meetings is given, as well as the time for giving notice.

32.2 The authority of this Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5)(a) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

33. DIRECTOR'S RIGHT TO REQUISITION A MEETING

The Chairman of the Board of Directors of the Company must call a Directors' meeting if a demand is made by two or more Directors.

34. QUORUM FOR DIRECTORS' MEETINGS

A Directors' meeting may not begin unless a quorum is present. A majority of Directors must be present in order to constitute a quorum.

35. VOTING AT DIRECTORS' MEETINGS

35.1 Each Director of a Company has one vote on a matter before the Board of Directors.

35.2 A resolution is approved if it is supported by a majority of the votes cast at a Directors' meeting.

35.3 The Chairman of the Board of Directors has a second or casting vote at Directors' meetings in event of a deadlock in voting by the Directors.

36. ROUND ROBIN RESOLUTIONS: DIRECTORS

Section 74 of the Companies Act provides that, except to the extent that a Company's Memorandum of Incorporation provides otherwise, a decision of the Board of Directors of a Company may be adopted by written consent of a majority of the Directors (without a meeting being held) if each Director has received notice of the matter to be decided. The authority of this Company's Board of Directors to consider a matter other than at a meeting, as set out in section 74, is not limited or restricted by this Memorandum of Incorporation.

37. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

The Directors shall appoint from their number a Chairman and vice-Chairman at the first meeting after each annual general meeting.

38. DIRECTOR'S REMUNERATION

A Director shall be entitled to be repaid all reasonable and genuine expenses incurred by him or her in or about the performance of his or her duties as Director, Chairman or vice-Chairman.

39. CONTROL OF MEETINGS

39.1 The Chairman presides at all meetings of the Board of Directors, and all annual 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.

39.2 If at any meeting of the Directors the Chairman is not present within 5 minutes after the time appointed for the start of the meeting, then the vice-Chairman shall act as Chairman of that meeting and shall exercise all the powers and duties of the Chairman in relation to that meeting. If the vice-Chairman is also not present within 5 minutes after the time proposed for the start of the meeting, then those Directors present shall appoint a Chairman for the meeting, who shall also exercise all the powers and duties of the Chairman in relation to that meeting.

40. PROCEEDINGS AT MEETINGS OF DIRECTORS

40.1 The Directors may meet, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this Memorandum of Incorporation.

40.2 Meetings of the Directors shall be held at least once every quarter. Minutes must be taken of every Directors meeting, although not necessarily verbatim minutes. The minutes must be reduced to writing and shall be certified correct by the Chairman of the next meeting. All minutes of Directors' meetings shall, after certification, be placed in a Directors' minute book to be kept in accordance with the requirements of the Companies Act. The Directors' minute book shall be open for inspection at all reasonable times by a Director, the Auditors and any Member in good standing.

40.3 All competent resolutions recorded in the minutes of any Directors' meetings shall be valid and of full force and effect, with effect from the passing of such resolutions, and valid until varied or rescinded.

40.4 Except to the extent set out in this Memorandum of Incorporation, the proceedings at any Directors' meeting shall be conducted in such reasonable manner and form, as the Chairman of the meeting shall decide.

41. FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

41.1 The authority of the Board of Directors to manage and direct the business and affairs of the Company, as set out in section 66(1) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

41.2 Without limiting the generality clause 41.1, the Directors may in their discretion, from time to time, for the purposes of the Company borrow or raise such sum or sums of money from Members of the Company or from such other source as the Directors may decide.

41.3 If at any time this Company has only one Director, the authority of that Director to exercise any power or perform any function of the Board of Directors without notice or compliance with any other internal formalities, as set out in that section 57(3), is excluded.

41.4 Nothing prevents the Board of Directors from purchasing and taking transfer of a unit on the Estate and, other than in the case of common Property, disposing of any such unit for the benefit of the Company.

42. PROFESSIONAL ADVISORS

The Directors have the right to engage, on behalf of the Company, the services of accountants, auditors, attorneys, advocates, architects, engineers, any other professional person or firm and/or any other employees whatsoever for any reason deemed necessary by the Directors and on such terms as the Directors shall decide, subject to any of the provisions of this Memorandum of Incorporation.

43. INDEMNIFICATION OF DIRECTORS AND OFFICERS

- 43.1 The authority of this Company to advance expenses to a Director or officer of the Company to defend legal proceedings arising out of his or her service to the Company, as set out in section 78(4) of the Companies Act, is limited, restricted and extended only to the following extent: if the Director or officer is found to be liable for a breach of commonlaw or statutory duty or is found guilty of a criminal offence, then the Director or officer shall reimburse the Company for these expenses within 30 days of the finding (regardless of whether or not the Director or officer appeals the finding and provided that, if the finding is overturned on appeal, then the Company shall reimburse the Director or officer for expenses incurred in the initial proceedings and in the appeal).
- 43.2 The Company must indemnify a Director or officer, as set out in section 78(5) of the Companies Act, for expenses incurred in defending legal proceedings arising out of his or her service to the Company if the legal proceedings are abandoned or the Director or officer is not found to be liable (a Company may not indemnify a Director or officer for wilful misconduct, wilful breach of trust or for liability arising in terms of sections 77(3)(a), (b) and (c) of the Companies Act).
- 43.3 The Company may purchase insurance to protect the Company, a Director or an officer against liability or expense for which the Company is permitted to indemnify the Director or officer, as set out in section 78(7) of the Companies Act.

44. VARIATION OF DECISIONS

The Board of Directors shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

45. APPOINTMENT AND AUTHORITY OF COMMITTEES

- 45.1 The Company's Board of Directors may appoint committees of Directors and delegate to any such committee any of the authority of the Board, as

set out in section 72(1) of the Companies Act.

45.2 The authority of a committee appointed by this Company's Board of Directors to consult with or receive advice from any person, and to exercise the full authority of the Board on matters referred to it, as set out in section 72(2)(b) and (c) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

46. COMPOSITION OF COMMITTEES

The authority of the Company's Board of Directors to include in any committee, persons who are not Directors, as set out in section 72(2)(a) of the Companies Act, is not limited or restricted by this Memorandum of Incorporation.

47. FINANCE COMMITTEE

There shall be established a finance committee, which shall consist of no less than -

47.1 2 persons appointed by the Board of Directors, at least 1 of which must be a Director; and

47.2 1 person appointed by the Members.

48. BUDGET

48.1 The finance committee must prepare a budget to meet the expenses of the Company during each Financial Year. The budget must -

48.1.1 Specify any estimated deficiency which will result from the preceding Financial Year; and

- 48.1.2 Include an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 48.2 The budget must be prepared and delivered to the Members not less than 30 days before the end of each Financial Year (or as soon as reasonably possible thereafter). The budget must estimate, in reasonable detail, the amount which shall be required by the Company to meet the expenses during the following Financial Year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The finance committee may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 48.3 The budget must be accompanied by a notice specifying the levy payable by each Member as a contribution to the expenses and reserve fund.
- 48.4 If the finance committee fails for any reason to prepare the budget or to notify Members of the levies, then every Member shall (until the budget and levy notice has been issued) continue to pay the levy imposed in the previous Financial Year as an interim measure.

49. LEVIES

The finance committee shall, from time to time, but at least annually establish and maintain a levy fund for the purpose of meeting all the expenses which the Company has incurred, or which the Directors reasonably anticipate the Company will incur (which may include a reasonable provision for contingencies) for the ensuing Financial Year, in the furtherance of the Company's objects.

50. PURPOSE OF LEVIES

50.1 Levies are intended to cover costs incurred by the Company in -

- 50.1.1 Maintaining, repairing and improving the roads, open spaces and services, the perimeter fence, and any buildings, structures, erections and other improvements on Common Property on the Estate;

50.1.2 Paying rates and other charges payable by the Company in respect of the services provided to the Company and services provided to the Company;

50.1.3 Paying the salaries and wages of employees; and

50.1.4 Paying all other expenses necessarily or reasonably incurred in connection with the management of the Company, the Estate, and the Company's affairs including any expenses reasonably or necessarily incurred in the attainment of the objects of the Company or in pursuit of its business.

50.2 Levies shall not cover the consumption of water and electricity, sewerage or the maintenance or improvements of the units, rates, taxes and other expenses attributable to individual Members. These expenses shall be for the account of the Member.

51. CALCULATING LEVIES AND CONSOLIDATIONS

51.1 In calculating the levy, the finance committee must take into account all expenses which the Company has incurred, or which it reasonably might be anticipated will be incurred.

51.2 The finance committee must determine a standard Estate levy and impose that levy upon each unit in a manner which it considers to be equitable, taking into account the following:

51.2.1 A standard Estate levy will be payable for each free-standing residential unit;

51.3 If, in contravention of the town planning scheme, a unit contains more than one kitchen, and the Board is satisfied that the unit is not being used for the purpose of a single family, then (in addition to any other remedy which may be available to the Board) the owner or owners of the unit shall be liable for double the monthly levy which would otherwise be payable in respect of that unit (the town planning scheme provides that a Dwelling means a self-contained, inter-leading group of rooms, for a single family, including not more than one kitchen).

52. ADDITIONAL SERVICES

52.1 The Board may, from time to time, resolve to supply additional services to the Estate, including (but not limited to) water and electrical reticulation, waste removal, telephone and internet services.

52.2 If additional services are provided to the Estate by the Company, as contemplated in paragraph 53.1, then the finance committee may (without limiting in any way its power to impose levies) add the cost of providing these services to the levies.

53. PAYMENT OF LEVIES

Every levy shall be payable monthly in advance on the first day of each and every month. Levies are exclusive of VAT. Such payment is subject to the provisions of Section 51 of the Agreement.

54. INTEREST ON LEVIES

Interest at 10% per annum (or at such other rates as the finance committee may determine from time to time) shall accrue on levies not paid on due date.

55. INCREASE OF LEVIES

The finance committee shall be entitled to review the levies from time to time in its discretion.

56. SPECIAL LEVIES

The finance committee may from time to time -

56.1 Make special levies upon the Members in respect of any expenses of the Company which were not included in the budget or which were underestimated in the budget; and

56.2 Determine the terms of payment of the special levy.

57. CAPITAL EXPENDITURE

The finance committee shall not be entitled, without a resolution of Members in general meeting, to undertake capital expenditure on any one item which exceeds or is likely to exceed R20 000.00. This amount shall be increased annually in accordance with the CPIX as published from time to time.

58. APPLICATION OF OPTIONAL PROVISIONS OF THE COMPANIES ACT (AUDIT ETC)

The Company elects, in terms of section 34(2) of the Companies Act, to comply voluntarily with the enhanced accountability requirements of Chapter 3 of the Companies Act to the following extent: the financial statements of the Company shall be audited once in every Financial Year.

59. ACCOUNTS

The notice of the annual general meeting shall be accompanied by audited financial statements for the past Financial Year, once such accounts are available.

60. MAINTENANCE OF UNITS AND COMMON PROPERTY

The maintenance of services and the Common Property shall be controlled by the of the Board of Directors.

61. CONDUCT RULES

61.1 The Board of Directors may make house rules, as contemplated in section 15(3) of the Companies Act, on the following topics:

61.1.1 The use by Members or their households, their guests, and lessees, of the roads, open spaces and the sporting and other amenities (this power shall include the right to prohibit, restrict or control the use of the roads and open spaces or any portions thereof as may from time to time be necessary or expedient);

61.1.2 The preservation of the natural environment, vegetation and

- fauna as appropriate for the Estate which is, in the first instance, a residential estate;
- 61.1.3 The use of parking areas;
 - 61.1.4 The right to prohibit restrict or control the keeping of any animals or pets;
 - 61.1.5 The use of services, entertainment and recreation areas, amenities and facilities including the right to make a reasonable charge for the use thereof;
 - 61.1.6 The placing of movable or other objects upon the outside of buildings, including the power to remove any such objects;
 - 61.1.7 The keeping of flammable substances;
 - 61.1.8 The conduct of any persons within the Estate for the prevention of nuisance of any nature to any Member; and
 - 61.1.9 The use of any residential erf on the Estate; and
 - 61.1.10 Any additional rules as the Board may deem necessary from time to time.
- 61.2 The Board of Directors may make, and amend, the house rules by -
- 61.2.1 delivering a copy of those rules or any notice of amendment to each Member by ordinary mail or e-mail, provided that a Member shall be deemed to have received a copy of the rules if sent to his or her last known e-mail address; and
 - 61.2.2 filing a copy of the rules or any notice of amendment with the Companies and Intellectual Property Commission.
- 61.3 In order to enforce the house rules, the Directors may:
- 61.3.1 Take or cause to be taken such steps as they may consider necessary to remedy a breach of a house rule, and debit the cost to the Member concerned (which amount shall then be deemed to be a debt owing by the Member concerned to the Company); and/or
 - 61.3.2 Impose a system of fines or other penalties (until ratified or set aside at an annual general meeting, a fine or penalty may not exceed R20 000.00); and
 - 61.3.3 Take such other action including legal proceedings, as they may deem fit.

- 61.4 A breach of the house rules by a Member's household, his or her guests or lessees shall be deemed to have been committed by the Member himself or herself (but, without prejudice to this principle, the Board of Directors may in its discretion also take or cause to be taken such steps against the person actually committing the breach).
- 61.5 The Board of Directors shall appoint a disciplinary committee to hear representations from any Member who disputes that he or she is guilty of a breach of the house rules.
- 61.6 The disciplinary committee shall comprise at least one Member of the Board of the Company and one other person appointed by the Board (who need not necessarily be a Member of the Company). The Board shall appoint the Chairman of the disciplinary committee.
- 61.7 The disciplinary committee 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.
- 61.8 It shall be the duty of the Board of Directors, or such other person or body as may be empowered by the Directors, to ensure compliance by the Members, their guests, lessees and all other persons within the Estate, with the house rules and to this end, to issue such notices, impose such fines or do such things as may be necessary or requisite.

62. COMPLIANCE WITH THE CONDUCT RULES; THE OBJECTS OF THE COMPANY

- 62.1 Each Member undertakes to comply with the Conduct Rules, and to ensure that their households, their guests and lessees also comply.
- 62.2 Each Member shall, to the best of his or her ability, further the objects and interests of the Company.

63. LEGAL REMEDIES

- 63.1 The rights given to the Company in terms of this Memorandum of Incorporation are in addition to, and without prejudice to, any of the rights which the Company may have to proceed against a Member, either to recover any arrear levies or other monies or to claims specific

performance, damages or any recourse in law.

63.2 A Member shall be liable for, and shall pay, all legal costs including costs on an attorney and client scale and collection commission, expenses and all other charges incurred by the Company in obtaining the recovery of arrear levies or any other arrear amounts due and owing by a Member to the Company or in obtaining compliance with the house rules or any provision of this Memorandum of Incorporation.

63.3 If the Member disputes the legal costs incurred by the Company, then the parties agree that the Company may refer the bill of legal costs prepared by the attorney to the Fee Assessment Committee of the Law Society for consideration and determination, and the decision of the Fee Committee shall be final.

64. COMMON PROPERTY

64.1 No Common Property owned by the Company may be -

64.1.1 Sold;

64.1.2 Let;

64.1.3 Alienated or otherwise disposed of;

64.1.4 Subdivided;

64.1.5 Transferred;

64.1.6 Mortgaged; or

64.1.7 Subjected to any rights, whether registered in the Deeds Registry or not (except for servitudes intended to protect the rights of Members and ensure that services are maintained and protected for the benefit of Members of the Company), except in circumstances laid down in the Conditions of Establishment of the Estate or with the support of a special resolution of the Members of the Company.

64.2 Nothing in this Memorandum of Incorporation shall be construed as preventing the Company from building upon any erven owned by it any buildings or other improvements which it may be entitled to erect in terms of the town planning scheme, and as may be approved by the municipality.

65. USE OF COMMON PROPERTY

The Company may, in its discretion, permit the Members, subject to the provisions of this Memorandum of Incorporation, to use the Common Property (unless the Members resolve otherwise by special resolution). The Directors may from time to time and whenever they deem it necessary, limit, restrict or suspend such use in relation to any part of the Common Property, subject to reasonable privacy of Members being respected at all times.

66. OPERATING OF BUSINESSES ON THE ESTATE

No person may operate a business on any unit on the Estate:

- 66.1 Which is not in accordance with the town planning scheme; and
- 66.2 Without the Board of Directors of the Company having first granted written consent on such conditions and for such period as they may deem fit.

67. SERVICE OF NOTICES

67.1 All Members must notify the Company in writing of an address for the services of all legal process, notices and other documents. This address will operate as each Member's *domicillia citandi et executandi*. When notifying the Company of an address each Member must provide the following information insofar it exists:

- 67.1.1 Postal address;
- 67.1.2 Physical address;
- 67.1.3 E-mail address;
- 67.1.4 Telefax number;
- 67.1.5 Telephone number; and
- 67.1.6 Cell phone number.

67.2 A notice may be served by the Company upon any Member, either personally, by electronic mail or sending it through the post in a prepaid registered letter, addressed to such Member at such address as he may have notified the Company in writing, save that such address shall be within the boundaries of the Republic of South Africa, or if such Member has failed to notify the Company in writing of any such address of any unit

owned by him or her, provided that copies of all notices sent to Members shall be sent to the mortgagee (if any) of that Member's unit.

67.3 A notice will be presumed, unless the contrary is proved, to have been given:

67.3.1 if posted by prepaid registered post, 5 (five) days after the date of posting thereof;

67.3.2 if hand delivered during business hours on a business day, on the day of delivery;

67.3.3 if sent by telefax, on the first business day following the date of sending; and

67.3.4 if sent by electronic mail, on the day of sending.

68. ACCESS TO THE ESTATE

The Directors shall take such measures as are necessary to ensure that the general public, with the exception of Members, their guests, lessees and members of their families and such other persons, as the Directors may reasonably permit, are excluded from the Estate. No resolution to alter the terms of this clause shall be taken unless simultaneously with the taking of such resolution, a resolution is taken to widen and reconstruct the roads to such specification as may comply with the standard requirements of the Municipality.

69. ESTATE AGENTS

Members must comply with the Company's Conduct Rules relating to Estate Agents.

70. "FOR SALE" SIGNS

No "For Sale" signs or "Sold" signs shall be erected on units without the written consent of the Company.

71. DISCLAIMER

71.1 The Company shall not -

71.1.1 be liable for any injury or death to any person, damage to or loss of any Property to whomsoever it may belong, occurring or suffered on the Estate regardless of the cause thereof; and

- 71.1.2 be responsible for any theft of Property occurring on the Estate.
- 71.2 Members shall not, under any circumstance, have any claim or right of action whatsoever against the Company for injury, death, damages, loss or otherwise, or be entitled to withhold or defer payment of any amount due by them for any reason whatsoever.
- 71.3 The Company, its Directors, employees and agents shall not be liable to any Member or any of the Member's lessees or their respective employees, agents, invitees or customers or any member of the public dealing with the Member or any lessee for any injury, death, loss or damage of any description which the Member or any such other person aforesaid may suffer or sustain whether directly or indirectly on or about the Estate, regardless of the cause thereof.

72. WINDING UP

- 72.1 No resolution for the winding-up or dissolution of the Company and the transfer of the Company's assets shall be taken unless -
- 72.1.1 The Company has made adequate provision for the rights of Members to obtain access to their units; and
- 72.1.2 The rights of Members to exclusive use of any areas have been safeguarded, if necessary, by registration of servitudes at the cost of the Member concerned if the Member so requires.
- 72.2 If the Company is wound up, deregistered or dissolved, the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution having objects similar to its main object, which is also exempt from income tax in terms of section 10(1)(e)(iii) of the Income Tax Act, to be determined by the Members of the Company at or before the time of its dissolution or, failing such determination, by the court.

73. ACCESS BY THE COMPANY

Every Member shall be obliged to allow the Company or its service providers access to any unit at reasonable times for purposes enabling the Company to

carry out its obligations or exercise its rights in terms of this Memorandum of Incorporation.

74. DELEGATION

The powers of the committees established in terms of this Memorandum of Incorporation and the powers of the Board of Directors and the powers of the Company generally may be delegated to the General Manager to such extent and upon such conditions as the Directors may determine from time to time, and such delegations may from time to time be revoked either in whole or in part or the conditions of such delegations may be changed as the Directors may from time to time deem fit.

75. FIDELITY INSURANCE

The Company shall be obliged to take out fidelity insurance to be paid by the Company and to the satisfaction of the Directors for all monies held by the Company or on behalf of its Members from time to time.