MEMORANDUM OF INCORPORATION

OF

BASSONIA ESTATE HOMEOWNERS ASSOCIATION (“NPC”)
Registration Number: 1999/010293/08

(hereinafter referred to as the “*HOA*”)

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

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

A. ADOPTION OF MEMORANDUM OF INCORPORATION

This Memorandum of Incorporation was adopted by the *Members* of the BASSONIA HOME OWNERS ASSOCIATION (“NPC”) (“*HOA*”) by *Special Resolution* of its *Members* on the 12th of June 2014.

B. INTERPRETATION

In this Memorandum of Incorporation-

a) A reference to a section by number refers to the corresponding section of the Companies Act, 2008;

b) Words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that *Act*;

c) The following expressions shall, unless otherwise stated or inconsistent with the context in which they appear bear the following meanings:

“*Act*”	means the Companies Act, 2008;
“Agent”	means an estate agent and/or estate agency (which shall include such agencies staff, representatives, directors and members) registered as such with the Estate Agency Affairs Board and mandated as such by an owner/s to attend to the sale of such owner/s property and shall include an owner who himself attends to the private sale of his property;
“*Any other amount owing*”	shall mean an amount owing to the *HOA* by any specific *Member* and over and above ordinary levies, and shall include special levies, interest, penalties and fines, legal fees and/or any other amount incurred or accruing to the *HOA* by such *Member*;
“*Auditors*”	mean the *auditors* of the *HOA* as approved by the *Members* at a general meeting of the *HOA*;
“*Chairman*”	means the Chairman of the Board of Directors for the time being who is elected by his fellow-directors in terms hereof;
“D*eveloper*”	means **HOMEGOLD DEVELOPMENTS 1998 CC** (registration number: 1996/00941/23) and/or **INVESTMENT FACILITY COMPANY 588 (PTY) LIMITED** (registration number 1997/004847/07) and shall include its heirs, assigns, executors, cedants, parent companies, subsidiaries and successors in title;

"*Development period*"	shall mean the period from the establishment of the *HOA* until the last *erf* in the *HOA* area has been transferred from the *Developer*, whether on freehold or sectional title basis, alternatively until the *Developer* notifies the *HOA* in writing that the *Development Period* has ceased (whichever is the earlier), which period shall be deemed to have ceased in the absence of such notice on 30 April 2008, whichever is the earlier. Provided however that if the *Developer* obtains final approval in respect of the high density development to be sited in *Phase 4*, the *Development period* shall run for an additional three (3) years from the date of granting of such approval, save that any rights or relaxations afforded to the *Developer* in terms hereof shall only apply to *Phase 4*, being the high density development. The date of final approval shall not have occurred until or unless all objectors by legal process shall have exhausted all lawful means to contest or oppose the high density development or until all such objectors agree in writing not to continue with their opposition thereto.
"*Directors*"	mean the directors for the time being elected by the *Members* of the *HOA* and/or appointed by the fellow-directors in the event of a vacancy as contemplated further herein;
"*erf*"	means a subdivided portion of land in the township registered or capable of being registered in the name of any person or entity;
"*Estate Rules*"	means the general body of rules governing the *Scheme* and the *Members* which shall consist of conduct rules, architectural rules, management rules and which may in terms hereof be amended from time to time by the *Directors* and ratified as provided for herein;
"*HOA*"	means the **BASSONIA *ESTATE HOME OWNERS ASSOCIATION ("NPC")*** with registration number 1999/010293/08;
"*in writing*"	means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in visible form and shall include electronic forms of communication as set out in the Electronic Communications and Transactions Act 25 of 2002 (as amended), in this regard it is the onus of the *Member* to ensure that all contact details of that particular owner is at all times updated and correct which details shall be forwarded and addressed to the *Managing Agent* or the Estate Manager. In any event preferred communication methods of the *Scheme* shall be as follows: 1. Email; 2. Fax; 3. Hand Delivery; 4. Normal post; 5. Registered Mail
"*Managing Agent*"	means any person or body appointed by the *HOA* as an independent contractor to undertake any of the functions of the *HOA*;

"*Member*" means a Member of the *HOA* and shall for purposes hereof also mean any member of any body corporate incorporated within the boundaries of the *HOA* with specific reference to *Phase 4*;

"*Phase 4*" means Bassonia Rock Extensions 22 and 23 (previously Extensions 17, 18 and 19) and includes erven 834 to 838;

"*Phase 5"* means Bassonia Rock Extension 21 and includes erven 844 to 853;

"*Scheme*" means the township development scheme laid out and includes erven 27 to 96 in respect of Extension 12; 742 being the guardhouse; 500 to 579 in respect of Extension 15, 791 to 830 in respect of Extension 20 and shall for purposes hereof include *Phase 4* and *Phase 5*;

"*Special resolution*" means where required in terms of the *Act*, a resolution passed at a special general meeting of which:

i) Not less than 21 (twenty-one) clear calendar days' notice has been given specifying the intention to propose a resolution as a *special resolution*;

ii) The terms and effect of the resolution are specified in such notice;

iii) The reasons for the resolution are specified in such notice;

iv) Not less than 25% (twenty five percent) of the *Members* entitled to vote thereat are present in person or by proxy;

v) There has been a show of hands that the resolution has been passed by not less than 75% (twenty five percent) of the number of *Members* of the *HOA* entitled to vote whether in person or by proxy;

"*Vice-Chairman*" means the Vice-Chairman of the Board of Directors for the time being as elected by the fellow-directors in terms hereof;

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

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

1 ARTICLE 1 – INCORPORATION AND NATURE OF THE HOA

1.1 INCORPORATION

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

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

i. the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies;

ii. the alterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and

iii. the provisions of this Memorandum of Incorporation together with any annexures, appendices and codicils hereto.

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

1.2.1 The Objects of the *HOA* are:

1.2.1.1 to manage and administer the erven, parks and common areas that are registered within the *HOA* for the benefit and use of the *Members* of the *HOA* and in the interests of all the residents who occupy erven in the *Scheme*;

1.2.1.2 to ensure that erven are developed according to specific and uniform aesthetic standards and that those standards are maintained thereafter;

1.2.1.3 to maintain the entrance of the *HOA* (including the guardhouse and access and security control equipment), the clubhouse, the perimeter fence around the *HOA* and any common property in the *HOA* such as walkways, parks, water features and the like;

1.2.1.4 to institute, control and pay for measures to ensure security which may include the employment of a security manager;

1.2.1.5 to protect the use and enjoyment by *Members* of their property in conjunction with the *Estate Rules* and the law;

1.2.1.6 to take action including the imposition of fines, or the institution of legal proceedings in any court of law, as may be deemed fit by the *Directors*, in relation to the non-compliance by any *Member* of any of the requirements of this Memorandum or any other rule applicable to the *HOA*;

1.2.1.7 to ensure that all local authority service departments, Rand Water and emergency services of the local authority have 24-hour access to the *HOA* and use of the servitude areas for the purposes of maintaining the local authority installations and to provide services to the residents in the *HOA* which shall include roads, water, electricity, fire department services and the South African police;

1.2.1.8 to take responsibility for the maintenance and any other essential services not specifically taken over by the local authority as voted on or directed by the *Members* of the *Scheme*;

1.2.1.9 to ensure compliance with this Memorandum by any body corporate within the boundaries of the *Scheme* with particular reference to *Phase 4*.

1.2.1.10 to employ estate staff

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

1.2.2 All the property and income of the *HOA*, whether obtained by donations or profit by means of income generating activities and levies, must be used to further its objectives as stated above and/or as voted on or directed by the *Members* of the *Scheme*. No part of the *HOA's* income may be paid to an incorporator, *Member*, or *Director* unless:

1.2.2.1 The payment is reasonable remuneration for goods delivered and/or services rendered and such payment has been disclosed to the *Members*;

1.2.2.2 The payment constitutes reasonable reimbursements for expenses incurred in the course of a *Director's* duties in furthering the object and purpose of the *HOA* which reimbursement has been approved by a majority of the *Directors*;

1.2.2.3 The payment is an amount due and payable under a *bona fide* agreement between the *Member*, or *Director* which agreement has been disclosed to the *Members*;

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

1.2.2.5 The *HOA* is obliged by law to do so.

1.2.3 Upon dissolution of the *HOA* its net assets must be distributed in the manner determined in accordance with Item 1(4) (b) of Schedule 2 of the Companies Act, 2008 which distribution must take into account *any amount owing* by any *Member* to the *HOA*.

1.3 ALTERATION OR AMENDMENT OF MEMORANDUM OF INCORPORATION

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

a) in compliance with a court order in terms of the provisions of the *Act*; or

b) at any other time if a *special resolution* to amend it –

i. is proposed by:

a. the *Directors* of the *Scheme*; or

b. *Members* entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution; and in addition,

ii. is adopted at a special general meeting of *Members*.

1.4 BODIES CORPORATE WITHIN THE HOA

1.4.1 This Memorandum together with the *Estate Rules* promulgated in terms hereof shall apply to all *Members* within the *HOA* as well as any Body Corporate, together with any *Members* of such body corporate which may now or in future exist within the boundaries of the *HOA* but shall at all times include *Phase 4.*

1.4.2 Any body corporate rules which shall in the ordinary course be required shall at all times be subject to this Memorandum and are to verified and approved by the HOA before being registered at the Deeds Offices or Ombud as may be required by the Sectional Title Act (as amended from time to time).

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

2.1. MEMBERSHIP

2.1.1. Save and except for owners who exercise ownership as a *Member* of any bodies corporate, with particular reference *Phase 4*, within the boundaries of the *HOA* (who shall together be represented by one vote), Membership of the *HOA* shall be limited to any person who in terms of the Deeds Registries Act is reflected in the records of the Deeds Office concerned as the registered owner of any land in the *HOA*.

2.1.2. Where any *erf* is owned by more than one person, all the registered owners of that *erf* shall together be deemed to be one *Member* of the *HOA* and have the rights and obligations of one *Member* of the *HOA*; provided however that all co-owners of any *erf* shall be jointly and severally liable for the due performance of any obligation to the *HOA*. In this regard all *Members* of any bodies corporate existing within the *HOA*, despite only being entitled to one single vote between them, shall be jointly and severally liable to the *HOA* for the due performance of any obligation to the *HOA*.

2.1.3. When a person becomes the registered owner of an *erf* in the *Scheme* he shall automatically become a *Member* of the *HOA* and when he ceases to be the owner of any such *erf* in the *Scheme* he *shall* automatically cease to be a *Member* of the *HOA*, however registered owners of property in *Phase 4* shall enjoy membership as one *Member* respectively for the purposes of voting but shall be liable individually for levies imposed upon them by the *Directors*.

2.1.4. The *domicilium citandi et executandi* of each *Member* shall be the address of the *erf* registered in his name provided that such owner shall be entitled from time to time to change the said *domicilium* but that any new *domicilium* selected shall be situated in the Republic of South Africa and shall not be a post office box or *poste restante*, and that the change shall only be effective on receipt of written notice thereof by the *HOA* at its *domicilium*, which shall be the address of its duly appointed *Managing Agent* unless otherwise advised. In this regard the property registered to any owners within the boundaries of *Phase 4* shall also be his chosen *domicilium citandi et executandi* until such time as the *HOA* has been notified as provided for in this clause.

2.2. RIGHTS AND OBLIGATIONS OF MEMBERS

2.2.1. No *Member* shall let or otherwise part with occupation of his *erf,* including *Members* who enjoy membership in *Phase 4*, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such *erf* as a *stipulatio alteri* (stipulation for the benefit of a third party) in favour of the *HOA* that such occupier shall be bound by all the terms and conditions of this Memorandum and such written agreement is lodged with the *HOA* prior to the proposed occupier taking occupation of the *erf* in question.

2.2.2. A registered owner of an *erf* shall not be entitled to at any time resign as a *Member* of the *HOA,* in addition no owner in *Phase 4* will be entitled not to become a *Member* in terms hereof. (previously clause 5)

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

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

b) pay all levies and *any other amount* owing to the *HOA* when due by the *Member* to the *HOA* on due date without deduction or set-off despite there being a dispute between that *Member* and the *HOA*;

c) sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of the access *erf* or any other *erf* in the *Scheme* and including the provision of security facilities;

d) be bound by the *Estate Rules*, annexures, directions of decisions made at a meeting of the *HOA* and any other document/s used in the regulation of the *Scheme*.

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

2.2.4.1. Subject to the provisions of voting rights as contained herein the right to nominate and elect the *Directors* of the *HOA*;

2.2.4.2. On written application the right to receive copies of the annual financial statements of the *HOA*;

2.2.4.3. subject to the provisions relating to voting rights below, the right to receive notice of, attend, speak and vote at general meetings of the *HOA*.

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

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

The *Directors* shall from time to time make levies upon the *Members* for the purpose of meeting all the expenses which the *HOA* has incurred or to which the *Directors* reasonably anticipate the *HOA* will incur in the attainment of its objects or the pursuit of its business. In addition the *Directors* shall impose a levy/ies upon the body corporate, which shall be responsible for the payment thereof without deduction or set-off and despite whether having received payment from its members or otherwise.

2.3.1. The *Directors* shall, not less than 60 (sixty) days post the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every *Member* at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the *HOA* to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The *Directors* may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.

2.3.2. Each notice to each *Member* (and to any body corporate), shall specify the contribution payable by that *Member* and/or body corporate to such expenses and reserve fund.

2.3.3. Whilst the annual levy is due and payable <u>*immediately and in full*</u> on the acceptance of the annual budget by the *Members* at the Annual General Meeting, the *Members* shall be granted an indulgence by the *Directors*, which shall permit them to pay the annual levy in equal monthly instalments, in advance on the first day of each and every month of the financial year. Any *Member* who is the registered owner of more than one *erf* shall be liable to make payment of such share in respect of each *erf* owned by him.

2.3.4. In the event of the *Directors* for any reason whatsoever failing to prepare and timeously serve the estimate referred to in clause 2.3.2 above every *Member* shall until served with such estimate, continue to pay the levy previously imposed and shall after such service pay such levy as specified in the notice in terms of clause 2.3.4.

2.3.5. The *Directors* may from time to time impose special levies upon the *Members* in respect of all expenses as are mentioned in article 0, which are not included in any estimate made in terms of article 2.3.1 and may in imposing such levies further determine the terms of payment thereof.

2.3.6. Any special levy imposed shall be payable on the passing of a resolution to that effect by the *Directors* and shall be payable by the owner of the *erf* at the time that the resolution is passed, or as determined by the resolution of the *Members*. Once the resolution is passed the Directors must cause a circular to be addressed to each *Member* of the *Scheme* setting out the details of the special levy, the amount payable and the reasons for the special levy.

2.3.7. The *Directors* shall be empowered in addition to such other rights as the *HOA* may have in law against its *Members* to determine the rate of interest from time to time chargeable upon arrear levies and *any amount owing*, provided that such rate of interest shall not exceed the prime bank lending rate plus ten percent (10%) and shall for purposes hereof be the prime lending rate plus five percent (5%) until changed by resolution of the *Directors* at a properly constituted meeting of the *Directors* of the *HOA*, or where instructed by the *Members* at an annual general meeting of the *HOA* where such discussion is placed on the agenda for a resolution thereon to be passed, provided however that interest can never be incurred on legal fees.

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

2.3.9. Any *Member* who has consolidated or notarially tied two or more portions of land as shown on the general plan, shall be liable to contribute a monthly levy on each erf as if the erven were separate as before the consolidation only until such consolidation has been effected and proof that such consolidation has been submitted to council is forwarded to the Estate Manager.

Once consolidated the consolidated *erf* shall be deemed to be one *erf* for the purposes of imposing levies. During the consolidation period any penalty as defined in the *Estate Rules* relating to a time limit for completion of building works shall not be levied to such *Member*.

2.3.10. No levies or interest paid by a *Member* shall under any circumstances be repayable by the *HOA* upon his ceasing to be a *Member*.

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

2.3.12. Should the *HOA* institute legal action against any *Member*, pursuant to the debtors policy of the *HOA* for and/or in relation to arrear levies or *any other amount* owing by such *Member* the costs thereof including collection commission, will be recoverable against such *Member* on an attorney and own client scale and will be debited to such owners levy account and be payable within the same time periods as would a normal levy.

2.3.13. The *Developer* shall be liable for levies on the same basis as any other *Member* in respect of proclaimed erven only.

2.3.14. No *Member* shall be entitled to any of the privileges of Membership unless and until he shall have paid every levy and interest, and fines or penalties or *any other amount* owing, if any, which may be due and payable by that *Member* to the *HOA*, from whatsoever cause arising.

2.4 RESTRICTION ON TRANSFER OF LAND

2.4.1 No *Member* shall transfer land or an *erf* in the *Scheme*, whether by public sale, private sale, mandated sale or forced sale:

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

2.4.1.2 Only *HOA* accredited Estate Agents will be permitted to sell property within the *HOA* with the exception of *Members* who are owner sellers.

2.4.1.3 All prospective buyers are to be personally accompanied by estate agents and may only view properties on a “by appointment” basis. Estate agents will not be permitted to advertise the sale of a house or premises by distribution of leaflets or by erecting “for Sale” boards save and except as provided for in the rules.

2.4.1.4 All sale agreements must make reference of the fact that purchasers are to become *Members* of the *HOA* and are to consider themselves bound by this Memorandum as well as any other rules (as amended) applicable to the *HOA*.

2.4.1.5 Neither an *erf* or any sub-division thereof or any interest therein or any *erf* thereon shall be transferred to any person who has not bound himself to the satisfaction of the *HOA* to become a *Member* of the *HOA* and to be bound by the *Estate Rules*.

2.4.1.6 These provisions will apply *mutatis mutandis to Phase 4.*

2.5 **ACCREDITATION OF ESTATE AGENTS**

2.5.1 All estate agents wishing to sell property with sale or lease/let property within the *HOA* shall firstly be accredited by the *HOA* by signing an agreement with the *HOA* (Annexure “C”) in terms of which agreement the procedures relating to lease, letting or selling of property will be determined in terms of which agreement the estate agent will undertake to adhere to all rules and regulations implemented by the *HOA* relating to the letting or selling of property within the *HOA*.

2.5.2 A list of all accredited estate agents will be made available by the *HOA* upon request by any *Member*.

2.5.3 The provisions hereof shall also apply mutatis mutandis to lease agreements and tenancy.

2.6 **DIRECTORS**

2.6.1 There shall be a Board of Directors of the Association, which shall consist of at least 6 (six) and a maximum of 10 (ten) persons as voted in by the *Members* at an annual general meeting of the *HOA*.

2.6.2 A *Director* shall be an individual and must be a *Member* of the *HOA*. A *Director*, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this Memorandum.

2.7 **REMOVAL AND ROTATION OF *DIRECTORS***

2.7.1 Each *Director* shall continue to hold office from the date of his appointment until the next annual general meeting following his appointment, at which meeting each *Director* shall be deemed to have retired from office but will be eligible for re-election to the Board of Directors as such meeting, subject at all times to the provisions of the *Act*.

2.7.2 A *Director* shall vacate his office upon his having become disqualified to act as a *Director* in terms of the provisions of the *Act* and/or at the date upon which he has failed and/or neglected to make payment of each and every sum due by him to the *HOA* by way of levy and interest or *any other amount*, if any, and has failed to rectify such non-payment within 14 days upon written demand by the remaining *Directors* and/or if he is in breach of the *Estate Rules* and fails to rectify such breach within 14 days upon written demand by the remaining *Directors*;

2.7.3 In terms of section 69 of the *Act* a person is disqualified to be a Director of a the *HOA* if:

a) a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

b) subject to subsections (9) to (12), the person—

i. is an unrehabilitated insolvent;

ii. is prohibited in terms of any public regulation to be a Director of the company;

iii. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or

iv. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—

aa) involving fraud, misrepresentation or dishonesty;

bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or

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

2.7.4 Upon any vacancy in number of voted in *Directors* occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by a *Member* nominated and voted in by a majority of the remaining *Directors* at a properly called meeting of the Board of Directors. Provided that at all times any body corporate may only be represented by one *Director* on the Board of Directors.

2.7.5 *Directors* shall be appointed in terms of the following process:

2.7.5.1 Nominations shall be submitted to the existing *Directors*, in writing, by no later than the commencement of the general meeting at which such nomination is to be considered;

2.7.5.2 Written notification shall be signed by the person so nominated to indicate acceptance of the nomination, prior to the submission thereof to the office of the *Managing Agents*;

2.7.5.3 The *Chairman* may request and receive nominations from the floor of the general meeting at which nominations are to be considered and any such person nominated shall be present at such meeting and shall accept such nomination, failing which such nomination shall be void *ab initio*.

2.7.5.4 The *Chairman* of the meeting shall call for the votes of such *Directors*, on the terms and conditions of voting rights as set out in this Memorandum, after allowing each candidate for the election to address the meeting for a period of not exceeding 3 minutes per nominee.

2.8 CHAIRMAN AND VICE CHAIRMAN

2.8.1 The *Directors* shall within 14 (fourteen) days after each annual general meeting appoint from their number a *Chairman* and *Vice-Chairman*, who shall hold office until the next annual general meeting after the said appointments, provided that the office of the *Chairman* and *Vice-Chairman* shall be *ipso facto* vacated by a *Director* holding office as such upon him ceasing to be a *Director* for any reason. Should either the *Chairman* or the *Vice-Chairman* cease to be a *Director* then their respective office will be vacated simultaneously with them no longer being a *Director*.

2.8.2 No one *Director* shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in either of the aforesaid offices at any time the Board of Directors shall immediately appoint one of their number as a replacement in such office.

2.8.3 Except as otherwise herein provided, the *Chairman* shall preside at all meetings of the Board of Directors and all General Meetings of *Members* and, in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the *Vice-Chairman* shall act in his stead, or failing the *Vice-Chairman*, a chairman appointed by the meeting.

2.9 PORTFOLIO'S OF DIRECTORS

2.9.1 The *Directors* shall amongst themselves bring about certain portfolios to attend to the running of the *Scheme*. In this regard the *Directors* may elect so many portfolios as they in their absolute discretion deem appropriate subject to the *proviso* that the following portfolios must exist:

2.9.1.1 Security;

2.9.1.2 Financial;

2.9.1.3 Architectural; and

2.9.1.4 Legal and governance.

2.10 DIRECTORS' EXPENSES

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

2.11 POWERS OF DIRECTORS

2.11.1 Subject to the provisions hereof the *Directors* shall manage and control the business and affairs of the *Scheme*, and shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the *Managing Agent*, management staff and general staff and to exercise all such powers of the *HOA* and do all such acts on behalf of the *HOA* as may be exercised and done by the *HOA* and as are prescribed by the *Act* or by this Memorandum required to be exercised or done by the *HOA* in General Meetings.

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

2.11.3 The *Directors* shall further have power to:

2.11.3.1 require the submission of building plans for approval of such plans, drawings, specification and other information as they may deem necessary to ensure compliance by *Members* of this memorandum;

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

2.11.3.3 determine the access to the *HOA* and to the erven within the *Scheme*;

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

2.11.3.5 issue and enforce the provisions of the *Estate Rules*.

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

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

2.11.5.1 a practicing architect, registered in South Africa with a governing/competent authority and who is duly qualified to practice as such;

2.11.5.2 such committee *Members* as the *Directors* may determine.

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

2.11.5.4 All plans for buildings, deviations, structures, additions, alterations and all plans for all works shall be submitted to the architectural review committee for approval.

2.11.5.5 At all times 1 (one) member of the architectural committee must be a *Director*.

2.12 **PROCEEDINGS OF DIRECTORS**

2.12.1 The *Directors* may meet to attend to their business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of this Memorandum.

2.12.2 The quorum for the holding of any meeting of the *Directors* shall be fifty percent (50%) of the *Directors*. Any resolution passed by the Board of Directors shall be carried on a simple majority of all votes cast. Should there be an equality of votes for and against any resolution; the resolution shall be deemed to have been defeated.

2.12.3 The *Directors* shall cause the minutes of each meeting to be kept in accordance with Section 204 of the *Act*. All minutes of *Directors* meetings shall, after certification be placed in a *Directors*' Minute Book which shall be kept in accordance with the provisions of the law relating to keeping minutes of meetings of *Directors* of companies. The *Directors*' Minute Book shall be open for inspection at all reasonable times by any Director, the *Auditors*, the *Members* and the *Managing Agent*.

2.12.4 All votes taken at a *Directors* meeting must be recorded, if there exists a majority, on number of votes cast for and against any proposed resolution.

2.12.5 Subject to the provisions of this Memorandum, the proceedings of any *Directors* meeting shall be conducted in such reasonable manner and form as the *Chairman* of the meeting shall direct.

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

2.12.7 Minutes of *Directors* meeting must be prepared, signed and placed in the *Scheme*'s minute book with ten (10) days from date of such meeting.

2.13 GENERAL MEETINGS

2.13.1 The *HOA* shall hold an annual general meeting not later than 6 (six) months after the end of each financial year of the *Scheme*.

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

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

2.13.4 The *HOA* is not required to hold any *Members* meetings other than those specifically required by this Memorandum of Incorporation and the Companies Act, 2008

2.14 NOTICE OF GENERAL MEETING

2.14.1 Subject to the provisions of the *Act* an annual general meeting and a meeting called for the passing of a *Special Resolution* shall be called on not less than twenty one (21) calendar days' notice in writing and any other general meeting shall be called on not less than 14 (fourteen) calendar days' notice in writing, such number to be calculated excluding both the first and last day. Any notice or any process may be served on any member of any body corporate within the *HOA* upon at the address owned by him unless the *Member* shall have notified the *HOA* in writing of another address for service of notices and processes, or electronically in terms of the Electronic Communications Act. In addition the *HOA* shall serve one copy of the notice of any general meeting on the representative of the body corporate as elected by the body corporate at the address specified by such *Member* in writing to the *HOA*.

2.14.2 The notice of a meeting of the *HOA* shall specify:

2.14.2.1 the place;

2.14.2.2 the date and time of the meeting; and

2.14.2.3 in the case of special business, the general nature of such business; and

2.14.2.4 shall set out an agenda of such meeting and attach all such required documents in terms of such agenda which may be necessary or incumbent to produce.

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

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

2.14.3.1 a general meeting shall, notwithstanding that it is called by shorter notice than that specified in this Memorandum, be deemed to have been duly called if it is so agreed by a majority in number of the *Members* having a right to attend and vote at the meeting, who hold not less than ninety five per centum of the total voting rights of all the *Members*;

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

2.14.4 The accidental omission to give notice of a meeting or of any resolution, or give any other notification, or present any document required to be given or sent in terms of this memorandum or in terms of the *Act*, or non-receipt of any such notice, notification or document by any *Member* or other person entitled to receive same, shall not invalidate the proceedings at any meeting or shall not invalidate any resolution passed at any meeting.

2.14.5 It will be sufficient to provide notice to the *Members* in *Phase 4* by delivery of such notice to the Chairman of the incorporated body regulating the affairs of the *Members* in *Phase 4* who will be deemed to have received such notice on delivery to the Chairperson so herein referred.

2.15 **AGENDA**

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

2.15.1.1 The ratification of the previous AGM minutes (which is required to be attached);

2.15.1.2 the consideration of the *Chairman*'s report (which is required to be attached);

2.15.1.3 the election of *Directors*;

2.15.1.4 the consideration of any other matters raised at the meeting, including any resolutions (which are to be attached) proposed for adoption by such meeting and the voting upon any such resolutions;

2.15.1.5 the consideration of the financial statements of the *HOA* for the preceding financial year (which is required to be attached);

2.15.1.6 the consideration of the report of the *Auditors* and the determination of remuneration for the *Auditors* (which is required to be attached);

2.15.1.7 the appointment of the auditor for the forthcoming financial year;

2.15.1.8 The proposed annual budget of the *HOA* for the subsequent financial year (which is required to be attached);

2.15.1.9 The ratification of any amendments to the rules of the *HOA* (if any).

2.15.2 In the event that a *Member* of the *HOA* wishes to include any special business onto the agenda he is required to notify the *Chairman* or the *Managing Agent* of such special business, in writing, no later than 48 (forty eight) hours before the general meeting.

2.16 PROCEEDINGS AT GENERAL MEETINGS

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

2.16.2 Where a company or other corporate body is a *Member* of the *HOA* it may, in the appropriate manner, nominate any person it deems fit to act as its authorised representative at any general meeting and such authorised representative shall be entitled to exercise the same rights and powers which that corporate body would have had at that meeting as if it were a natural person and present in person or by proxy.

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

2.17 QUORUM FOR GENERAL MEETINGS

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

2.17.1.1 **<u>25% of all *Members* present in person or by proxy or by representative recognised in law, of such 25 of the 25% must be *Members* and further must be physically present at the meeting.</u>**

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

2.17.2 The *Chairman* of the Board of Directors shall preside as chairman at every general meeting of the *HOA*.

2.17.3 If there is no such *Chairman* or if at any general meeting he is not present within 15 minutes after the time appointed for the holding of the meeting or if he is unwilling to act as *Chairman*, the *Directors* shall choose a *Director* to act as *Chairman* and, failing any *Director* present and willing to act, the *Members* present shall elect a *Chairman* of the meeting. A person elected to chair a meeting need not be a *Member* of the *HOA* but may not be the Managing Agent or a representative or employee of the Managing Agent.

2.17.4 The *Chairman* of a general meeting at which a quorum is present may (and shall if so directed by the meeting) adjourn the meeting to a different time or place but no business shall be transacted at any adjourned meeting other than business left unfinished at the meeting at which the adjournment took place. Subject to the *Act*, when a meeting is adjourned it shall not be necessary to give notice thereof.

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

2.18 **VOTING**

2.18.1 At every general meeting whether on a show of hands or on a poll, every *Member* present in person or represented by proxy and if a *Member* is a legal entity, or a body corporate existing within the boundaries of the *HOA*, its representative, shall have 1 (one) vote only. This provision shall apply *mutatis mutandis* to *Phase 4*.

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

2.18.3 Subject to the provisions of this Memorandum, no person other than a duly registered *Member* who has paid every levy and *any other amount*, if any, which is due and payable to the *HOA* in respect of or arising out of his Membership and any *Director* who is not under suspension in terms of paragraph 2.7.2, shall be entitled to vote on any question, either personally or by proxy, at any general meeting. In addition no person who is in arrear of *any amount owing* to the *HOA* may carry the proxy of another owner.

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

2.18.5 If a poll is demanded:

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

2.18.5.2 the *Chairman* of the meeting shall be entitled to appoint scrutinizers;

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

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

2.18.5.5 a demand for a poll may be withdrawn;

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

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

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

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

2.19 RESOLUTIONS

2.19.1 MEMBERS RESOLUTION

2.19.1.1 For an ordinary resolution to be adopted at a general meeting, it must be supported by more than –

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

2.19.1.2 For a *special resolution* to be adopted at a *Members* meeting, it must be supported by at least –

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

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

2.20 MINUTES AND INSPECTION

2.20.1 The *Directors* shall cause a record to be made of all resolutions of the *HOA* in general meetings in a book provided for that purpose.

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

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

2.21 **PROXIES**

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

2.21.2 A proxy need not be a *Member* of the *HOA*.

2.21.3 The instrument appointing a proxy shall be in writing under the hand of the appointer or his agent duly authorised in writing or, if the appointer is a corporate body, under the hand of the authorised representative. A proxy need not be witnessed. Whether he is himself a *Member* or not, the holder of a general or special power of attorney given by a *Member* shall, if duly authorised under that power to attend and take part in meetings and proceedings of the *HOA* or companies generally, be entitled to attend general meetings and to vote thereat.

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

2.21.5 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, (or a notarially certified copy of such power or authority) shall be deposited at the offices of the *Managing Agent* not less than forty-eight (48) hours (or at such other place and such lesser period as the *Directors* may determine in relation to any particular meeting) before the time for the holding of the meeting which the person named in the instrument proposes to speak and vote.

2.21.6 Except insofar as the form appointing a proxy indicates otherwise, the appointment of a proxy shall be deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specially directed to vote for or against or to abstain from voting on any proposal or resolution), the power generally to act for the *Member* giving that proxy at the general meeting in question as the proxy may deem fit. Unless the contrary is stated therein, the form appointing a proxy shall be valid for each adjournment of the general meeting to which it relates.

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

2.21.8 No person may hold more than 5 proxies at any general meeting of the *HOA*.

2.21.9 Proxies are transferable, only by a *Member* (and not a proxy), during the currency of the meetings, only if without such proxy there would not exist a quorum.

2.22 **MEMBERS' RIGHT TO REQUISITION A MEETING**

The right of *Members* entitled to vote to requisition a meeting, as set out in section 61 (3), may be exercised – by at least 10% of the voting *Members* in writing at least 30 (thirty) days, as provided for in that section.

2.23 **LOCATION OF MEMBERS MEETINGS**

2.23.1 *Members*' meetings shall be held within the magisterial district in which the *HOA* is situated unless it is determined otherwise by the *Directors* and notice of the address at which the meeting is to be held, which address falls outside the magisterial district in which the *Scheme* is situated, is clearly stipulated in the notice calling the meeting, subject to the following proviso:

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

2.23.1.2 The magisterial district is at present Johannesburg in the region of Johannesburg in the province of Gauteng, South Africa.

2.24 **INDEMNIFICATION OF DIRECTORS**

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

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

2.24.3 The *Directors* and the *HOA* shall not be held liable for any loss, damage, destruction, theft or death of any person or property within the *Scheme*.

2.25 **OBLIGATIONS OF THE DEVELOPER**

2.25.1 The *Developer* shall be obliged, no later than one (1) year after the opening of the sectional title register in respect of phase 4 or, if same is not opened by 1 October 2006, by no later than 1 October 2006, to:

2.25.1.1 Establish a clubhouse for the use of the *Members* of the *HOA* on the common property belonging to the *HOA* or a sectional title *Scheme* within the *HOA* (as contemplated herein), in which event the *Developer* shall further be obliged to secure the use thereof in favour of the *Members* of the *HOA* by registration of an appropriate servitude over the property upon which the clubhouse is erected.

2.25.1.2 Establish and develop and landscape a suitable water course including water features and ponds, which water course shall utilize the flow of water emanating from the adjacent Rand Water facilities and shall be incorporated into public parks and open space for the use of the *Members*.

2.25.1.3 Should the *Developer* obtain final approval in respect of a high density development in P*hase 4*, the memorandum of incorporation and/or conduct rules and any other rules or regulatory documents proposed to be applicable to such development shall be submitted to the *HOA* for its prior written approval.

2.25.1.4 Without derogating from these presents, during the *Development Period*, the *HOA* shall not interfere in the development affairs of the *Developer* relating to the *HOA* area. In particular, the *Developer* will have exclusive rights of control in respect of the following matters:

2.25.1.4.1 to appoint any person(s) or entities to attend to the initial construction on any erven within the *HOA* area;

2.25.1.4.2 The *Developer* shall be afforded rights of reasonable access (subject to any rules promulgated by the *HOA* and to the *Developer* providing written indemnities and/or deposits reasonably acceptable to the *HOA*, for the rectification of any damage to roadways, road reserved or any common property) for purposes of the ongoing development of units or erven, P*hase 4*.

2.25.1.5 The obligations of the *Developer* herein shall be transferable and binding on the respective estate of the *Developer* including but not limited to administrators, liquidators, heirs, purchasers and cessionary’ s, whether singularly or in joint venture with the *Developer*.

2.26 **<u>PHASE 5 SERVITUDES</u>**

2.26.1 The owners of any property in *Phase 5* shall grant in favour of the *Scheme* a servitude for access purposes over the servitude area, as more fully appears from the diagrams annexed hereto as annexure “A1” to “A7 respectively”.

2.26.2 The owners in *Phase 5* shall be obliged to give access to the *Scheme* or its employees or its duly authorised representatives to the servitude area for purposes of maintenance and/or security response and/or patrolling the boundary fence in the servitude area.

2.26.3 The owners in *Phase 5* shall not be entitled to interfere in any manner or form whatsoever with the *Scheme* whilst it is exercising its rights granted as per this clause 2.28.

2.26.4 The *Scheme* shall be entitled but not obliged at its sole discretion to erect security equipment or security devices within or upon the servitude area.

2.26.5 The *Scheme* shall be obliged to maintain the servitude area and/or any equipment erected thereon at its own cost.

2.26.6 The owners in *Phase 5* shall not be entitled to plant any shrubs, trees or plants or effect any improvements to the servitude area.

2.26.7 The owners in *Phase 5* shall be bound by the provisions of the Gauteng Department of Agriculture and Rural Development Environment Management Program 005/381 dated November 2011.

3 **ARTICLE 3 - RULES PERTAINING TO THE HOA**

3.1 **DIRECTORS NOT PROHIBITED FROM MAKING RULES**

3.1.1 Subject to any restriction imposed or direction given at a general meeting of the *HOA* the *Directors* may make, add to, amend, repeal or suspend *Estate Rules*. The *Estate Rules* shall be binding on all *Members*.

3.1.2 Any amendment to the *Estate Rules* must be published, in any manner required or permitted in terms hereof, or the *Estate Rules* and must be filed with the Company and Intellectual Property Commission within 20 business days after the *Estate Rules* are published or the date, if any, specified in the *Estate Rules* and shall become binding on an interim basis from the time it takes effect until it is put to a vote at the next general meeting of the *HOA* and on a permanent basis only if it has been ratified by an ordinary resolution as contemplated herein.

3.1.3 The *Estate Rules* appended to this Memorandum shall form part hereof and shall be deemed to be incorporated herein and shall be enforceable in terms hereof.

5 ARTICLE 4 - GENERAL PROVISIONS

5.1 PUBLIC ANNOUNCEMENTS, SIGNS AND NOTICES

5.1.1 It is prohibited to place signs, notices, boards or advertisements of any kind whatsoever within the *Scheme*, with the exception of one standard building signboard setting out details of the Contractor and/or architect which may be placed on the *erf*.

5.1.2 No signage may be placed on the municipal pavement directly outside the estate/adjacent to the *Scheme*.

5.2 AUDITORS

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

5.2.2 The appointment, powers, rights, remunerations and duties of the *Auditors* shall be regulated by the provisions of the Companies Act.

5.3 RESERVES

5.3.1 The *Directors* may set aside out of the profits of the *HOA* or contingencies as budgeted for and carry to reserve such sums.

5.3.2 All sums standing to the credit of revenue and general reserve shall be applicable for meeting contingencies, for the gradual liquidation of any debt or liability of the *HOA*, for repairing, improving or maintaining any property of the *HOA*, for meeting losses on realization of, or writing down investments either individually or in aggregate, or for any other purpose to which profits of the *HOA* may appropriately be applied. Pending such application such sums may either be employed in the business of the *HOA* (without being kept separate from other assets of the *Scheme* or be invested and may not be repaid to *Members*).

5.3.3 The *Directors* may divide the reserve into such special reserves and re-allocate the amounts of such reserves either in whole or in part to other special or general reserves and may consolidate into one reserve any special reserves or any parts of special reserves into which the reserve may have been divided. The *Directors* may also carry forward any profits without placing them to reserve.

5.3.4 All unbudgeted expenditure for any singular transaction which exceeds five percent (5%) of the approved budget is required to be authorised by the *Members*, in terms of the voting requirements set forth herein, at a general meeting of the *Members* or by a special general meeting of the *Members*.

5.3.5 At all times the Directors shall deal with the reserved as mandated by *Members* who shall have the right, at all times, to be entitled to the books of account of the *HOA*.

5.4 NOTICES

5.4.1 A Notice *in writing* by the *HOA* to any *Member* shall be regarded as validly given if it is delivered personally to the *Member*, or sent by prepaid registered post to him at his registered address or emailed to him by electronic communication at an email address which was provided in terms of this Memorandum.

5.4.2 A *Member* entitled to a notice shall be bound by every notice given in terms hereof. The *HOA* shall not be bound to enter any person in the register of *Members* until that person gives the *HOA* details of the *Members* physical address, as well as a postal address, email address and facsimile number (if applicable) to enter on the register in terms hereof.

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

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

5.5 WINDING-UP

5.5.1 The *Scheme* does not have a share capital.

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

5.6 DISCLAIMER

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

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