

# **MEMORANDUM OF INCORPORATION**

of

## **MOOIKLOOF RIDGE HOME OWNERS ASSOCIATION (NPC) Registration Number: 2003/029492/08**

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

### **A) OBJECTS AND POWERS OF THE COMPANY:**

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

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

The “**Township**” means the property comprising the Mooikloof Ridge Estate.

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

- 2.4 formulate and implement Rules for the furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of **Members** and/or residents in the **Township** and without limitation thereto, for *inter alia* relating to security, landscaping, vegetation, parking, road use, signage and advertising, exterior finishes of buildings, fencing or walling;
- 2.5 make and enforce Rules concerning design, landscaping, ecological planning, any building activities and the control and collection of refuse;
- 2.6 ensure that Bodies Corporate members maintain their **Units** in a clean and tidy condition;
- 2.7 consent to sub-division or re-zoning of any **Erf/Unit** and to impose such conditions relating to any landscaping and aesthetic appearance, as they may deem fit;
- 2.8 control access to and from the **Township**;
- 2.9 collect **Levies** and contributions towards funds of the **Company** for the attainment of the objects of the **Company**, to promote and maintain any business or enterprise of the **Company**; and
- 2.10 create Rules concerning the rights and obligations of **Members** and the use of **Common Property** and **Units/Erven** within the **Township** and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation, are enforced equally upon all **Members** and are adhered to for the benefit of the **Members** as a whole and subject to such restrictions and/or conditions, restrictions and/or powers as may be imposed by the **Members** upon the **Directors**, in General Meetings, on the basis that all **Members** shall have equal rights and obligations;
- 2.11 In general, to do all things necessary for the furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of members and/or residents in the **Township**.

## **B) ADOPTION OF MEMORANDUM OF INCORPORATION:**

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

## **C) DEFINITIONS:**

In this Memorandum of Incorporation –

- (a) a reference to a **section** by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act;
- (c) the Sectional Titles Schemes Management Act, Act No 8 of 2011 (when it comes into operation) shall bear the same meaning in this Memorandum of Incorporation in relation to Sectional Title matters referred to herein;
- (d) a reference to any Act shall include any amendment thereto or Act in substitution thereof;
- (e) the headings to the clauses in this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of the provisions in this Memorandum of Incorporation;
- (f) the following words, expressions and abbreviations shall have the meanings hereinafter assigned to them:
- (g) the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

- (i) **“the Act”** : Means the Companies Act, 71 of 2008;
- (ii) **“Auditors”** : Means the **Company’s** appointed Auditors from time to time;
- (iii) **“Authorized representative”** : Means a person duly authorized by a Company or other legal entity, to act as its representative
- (iv) **“Board”** : Means the **Board** of **Directors** of the **Company** from time to time;
- (v) **“Body Corporate”** : Shall mean, in relation to a Sectional Title Complex which is situated within the **Township**, a Body Corporate established in terms of Section 36(1) under the Sectional Titles Act, Act 95 of 1986;

(vi) **"Business day"**

: A business day is calculated by:

- (a) excluding the day on which the first such event occurs;
- (b) including the day on or by which the second event so











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

### 1.3 Memorandum of Incorporation and Company Rules

- (1) This Memorandum of Incorporation of the **Company** may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b), subject to the requirement that any alteration of the Memorandum of Incorporation or the Rules, made in terms of Section 17(1), shall be published to the **Members** of the **Company**, by delivering a copy of the altered Memorandum of Incorporation or the Rules, to each **Member** by ordinary mail and/or telefax and/or e-mail.
- (2) The **Company's Board of Directors** may make Rules for the **Company**, without limitation or restriction and only subject to the provisions of Article 1.3(5), as contemplated in section 15(3) – (5), which Rules shall include, but not be limited, to the following matters:
  - (a) The preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of fences and other improvements to a **Unit/Erf**, whether upon or within the boundaries of any **Unit/Erf**, which may affect the general aesthetical appearance of the **Township**, and which includes amongst other, additions and improvements such as satellite and/or radio antennae dishes and/or -receivers, air-conditioning units and/or solar heating systems and panels;
  - (b) All aspects of security, vegetation, parking, signage and advertising, exterior finishes of buildings or walling and fences, streetscapes and the maintenance of any **Unit/Erf** and any improvements thereon;
  - (c) The right to prohibit, restrict or control the keeping of any animal/bird/reptile which they may regard as dangerous or likely to cause a nuisance and/or disturbance to other residents or the flora and fauna in the **Township**;
  - (d) The placing or affixing of ornamentation or embellishments to the outside of the buildings or on a **Unit** within the **Township**,

including the power to remove, or order the removal or to procure an order for removal of any such objects;

- (e) The conduct of any person or persons within the **Township** for the preservation of peace and tranquillity and the prevention of nuisance of any nature to any **Member** resident or to prevent any harm to the environment;
- (f) The furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of **Members** of the **Company**;
- (g) The right to control reasonable access to the **Township** and to any **Unit/Erf** to protect the security of the **Township**, the **Members** and residents and all users thereof;
- (h) The control of any visitors, contractors and labourers and restriction of their access and activities on the **Township**;
- (i) The enforcement of any of the Rules.
- (j) The operations and activities of all businesses whatsoever conducted on or from a **Unit/Erf** within the **Township**, including the methods of sale and advertising within the **Township**;
- (k) Rules regulating the conduct of estate agents within the **Township**, show-houses, accreditation, property transactions, the control and movement of the estate agents and their clients (prospective purchasers of **Units/Erven** in the **Township**);
- (l) The Maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable flora;
- (m) Rules concerning construction and material specification and Architectural Rules and requirements of all improvements and in particular, without derogating from the generality of the foregoing, structures of whatsoever nature, paving, pavements / sidewalks, the appearance of streetscapes, installations of whatsoever nature, including without limiting the generality thereof, air-conditioning units, any power saving devices, swimming pool pumps / filters, TV aerials / dishes / antennae, lighting, washing lines, refuse bins, building rubble, carports, awnings, security systems and landscaping features as well as the maintenance and upkeep of all the foregoing;

- (n) The control of vehicular traffic of whatsoever nature, including parking;
  - (o) The use of any facilities or amenities within the **Township**;
  - (p) The safety- and other regulations applicable to the playing of any sport or engagement in any other recreational activity, including, but not limited to, the use of balls and other sporting equipment, cycles, scooters, skateboards, etc.;
  - (r) The control and recycling of refuse, littering and other safety and anti-pollution related measures.
- (3) For the enforcement of any Rules made by the **Directors** or the **Company**, the **Directors** shall be entitled to:
- (a) implement a system of fines and penalties from time to time in order to deter any contravention of these Rules and to ensure the due enforcement of these Rules.
  - (b) Any penalties imposed by the Directors are subject to adjustment and/or ratification by members in General Meeting.
  - (c) In the event of contravention of any of these Rules, the following procedure will be followed and implemented by the Directors/**Managing Agent**:
    - (i) A letter of demand and /or fine will be sent to the member, specifying the nature of the breach and demanding him to remedy the breach, where applicable, within a period of 10 (ten) days from date of the demand;
    - (ii) Should the member fail to adhere to the demand letter and to remedy the breach then, unless written objection is received by the owner within **10 (ten) days** from demand, concerning the alleged contravention, the prescribed penalty as per the Rules, shall be implemented and levied against the member's levy account and shall be enforceable, as if such penalty or fine constitutes a normal levy;
    - (iii) If the transgression is disputed and upon receipt of any written objection by the **Member**, a Committee of 3 (three) **Directors** appointed by the **Chairman** for this purpose, shall convene a meeting with the **Member**

within a period of 10 (ten) days, or as soon as reasonably possible after receipt of the objection, to adjudicate upon the issue. The meeting shall take place at a venue and time, and in accordance with such procedure, as the **Chairman** of the Committee shall direct; provided that the Rules of natural justice shall be observed and at which meeting the **Member** shall be entitled to address his objection and to call witnesses.

- (iv) The decision of the **Board** shall be final;
  - (v) Should the **Member** refuse to accept the decision of the **Board** on any matter, such dispute shall then be referred to arbitration in terms of these Rules.
- (d) Any fine imposed upon any **Member** shall be deemed to be a debt by the **Member** to the **Company** and shall be recoverable by ordinary civil process.

(4) Arbitration:

- (a) In the event of a dispute between the **Company** and a Member or between Members arising out of or in connection with or related to provisions of this Memorandum of Incorporation, the **Act** or the Rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions.
- (b) Notwithstanding the provisions of clause (4)(a), any dispute concerning the payment of monies due to the **Company**; shall be excluded from arbitration.
- (c) If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the **Board** and the **Managing Agent**, if any, and should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- (d) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.

- (e) If the parties cannot agree as to the person of the arbitrator to be appointed in terms of Article 1.3(4)(d) within 5 (five) days after the arbitration has been demanded, the auditors of the **Company** shall, upon written application, in writing, appoint an arbitrator within 7 (seven) days after they have been required to make the appointment.
- (f) The arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 7 (seven) days after demand for security or payment was made, the other party shall be entitled to abandon arbitration proceedings.
- (g) The intention being that the arbitration shall be concluded within 45 (forty five) days after an arbitrator has been appointed or security for costs has been furnished.
- (h) The arbitrator shall make his/her award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his/her award, have regard to the principles laid down in terms of the Memorandum of Incorporation and the Rules thereunder. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he/she may determine and as he/she in his/her discretion may deem appropriate, having regard to the outcome of the arbitration.
- (i) In making an award of costs, it shall be competent for the arbitrator to award costs against the **Company** on the basis that the member in whose favour the award was made, shall be excluded from contributing to such costs through his general levy and/or any special levy contributions.
- (j) The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to, or affected by, the arbitration.
- (k) The provisions of the Arbitration Act, No. 42 of 1965 shall be applicable.

- (l) Notwithstanding that the Arbitration Act, No. 42 of 1965 makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the **Company** and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event, not later than 10 (ten) days prior to the arbitration hearing.
- (5) The **Board** must publish any Rules made in terms of section 15(3) – (5) by delivering a copy of those Rules to each **Member** by ordinary mail and/or telefax and/or e-mail. The Rules are available for inspection at the office of the Company at all times within business hours and a copy will be made available against payment of the reasonable fee as determined by the **Board of Directors** from time to time.
- (6) The **Company** must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17(1) by delivering a copy of the notice and altered Memorandum of Incorporation or the Rules, to each **Member** by ordinary mail and/or telefax and/or e-mail.
- (7) All Rules made by the **Board of Directors** must be ratified by the **Members** of the **Company** at the General Meeting following the publication of the Rules to the **Members**.
- (8) Any Rules issued by the **Directors** with regards to conduct of **Members** or any other matter, in force on the date before this Memorandum of Incorporation is accepted by the **Members**, will remain of force and effect as if they were issued in terms of this Article 1.3(2).
- (9) The **Company** may itself, through the **Members** in General Meeting, make any Rules which the **Directors** may make in terms of Article 1.3(2) and may likewise vary or modify any Rules made by it or the Directors from time to time.

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

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

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

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

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

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

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

## (3) **Application for Membership of the Company**

- (3.1) Subject to the provisions of Article 1.5(2), application for Membership of the **Company** shall be made to the **Board in writing**.
- (3.2) When application is made for membership of the **Company** by a person, such person shall declare himself bound by the terms and conditions of this Memorandum of Incorporation and any Rules made thereunder and such person shall be deemed to have acquainted himself with the terms and conditions thereof.
- (3.3) All **Members** who are **Members** of the **Company** at the time this Memorandum of Incorporation is adopted, shall remain

**Members** of the **Company** by virtue of them being the registered owners of **Unit(s)/Erf(Erven)** in the **Township**.

**(4) Initial or periodic costs for membership**

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

**(5) Rights and obligations of Membership**

- (5.1) A **Member** of the **Company** shall remain a **Member** thereof until he ceases to be the registered owner, as reflected in the relevant Deeds Office as an owner of a **Unit/Erf** in the **Township** and a **Member** shall therefore not be entitled to resign as a **Member** of the **Company** unless he ceases to be a **Member** of a **Unit/Erf** in the **Township**.
- (5.2) The rights and obligations of a **Member** shall not be transferable and every **Member** shall:
  - (5.2.1) further, to the best of his ability, the objects and interests of the **Company**;
  - (5.2.2) observe all Rules made by the **Company** or the **Directors**;
  - (5.2.3) pay all **Levies** due by the **Member**, to the **Company**;
  - (5.2.4) comply with the Conditions of Establishment of the Township;
  - (5.2.5) comply with the Architectural Design Guidelines in force from time to time;
  - (5.2.6) obtain the prior written consent of the **Board** of any building plans, including plans for alterations to an existing building, before submission thereof for approval to any local or other authority, prior to commencement with any building activity;
  - (5.2.7) not use his **Unit/Erf** or any part thereof, or any part of the common property or common services, or permit it to be used, in such a manner and/or for such purposes as shall be injurious to the reputation of the **Company**;



- (5.2.8) not contravene or permit the contravention of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of his **Unit/Erf** or of the common property or the carrying on of business, or so contravene or permit the contravention of the conditions of title applicable to his **Unit/Erf** or of any other **Unit/Erf** or the common property;
- (5.2.9) maintain his **Unit/Erf** in a clean and tidy condition and adhere to the Architectural Design Guidelines developed by the **Developer**, specific to each Body Corporate. Any deviations from these design guidelines, alterations and/or extensions to a **Unit** must be approved by the Board
- (5.2.10) allow any person so authorized by the **Board** to enter onto his **Unit/Erf** for purposes of inspecting any structure to be erected on his **Unit/Erf**. **Members** are responsible to allow entry to such persons for such purpose;
- (5.2.11) not sub-divide or allow the sub-division of any **Unit/Erf**, not erect a second dwelling on any **Erf**;
- (5.2.12) abide by the Memorandum of Incorporation and adhere to the Rules proclaimed by the **Directors** from time to time;

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

- (5.3) No **Member** shall let or otherwise part with occupation of his **Unit**, whether temporarily or otherwise, unless he has agreed **in writing** with the proposed occupier of such **Unit**, as a *stipulatio alteri* (benefit in favour of a third party) in favour of the **Company** that such occupier shall be bound by all the terms and conditions of this Memorandum of Incorporation and any Rules made thereunder, and such written agreement is lodged with the **Company** prior to the proposed occupier taking occupation of the **Unit** in question.

- (5.4) Every **Member** shall, when he agrees to transfer ownership of his **Unit** in the **Township**, set it as a condition of the agreement of sale and transfer, that the new owner shall apply for membership of the **Company** and be accepted as **Member** of the **Company** and therefore become a **Member** of this **Company**, accepting his/her/its obligations towards the **Company** as **Member**.
- (5.5) No **Member** of a **Unit** in the **Township** shall be entitled to dispose thereof to any other person without the written consent of the **Company** first having been obtained under the hand of the **Managing Agent**, which consent will not be withheld unless:
- (5.5.1) such **Member** is in arrear with any **Levies**, penalties, fines or interest or other payment due to the **Company** in terms of the Memorandum of Incorporation or the Rules or otherwise;
  - (5.5.2) such **Member** is in breach with any of his obligations towards the **Company** in terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company**, **in writing**, to remedy such breach and remain in breach;
  - (5.5.3) the prospective transferee has not applied for membership of the **Company**, where such application is required, or has not been accepted as **Member** of the **Company**.
- (5.6) No **Member** of a **Unit** in the **Township** shall be entitled to pass transfer thereof to any other person until the **Company**, under the hand of its **Managing Agent**, has certified by way of a Clearance Certificate that such **Member** as at date of transfer has complied with all his/her/its financial and other obligations towards the **Company**. The principles applicable in terms of the Sectional Titles Act with regard to the issuing of a clearance certificate shall apply *mutatis mutandis* to any clearance certificate required to be obtained in respect of the transfer of any **Unit/Erf** in the **Township**.
- (5.7) The provisions of Article 1.5(5.5) and (5.6) shall apply *mutatis mutandis* to any alienation of an undivided share in a **Unit** in the **Township**.
- (5.8) The **Directors** of the **Company** may impose an additional, reasonable fee upon the **Members** of the **Company** for the

issuing of the Clearance Certificate as referred to in Article 1.5(5.6). The said fee will be determined by the **Directors** or the **Managing Agent** from time to time.

(5.9) **Members** shall have the rights prescribed by the **Act**, the Memorandum of Incorporation and any Rules made thereunder, which shall *inter alia* include the following rights:

(5.9.1) the right to receive access to the **Company** records in accordance with the provisions of Section 26 of the **Act**;

(5.9.2) the right to receive notice of, attend, speak and vote at General Meetings of the **Company**,

(5.9.3) the right to receive access to the Financial Statements or related information of the **Company**.

(5.9.4) provided that they are in good standing (i.e. if they have paid all levies and other amounts due and payable to the **Company**), shall have the right to attend, speak and vote at all General Meetings of the **Company**;

(5.10) A **Member/(s)** shall not have the right to attend, vote and speak at any General Meeting, or as contemplated in terms of the provisions of Section 60 of the **Act**, if:

(5.10.1) such **Member** is in arrear with any **Levies**, service costs, contributions, penalties, fines, legal costs or interest or any other payment due to the **Company** in terms of this Memorandum of Incorporation or the Rules or otherwise;

(5.10.2) such **Member** is in breach with any of his obligations towards the **Company** in terms of this Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company, in writing**, to remedy such breach and he remains in breach.

(5.11) The Rules which are applicable to the **Members** shall similarly also be applicable to a Body Corporate and every Body Corporate is required to:

- (5.11.1) submit its Conduct Rules and Management Rules to the **Directors** for their consideration and approval;
  - (5.11.2) ensure at all times that its Conduct Rules and Management Rules are in full compliance and in accordance with the Rules of the **Company**. Should there be any conflict between the Conduct and Management Rules and the provisions of this **Memorandum of Incorporation** and/or the Rules of the **Company**, the provisions of this **MOI** and/or the Rules of the **Company** shall take precedence;
  - (5.11.3) ensure that, whenever a provision of this **MOI** or any Rules thereunder are amended, the necessary amendments are made to the Conduct- and Management Rules of the Body Corporate;
  - (5.11.4) submit to the **Directors** for their approval, every proposed amendment of the Conduct- and Management Rules of the Body Corporate, whether in accordance with an amendment to this **MOI** or the Rules thereunder, prior to it being voted on by the **Members** of the relevant Body Corporate.
- (5.12) Every **Member**, if so required by the **Company**, shall sign all documents required to create a condition in the Title Deed of his **Unit/Erf**, which will ensure that the **Unit/Erf** may not be sold or transferred without the buyer or transferee binding himself to become a **Member** of the **Company** and without a Clearance Certificate as contemplated in Article 1.5(5)(5.6). The condition referred to shall be worded as near as possible to the following format:
- "This property is subject to the following condition imposed by the developer/transferor in favour of **Mooikloof Ridge Home Owners Association (NPC)**, a Non-Profit Company as referred to in the Companies Act, 2008 with **Registration Number: 2003/029492/08**:*
1. *The transferee, their successors in title or assigns/(his heirs, executors, administrators or assigns) are compelled to be a member of the abovementioned Home Owners Association from the date of registration of the property into his/her/their name.*

2. The transferee, their successors in title or assigns/(his heirs, executors, administrators or assigns) shall not be entitled to transfer the property in any manner, without obtaining the prior written permission of the **Mooikloof Ridge Home Owners Association (NPC)** and then only subject to the condition that the purchaser will become a member of the said **Mooikloof Ridge Home Owners Association (NPC)** on the date of registration of the property into his name."

(5.13) Every **Member** shall, when he agrees to transfer of ownership of an **Erf/Unit** in the **Township**, set it as a condition of the Agreement of Sale and transfer of an **Erf/Unit** in the **Township**, that the new owner shall apply in writing to become a member of the **Company**, accepting his/her/its obligations towards the **Company** as a **Member** and this condition shall be worded as near as possible in accordance with the following format:

**"Further conditions:**

1.1 Home Owners Association:

- (a) The Purchaser undertakes to apply in writing, for membership of the **Mooikloof Ridge Home Owners Association (NPC)** (hereinafter referred to as "the **Company**") and confirms and accepts that, irrespective of such written application, his ownership of the **Unit/Erf** shall be subject to the **Memorandum of Incorporation** of the **Company** and any Rules made by the **Company**. A copy of the **Memorandum of Incorporation** of the **Company** and Rules made thereunder are available for inspection with the Managing Agent.
- (b) The Purchaser will remain a **Member** of the **Company** and be bound to its provisions for as long as he remains the registered owner of the property.
- (c) Should the Purchaser sell the property, he will be obliged to inform the new Purchaser of these provisions and the new Purchaser's obligation in terms of these provisions.
- (d) The Purchaser shall require the written consent of the **Company** to transfer the **Erf/Unit** to a third party, which consent will not unreasonably be withheld.

- (e) *As from date of transfer, the Purchaser shall be liable for payment to the **Company** of a levy as determined by the **Company** and which levy shall be utilised inter alia towards maintenance of the common property belonging to the **Company**, the security fence and systems as well as payment of disbursements relating to security matters and for any such other purposes as the Constitutional Documents of the **Company** may prescribe."*

(5.14) **Binding Nature**

- (5.14.1) The provisions of this Memorandum of Incorporation and Rules, and the duties of a member in relation to the use and occupation of his **Unit/Erf** shall be binding on the member of any **Unit/Erf** and any lessee or other occupant of any **Unit/Erf** and it shall be the duty of the member to ensure compliance with this Memorandum of Incorporation and Rules upon such lessee or occupant, including visitors, employees, contractors, guests, any member of his family or that of his lessee or his occupant;
- (5.14.2) It shall be the duty of any member to furnish a copy of this Memorandum of Incorporation and Rules to any lessee or other occupant of his **Unit/Erf** and to refer in any Lease Agreement to the binding nature of this Memorandum of Incorporation and Rules upon such lessee or occupant.
- (5.15) If a member ceases to be a **Member** of the **Company** as a result of the transfer of a **Unit/Erf** to another person, such **Member** shall not be released from any liability to the **Company** in respect of any debt or other obligation, the cause of which arose prior to the transfer of such **Unit/Erf**.
- (5.16) Where a **Unit/Erf** is owned by more than 1 (one) person, all the registered owners of that **Unit/Erf** shall together be deemed to be collectively 1 (one) **Member** of the **Company** and have the rights and obligations of 1 (one) **Member** of the **Company**; provided however, that all co-owners of any **Unit/Erf** shall be jointly and severally liable for the due performance of any obligation to the **Company**.

- (5.17) The rights and obligations of a **Member** shall not be capable of being ceded and/or assigned, in whole or in part, nor otherwise be transferable.
- (5.18) Members shall not interfere with, nor give instructions to any officers, employees, agents or contractors of the **Company** and **Managing Agent**, and any complaints shall be addressed **in writing** to the **Directors** and/or **Managing Agent**. The **Directors** may request that any complaint be dealt with at the forthcoming Annual General Meeting of the Association.

## **(6) Levies**

- (6.1) The **Directors** may from time to time determine the **Levies** payable by the **Members** for the purpose of meeting all the expenses which the **Company** has incurred, or to which the **Directors** reasonably anticipate the **Company** will be put in the attainment of its objects or the pursuit of its business.
- (6.2) The **Directors** shall not less than thirty days prior to the end of each financial year or so soon thereafter as is reasonably possible, publish a notice indicating an estimate, in reasonable detail, of the amount which shall be required by the **Company** to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The **Directors** may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual or recurring nature.
- (6.3) Each notice to each **Member** shall specify the contribution (levy) payable by that **Member** to such expenses and reserve fund.
- (6.4) The annual levy for the ensuing financial year or any special- or other levy to be implemented, shall become due and payable on the passing of a **Board** Resolution to that effect, or the publication thereof as envisaged in Article 1.3(5), and shall be payable in the form that the **Directors** may direct from time to time and failing direction, in equal monthly instalments, due in advance on the first day of each and every month of each financial year.
- (6.5) In the event of the **Directors** for any reason whatsoever failing to prepare and timeously serve the notice referred to in Article 1.5(6.2) above, every **Member** shall until served with such notice, continue to pay the levy previously imposed and shall after service of such notice pay the levy specified therein. **A**

**Member** shall pay any deficit (comprising the difference between the levies payable during the previous financial year and the new levy imposed, if any) within 30 (thirty) days of receipt of the notice specifying the new contribution payable by the **Member**.

- (6.6) Upon the change of ownership of a **Unit/Erf**, the successor in title becomes liable for the pro-rata payment of contributions from the date of change of such ownership.
- (6.7) The **Directors** may from time to time impose special **Levies** upon the **Members** in respect of all expenses as are mentioned in Article 1.5(6)(6.1) which are not included in any estimate made in terms of Article 1.5(6)(6.2), and may in imposing such **Levies** further determine the terms of payment thereof.
- (6.8) All **Levies** and any special **Levies** referred to in Article 1.5(6)(6.7), becomes due on the passing of a Directors' Resolution to that effect and may be recovered by the **Company** by action in any competent Court having jurisdiction, from the **Member(s)** who were owner(s) of the **Unit(s)** at the time when such Director's Resolution was passed.
- (6.9) The **Directors** shall be empowered in addition to such other rights as the **Company** may have in law against its **Members** to determine the rate of interest from time to time chargeable upon arrear **Levies**. Should the **Directors** fail to make any determination of the interest rate, then and in that event, the prescribed rate of interest, as may be applicable from time to time in terms of the Prescribed Rate of Interest Act, Act No. 55 of 1975, shall be applicable and which interest rate at adoption of this Memorandum of Incorporation is 15,5% per annum. Interest shall be calculated monthly in arrears and compounded.
- (6.10) The obligation of a **Member** to pay a levy and interest shall cease upon his ceasing to be a **Member** without prejudice to the **Company's** right to recover arrear **Levies** and interest and penalties, fines and other amounts due to the **Company**. No **Levies**, interest, penalties, fines or other amounts paid by a **Member** shall under any circumstances be repayable by the **Company** upon his ceasing to be a **Member**. A **Member's** successor in title to a **Unit/Erf** shall be liable for payment of **Levies** as from the date upon which he becomes the registered owner of the **Unit/Erf** as reflected in the Deeds Registry.



- (6.11) No **Unit(s)** registered in a **Member's** name shall be capable of being transferred without a Clearance Certificate as referred to in Article 1.5(5)(5.6) first being obtained from the **Company** confirming that all **Levies** (including payment of 3 (three) months' levies in advance), penalties, fines or other amounts due and interest have been paid up to and including date of registration of transfer thereof.
- (6.12) A **Member** shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the **Company** in obtaining the recovery of arrear **Levies**, penalties, fines, interest or any other arrear amounts due and owing by such owner to the **Company** or in enforcing compliance with the **Act**, the provisions of this Memorandum of Incorporation, or the Rules.
- (6.13) The **Directors** may from time to time determine a charge to be levied against **Members** in arrears, as an administration charge payable to the **Company** or to the **Managing Agent**. Any administration charges so levied shall be subject to review of the **Members** in General Meeting.
- (6.14) All payments made by a **Member** and received by the **Company**, shall be allocated firstly towards interest, legal costs and thereafter towards capital. The **Board** reserves the right to allocate payments as they deem fit in the absence of an express allocation by the **Member**. In the absence of an express allocation by the **Board** or the **Member**, all payments will be allocated to the debt newest in time.
- (6.15) **Members** shall further have the rights and obligations as specified in the Rules incorporated in this Memorandum of Incorporation and as may be amended from time to time.
- (6.16) Should a **Member** fail to effect payment of contributions levied in terms of these Rules on due date, the full outstanding balance remaining unpaid for the financial year shall become due and payable without notice and/or demand but the **Board** may at their sole election and discretion agree to a repayment arrangement with the **Member** concerned and subject to such conditions as the **Board** may impose. The **Board**, in managing the financial obligations and cash flow requirements of the **Company**, may at their sole election and discretion agree to reduce, vary or discount the full outstanding balance remaining unpaid by a **Member**, subject to such conditions as the **Board** may impose and subject further to the

ratification by the **Members**, with or without amendment, at the next General Meeting of the **Company** following such determination.

#### **1.6 The financial year end**

The financial year end of the **Company** shall be the last day of February.

## **Article 2 – Rights of Members**

### **2.1 Members' authority to Act**

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

### **2.2 Members' right to Information**

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

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

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

### **2.4 Authority of proxy to delegate**

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

### **2.5 Requirements to deliver proxy instrument to the Company**

The requirement that a **Member** must deliver to the **Company** a copy of the instrument appointing a proxy before that proxy may exercise the **Member's** rights at a **Members** meeting, as set out in section 58(3)(c) is varied to the extent that a copy of the instrument appointing a proxy must be delivered to the **Company** or to any other person acting on behalf of the **Company** (including a Board member or duly appointed **Managing Agent**) no less than 2 business days before commencement of the proceedings or meeting at which the proxy exercises any rights of the **Member**.

## **2.6 Deliberative authority of proxy**

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

## **2.7 Record date for exercise of Member rights**

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

## **Article 3 – Members Meetings**

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

- (1) The **Company** shall, within 12 (twelve) months after the end of each financial year, hold a General Meeting in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices, in terms of Article 3.4 below, calling such meeting;
- (2) The abovementioned General Meeting shall be called the “Annual General Meeting” and all other General Meetings shall be called “Special General Meetings”.

### **3.2 Members’ right to requisition a meeting**

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

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

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

### **3.4 Notice of Members meetings**

- (1) The minimum number of days for the **Company** to deliver a notice of a **Members** meeting to the **Members**, as required by section 62 is as provided for in section 62(1), being 15 (fifteen) **Business Days**.
- (2) The notice convening each meeting of the **Company** shall specify the place, the day and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.
- (3) The notice convening the meeting shall contain adequate motivation and information of any business and especially concerning special business to be conducted at the meeting, to enable the **Members** to make an informed decision.

### 3.5 Electronic participation in Members meetings

The authority of the **Company** to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63, is limited in the discretion of the **Board**, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each- other without an intermediary, and to participate reasonably effectively at the meeting.

### 3.6 Quorum for Members meetings

- (1) Subject to at least 3 (three) **Members** being present in person, the quorum requirement for a Members Meeting to begin, or for a matter to be considered, is 50 votes entitled to be exercised by the **Members** present in person or by proxy.
- (2) The time periods allowed in section 64(4) and (5) apply to the **Company**, subject to the following variations :
  - (a) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for 1 (one) week, at the same place and time;
  - (b) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for consideration of a **particular matter** to begin have not been satisfied.
    - (i) if there is other business on the Agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
    - (ii) if there is no other business on the Agenda of the meeting, the meeting is adjourned for 1 (one) week, at the same place and time, without motion or vote.
  - (c) The person intended to preside at a meeting that cannot begin due to the operation of sub-section 64(1)(a) or 64(3), where a quorum is not present, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub-section 64(5).
- (3) The authority of a meeting to continue to consider a matter after the quorum has been met, so long as at least 3 (three) **Members** remain

present (in person), is not limited or restricted by this Memorandum of Incorporation.

### 3.7 Adjournment of Members meetings

- (1) If a quorum has not been reached within 15 (fifteen) minutes after the appointed time for the meeting to begin or such extended period as the **Chairman** directed, the **Chairman** appointed for the meeting will be authorized to adjourn the meeting of the **Members** for 1 (one) week. Adjournment will take place in accordance with the provisions of Sections 64(4).
- (2) The maximum period allowable for an adjournment of a **Members** meeting is (sixty) **Business Days** after the date upon which the adjournment occurred.
- (3) No business shall be transacted at an adjourned meeting, other than the business which failed to be transacted at the meeting from which the adjournment took place.

### 3.8 Members resolutions

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

- (e) to authorize the **Board** to grant financial assistance in the circumstances contemplated in Section 44(3)(a)(ii) or 45(3)(a)(ii);
- (f) to incorporate further property(ies) into the Township and/or to extend the boundaries of the **Township**.

### 3.9 Votes of Members

At every General meeting:

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



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

### 3.10 Proxies

- (1) A **Member** may be represented at a General Meeting by a proxy, who need not be a **Member**.
- (2) The instrument appointing a proxy shall be **in writing**, duly signed by the **Member** concerned (or his appointed agent, duly authorized **in writing**) and shall be substantially in the form as set out in clause 3.10(5).
- (3) In accordance with the provisions of Article 2.5, a copy of the instrument appointing a proxy must be delivered to the **Managing Agent**, at least 2 business days before commencement of the proceedings or meeting at which the proxy exercises any rights of the **Member**. Notwithstanding this provision, the Directors may call upon a **Member** to lodge the original instrument appointing a proxy to the **Company** within 7 (seven) days from the meeting or proceedings.
- (4) Unless specifically specified in the proxy itself, no instrument appointing a proxy shall be valid for any meetings of the **Company**,

other than the meeting for which a proxy was first appointed or in respect of any adjournment of that meeting.

- (5) In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form be substantially in accordance with the following format and that the instructions to the proxy holder are indicated in an unambiguous manner:

**MOOIKLOOF RIDGE HOME OWNERS ASSOCIATION (NPC)**

**PROXY FORM**

I/We, \_\_\_\_\_, the undersigned, the registered owner of Stand/Unit number \_\_\_\_\_, or duly authorized by the registered owner, namely: \_\_\_\_\_, being a Member of the Company, do hereby appoint:

\_\_\_\_\_ of \_\_\_\_\_

Or failing him/her: \_\_\_\_\_ of \_\_\_\_\_

Or failing him/her: \_\_\_\_\_ of \_\_\_\_\_

as my proxy to vote for me on my; behalf at the General Meeting of the Association to be held on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ and at any adjournment thereof as follows:

1. Motion to \_\_\_\_\_

(See attached draft resolution, if relevant)

In favour ☐ Against ☐ Abstain ☐

2. Motion to \_\_\_\_\_

(See attached draft resolution, if relevant)

In favour ☐ Against ☐ Abstain ☐

3. Motion to \_\_\_\_\_

(See attached draft resolution, if relevant)

In favour ☐ Against ☐ Abstain ☐

Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification ☐ Without modification ☐

***If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.***

Signed on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

SIGNATURE: \_\_\_\_\_

- (6) A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no notice of the death or insolvency, or revocation shall have been received by the **Company** and the proxy at any time prior to the vote been taken in respect of which the proxy exercises such a vote.

### 3.11 Conduct of Meetings

- (1) The **Members** may, from time to time, at the AGM, by way of an Ordinary Resolution, determine the meeting procedures which shall be properly documented as such and which shall be strictly complied with at all General Meetings.
- (2) The **Chairperson** and **Directors** shall acquaint themselves with the meeting procedures and the **Chairperson** of the relevant meeting shall be entitled to rule on any technical irregularity regarding the conduct of any General Meeting, which ruling shall be final and binding upon the **Directors** and **Members**.

### 3.12 Agenda of General Meetings

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

- (1) The consideration of the Chairman's Report;
- (2) The consideration of any other matters raised at the meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;
- (3) The consideration of the accountant/auditors of the **Company** for the ensuing financial year;
- (4) The consideration of the report of the auditors.

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

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

- (1) The **Board of Directors** of the **Company** comprises appointed **Directors** only, each of whom:
  - (a) is appointed in the following manner:
    - (i) There shall be a **Board of Directors** of the **Company** which shall consist of 1 (one) **Director** from each Body Corporate and a maximum of 5 additional **Directors** appointed by the **Board**;
    - (ii) Each Body Corporate shall be entitled to appoint 1 (one) **Director**, who shall be a Trustee of the relevant Body Corporate, to the **Board** to act in accordance with the provisions of this **MOI**;
    - (iii) Should there be a need for the appointment of further **Directors** to the **Board** at any time, the **Directors** shall be entitled to appoint, by majority resolution, such further **Directors** to the **Board**;
    - (iv) **Directors** shall serve for an indefinite period until they are removed by the **Body Corporate** or **Board** who appointed them or until he is deemed to have vacated his office as such, in terms of the provisions of this **MOI**;
    - (v) When considering new appointments, a **Director** in office or a former Director shall be eligible for re-appointment to the **Board of Directors**.
    - (vi) Upon any vacancy occurring in the **Board of Directors** prior the vacancy in question shall be filled by a person to be nominated by the **Chairman** of the **Board of Directors** for the time being and in his absence or inability, the **Vice-Chairman**;
    - (vii) Within 21 (twenty one) calendar days of the holding of each Annual General Meeting, the **Board of Directors** shall meet and shall elect from their own numbers, the **Chairman** and the **Vice-Chairman**, who shall hold their respective offices until the further election of **Chairman/Vice Chairman**, post the Annual General Meeting, provided that the office of the **Chairman** or

**Vice-Chairman** shall *ipso facto* be vacated upon his ceasing to be a Director for any reason;

- (b) serve for an indefinite period, subject only to the provisions of this **MOI**.
- (2) In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the **Company**, a person must satisfy the following additional eligibility requirements and qualifications:
  - (a) be a paid-up **Member** of the **Company** at the time of appointment as Director;
  - (b) may not be in breach of any of his/her obligations as a **Member** of the **Company**, as stipulated in the Memorandum of Incorporation or the Rules;
  - (c) may not be disqualified from acting as Director of the **Company** in terms of the Companies Act, 2008.
- (3) Each **appointed** Director of the **Company** serves for an indefinite term, until substituted by the person or entity that made his appointment or until his removal in terms of the provisions of Article 4.1(4).
- (4) A **Director** shall be deemed to have vacated his office as such when:
  - (a) he resigns his office by notice in writing to the **Company**;
  - (b) he has been disqualified to act as a **Director** in terms of the provisions of Sections 69 of the **Act**;
  - (c) he has been discharged from office under circumstances in terms of Section 71 of the **Act**;
  - (d) he becomes of unsound mind;
  - (e) he is absent from more than 3 (three) consecutive meetings of the **Directors** without leave having been granted to him and if the **Board** so resolve;
  - (g) he is appointed by a Body Corporate and no longer serves as a Trustee of his Body Corporate.
- (5) A **Director** shall not be entitled to appoint an alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other

person to fulfil his functions and duties, save as provided in terms of the provisions of the **MOI**.

- (6) A **Director** may not otherwise delegate or sub-delegate any of his obligations, save as approved by the **Board**.

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

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

## **4.3 Board of Directors meetings**

- (1) The authority of the **Company's Board of Directors** to consider a matter other than at a meeting, as set out in section 74 is not limited or restricted by this Memorandum of Incorporation and may instead be adopted by written consent of a majority of the **Directors** given in person, or by electronic communication, provided that each **Director** has received notice of the matter to be decided.
- (2) The right of the **Company's Directors** to requisition a meeting of the **Board**, as set out in section 73(1), may be exercised by at least 25% of the **Directors**, despite the provisions of that section.
- (3) The authority of the **Company's Board of Directors** to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation.
- (4) The authority of the **Company's Board of Directors** to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this Memorandum of Incorporation.
- (5) The authority of the **Company's Board of Directors** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this Memorandum of Incorporation.
- (6) The quorum requirement for a **Directors** meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such meeting, are as set out in section 73(5) (51% / a majority of the **Directors**).

- (7) Each **Director** has 1 (one) vote on a matter before the **Board**.
- (8) A simple majority of the votes cast on a Resolution is sufficient to approve a Resolution of the **Board of Directors**.
- (9) The Directors may meet to attend to their business, adjourn and otherwise regulate their meetings, as they think fit, subject to the provisions of the **MOI**.
- (10) Where a **Director** has a personal interest or a conflict of interest in respect of any matter before the **Board**, the said **Director** shall be entitled to attend any meeting of the **Board** at which such matter is discussed or decided, however, such **Director** shall not be entitled to vote in respect of the matter in which he has a personal interest or conflict of interest, and shall recuse himself from any deliberations on the issue.
- (11) Any **Director** who has such a personal interest or conflict of interest regarding any matter as mentioned in Article 4.3(12), shall be obliged to disclose such personal interest or conflict of interest to the **Board** forthwith.
- (12) Should there be an equality of votes for or against any Resolution of the **Board**, the Resolution shall be deemed to have been defeated.
- (13) The **Directors** shall cause the Minutes of each **Board**- and General Meeting to be kept in accordance with Sections 73(6) and (7) of the **Act**, which Minutes shall be reduced to writing within 7 (seven) days of the meeting and certified as correct by the Chairperson at the next meeting.
- (14) A copy of each Minute shall be delivered by the Chairperson to each **Director** within 14 (fourteen) days of the meeting to which such Minutes relate.
- (15) All Minutes of **Board** Meetings shall, after certification, be placed in the **Directors'** Minute Book, which shall be kept by the **Managing Agent** in accordance with the provisions of the **Act** relating to the keeping of Minutes of Meetings of Directors of Companies.
- (16) The **Directors'** Minute Book shall be open for perusal at all reasonable times by any **Director**, the **Auditors** and/or the **Members**.
- (17) Subject to the provisions of this **MOI**, the proceedings of any Directors' Meeting shall be conducted in such reasonable manner and form as the Chairperson shall direct.



(18) 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**.

(19) **Chairman:**

- (a) The **Directors** will, at the first meeting after being appointed as such in terms of Article 4.1(1), elect a **Chairman** from their number who shall hold office as such until the further election of a **Chairman** at the first **Board** Meeting, post the Annual General Meeting. It is specifically recorded that the **Chairman** must be ordinarily resident within the **Township**. For the purposes of determining whether a **Member** is ordinarily resident, a **Member** shall be ordinarily resident if he resides within the Township for no less than 9 (nine) months for any continual period of 12 (twelve) months,
- (b) The **Chairman** elected shall hold his office until the further election of a **Chairman** at the first **Board** Meeting, provided that the office of **Chairman** shall *ipso facto* be vacated by a **Director** holding such office upon him ceasing to be a **Director** for any reason. In the event of any vacancy of the aforesaid office occurring during the term for which the **Chairman** is elected, the **Vice-Chairman**, if any, shall act as such and the **Board of Directors** shall immediately appoint one of their number as a replacement to the office of **Chairman** or **Vice-Chairman**.

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

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

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

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

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

#### 4.5 Officers and Committees

- (1) The **Board of Directors** may appoint any officers or committees from their ranks or from the ranks of the **Members** or outsiders, including the Managing Agent, as they may deem fit and to delegate to such committees, such of their functions, powers and duties as they may deem fit, together with the further power to vary or revoke such appointments and delegations, as the **Directors** may from time to time deem necessary. The **Directors** may also appoint to such committee, an executive member of the **Board** as the Chairman of the relevant committee.
- (2) The authority of the **Company's Board of Directors** to appoint committees of **Directors**, and to delegate to any such committee any of the authority of the **Board** as set out in section 72(1), or to include in any such committee persons who are not **Directors**, as set out in section 73(2)(a) is not limited or restricted by this Memorandum of Incorporation.
- (3) The authority of a committee appointed by the **Company's Board**, as set out in section 72(2)(b) and (c) may be restricted or limited by the **Board** when the committee is so established.
- (4) Notwithstanding the **Board's** entitlement to appoint committees as aforesaid, as and when it deems appropriate, the following committees shall at all times be in place and the **Board** shall delegate the requisite functions, powers and duties to such committees to enable them to properly fulfil their functions and to ensure the proper day-to-day functioning of the **Company**:
  - (a) the Financial Committee;
  - (b) the Maintenance Committee;
  - (c) the Security Committee;
  - (d) the Corporate Governance Committee.

#### 4.6 Accounting records

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

#### 4.7 Annual Financial Statements

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

#### 4.8 Director's compensation and financial assistance

- (1) The Executive Committee Members shall be remunerated for their services, and Directors who are not Executive Committee Members shall be entitled to a nominal meeting attendance fee, provided that the **Company** has approved the remuneration payable to its **Directors** for the rendering of services as **Directors**, in accordance with a Special Resolution approved by the **Members**, within the previous two years as set out in Section 66(9).
- (2) Notwithstanding the provisions of Article 4.8(1), the **Directors** may be paid any travelling, subsistence and other expenses properly incurred by them in the execution of their duties in or about the business of the **Company** and which are authorised or ratified by the **Board**.

#### 4.9 Powers and functions of Directors

- (1) The **Directors** may exercise all such powers which are required and/or ancillary to attaining the objects of the **Company**.

- (2) Unless otherwise resolved by way of an Ordinary Resolution at any General Meeting, the powers and functions of the **Directors** include, but are not limited to, the power to:
- (a) Appoint and dismiss on behalf of the **Company**, a **Managing Agent**;
  - (b) delegate powers to a **Managing Agent** (including the power to appoint and dismiss employees for and on behalf of the **Company**);
  - (c) institute legal proceedings to protect the rights of the **Company**, enforce the provisions of the **MOI** and/or Rules and to defend any legal proceedings brought against the **Company**;
  - (d) open and conduct a banking account(s) for purposes of the **Company's** business;
  - (e) disburse from the bank account(s), such operational- and capital expenditure as approved in the budget (and/or as raised by way of any additional- and/or special levy) and as otherwise may be authorized by the **Members** in General Meeting;
  - (f) enforce compliance with the provisions of this **MOI** and the Rules and in the event of non-compliance, to impose sanctions and penalties in terms of the Rules, such penalties to be determined by the **Directors** from time to time;
  - (g) enter into contracts necessary for the purposes of the objects of the **Company** and giving effect to the powers of the **Company** in its **MOI** and implementation of this **MOI**;
  - (h) appoint standing committees with respect to security, environment, disciplinary- and such other ad hoc committees as deemed necessary, and to delegate to such committees, such powers and authorities as may be considered necessary, subject to any restrictions imposed or directives given at any General Meeting;
  - (i) to invest funds of the **Company**, provided that funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services Board Act, 1990 (Act Number 97 of 1990), and in securities listed on stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985 (Act Number 1 of 1985).

## **Article 5 – General Provisions**

### **5.1 Rules**

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

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

**5.2** The Rules concerns all matters referred to in Article 1.3(2), and the conduct of **Members**, residents and visitors of the **Township**, including Guidelines concerning any improvements, encroachments on **Common Property** and alterations thereto, to the extent that such improvements/alterations may influence the aesthetical and harmonious appearance of the **Township**.

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

**5.4** Any Management Rule or Conduct Rule made by a Body Corporate within the Township shall be subordinate to the provisions of this Memorandum of Incorporation and any Rules made by the **Company**.

**5.5** In the event of an amendment of the Rules of the **Company** in accordance with the provisions of this Memorandum of Incorporation, each Body Corporate shall ensure that the necessary amendments are made to its Management Rules and Conduct Rules so as to conform to the Rules of Company.

# **Schedule 5**

## **Rules**

The Mooikloof Ridge Rules is an Annexure to the MOI

Main Changes,

1. Amend terminology and wording to align with the Companies Act and MOI.
2. Incorporate some aspects as proposed by the estate manager.
3. Remove the word regulations throughout,
4. Align powers of Board and members rights,