

**COMPANIES AND INTELLECTUAL PROPERTY COMMISSION  
REPUBLIC OF SOUTH AFRICA**

**MEMORANDUM OF INCORPORATION**

**OF**

**RANDPARK RIDGE VILLAGE ASSOCIATION NPC (RF)**

**(Registration Number: 1998/019868/08)**

Being a Non Profit Company in accordance with Schedule 1 of the Companies Act No. 71 of 2008

**Adoption of the MOI**

Neither the short nor the long standard form of MOI for a Non Profit Company, Forms CoR.15.1.C, COR.15.1.D and CoR.15.1.E, respectively, as amended from time to time, shall apply to the Company.

This Memorandum of Incorporation is in a form unique to the Company, as contemplated in section 13(1)(a)(ii) of the Companies Act 71 of 2008, as amended.

This Memorandum of Incorporation was adopted by special resolution of the Members of the Company on 10 June 2019 and substitutes in their entirety the existing Memorandum and Articles of Association of the Company with effect from the date of filing hereof and has been signed in the spaces set out below in order to confirm the adoption of this Memorandum of Incorporation.

## TABLE OF CONTENTS

<b>1.</b>	<b>DEFINITION AND INTERPRETATIONS</b> .....	<b>4</b>
1.1	DEFINITIONS .....	4
1.2	INTERPRETATION .....	6
<b>2</b>	<b>JURISTIC PERSONALITY</b> .....	<b>8</b>
<b>3</b>	<b>LIMITATION OF LIABILITY</b> .....	<b>9</b>
<b>4</b>	<b>OBJECTS AND POWERS OF THE COMPANY</b> .....	<b>9</b>
<b>5</b>	<b>AMENDMENTS TO THE MEMORANDUM OF INCORPORATION</b> .....	<b>10</b>
<b>6</b>	<b>THE MAKING OF RULES</b> .....	<b>10</b>
<b>7</b>	<b>SPECIAL CONDITIONS</b> .....	<b>10</b>
<b>8</b>	<b>FINANCIAL ASSISTANCE</b> .....	<b>12</b>
<b>9</b>	<b>MEMBERS</b> .....	<b>12</b>
9.1	VOTING MEMBERS.....	12
9.2	DEFINITION OF MEMBER AND VOTING RIGHTS: .....	12
9.3	TERMS AND CONDITIONS OF MEMBERSHIP .....	13
9.4	TERMINATION OF MEMBERSHIP .....	13
<b>10</b>	<b>RIGHTS OF MEMBERS</b> .....	<b>14</b>
10.1	MEMBERS' RIGHTS TO INFORMATION .....	14
10.2	MEMBERS' AUTHORITY TO ACT.....	14
<b>11</b>	<b>GENERAL MEETINGS</b> .....	<b>14</b>
<b>12</b>	<b>SPECIAL GENERAL MEETINGS</b> .....	<b>15</b>
<b>13</b>	<b>ANNUAL GENERAL MEETINGS</b> .....	<b>15</b>
<b>14</b>	<b>NOTICE OF MEMBERS MEETINGS</b> .....	<b>16</b>
<b>15</b>	<b>QUORUM</b> .....	<b>17</b>
<b>16</b>	<b>PROXY</b> .....	<b>18</b>
<b>17</b>	<b>ADJOURNED MEETINGS</b> .....	<b>19</b>
<b>18</b>	<b>CHAIRMAN OF GENERAL MEETINGS</b> .....	<b>20</b>
<b>19</b>	<b>MEMBERS MEETINGS BY ELECTRONIC COMMUNICATION</b> .....	<b>20</b>
<b>20</b>	<b>MEMBERS ACTING OTHER THAN AT MEETINGS</b> .....	<b>20</b>
<b>21</b>	<b>COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS</b> .....	<b>21</b>
<b>22</b>	<b>DISQUALIFICATION OF BOARD MEMBERS</b> .....	<b>23</b>
<b>23</b>	<b>DIRECTORS MEETINGS</b> .....	<b>23</b>
23.1	CONVENING A MEETING .....	23
23.2	POWER OF THE BOARD .....	24
23.3	QUORUM REQUIREMENT .....	25
23.4	MINUTES AND RESOLUTIONS OF THE BOARD .....	25
23.5	SIGNING OF MINUTES .....	26
23.6	EXTRACTS FROM MINUTES .....	26
23.7	DIRECTORS' ROUND ROBIN RESOLUTION .....	26
<b>24</b>	<b>REMUNERATION OF NON-EXECUTIVE DIRECTORS</b> .....	<b>27</b>
<b>25</b>	<b>INDEMNIFICATION OF DIRECTORS</b> .....	<b>27</b>

<b>26</b>	<b>DUTIES OF THE BOARD AND INDIVIDUAL DIRECTORS .....</b>	<b>28</b>
26.1	FIDUCIARY DUTIES OF THE BOARD OF DIRECTORS.....	28
26.2	MANAGING CONFLICTS OF INTEREST .....	29
<b>27</b>	<b>BORROWING POWERS .....</b>	<b>29</b>
<b>28</b>	<b>COMMITTEES OF THE BOARD .....</b>	<b>30</b>
<b>29</b>	<b>AUDITORS.....</b>	<b>30</b>
29.1	APPOINTMENT OF EXTERNAL AUDITORS .....	30
29.2	RESIGNATION OF AUDITORS AND VACANCIES .....	31
29.3	ROTATION OF AUDITORS.....	31
29.4	RIGHTS AND RESTRICTED FUNCTIONS OF AUDITORS .....	31
<b>30</b>	<b>MANAGER.....</b>	<b>32</b>
<b>31</b>	<b>ANNUAL FINANCIAL STATEMENTS .....</b>	<b>32</b>
<b>32</b>	<b>MAINTENANCE OF COMPANY RECORDS.....</b>	<b>32</b>
32.1	ACCOUNTING RECORDS.....	32
32.2	RECORDS OF MEMORANDUM OF INCORPORATION.....	33
32.3	RECORDS OF GENERAL MEETINGS .....	33
32.4	RECORD OF BOARD AND COMMITTEE MEETINGS .....	33
32.5	RECORD OF PARTICULARS OF DIRECTORS .....	34
32.6	LOCATION OF COMPANY RECORDS .....	34
32.7	ACCESS TO COMPANY RECORDS AND FINANCIAL STATEMENTS OR RELATED INFORMATION..	34
<b>33</b>	<b>NOTICES.....</b>	<b>34</b>
<b>34</b>	<b>PUBLIC BENEFIT ORGANISATION .....</b>	<b>35</b>

## 1. DEFINITION AND INTERPRETATIONS

### 1.1 Definitions

In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings.

- 1.1.1 "**ACT**" means the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;
- 1.1.2 "**ANNUAL GENERAL MEETING**" means an annual general meeting of the Company, duly called and constituted in terms of section 61(7) of the Companies Act, or any adjournment thereof;
- 1.1.3 "**AREA**" means the area comprising the townships of Randpark Ridge Extension 1, Randpark Ridge Extension 3, Randpark Ridge Extension 16, Randpark Ridge Extension 41, Randpark Ridge Extension 45 and any other township or area of land as may be decided upon by special resolution at a Members Meeting from time to time;
- 1.1.4 "**BOARD**" means the board of Directors from time-to-time of the Company;
- 1.1.5 "**BUSINESS DAY**" means any day other than a Saturday or a Sunday or any day that is a public holiday in the Republic;
- 1.1.6 "**CERTIFICATED**" means evidenced by a certificate;
- 1.1.7 "**CODES**" means the Department of Trade and Industry's Codes of Good Practice or such other Broad-Based Black Economic Empowerment framework, charter, strategy or code of conduct applicable to the Company published in accordance with the BBBEE Act, from time to time;
- 1.1.8 "**COMMISSION**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.9 "**COMPANY**" means the company named on the first page of this document, duly incorporated under the registration number endorsed thereon;
- 1.1.10 "**DAYS**" shall be construed as Gregorian calendar Days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time and any period provided for between the

happening of one event and another shall be calculated by excluding the day upon which the first such event occurs and including the day upon which the second event is to occur;

- 1.1.11 "**DIRECTOR**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.12 "**ECA**" means the Electronic Communications Act 36 of 2005, as amended from time to time, including the regulations thereof;
- 1.1.13 "**ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT**" means the Electronic Communications and Transactions Act 25 of 2002;
- 1.1.14 "**GENERAL MEETING**" means a special general meeting or an annual general meeting, duly called and constituted in terms of Clause 11 of this MOI, or any adjournment thereof;
- 1.1.15 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the International Accounting Standards Board, or its successor body;
- 1.1.16 "**LAW**" means any law of general application, as amended and re-enacted from time to time, and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 1.1.17 "**MEMBER**" means a member of the Company as defined in Clause 9 of this MOI;
- 1.1.18 "**MOI**" means this Memorandum of Incorporation, as amended from time to time;
- 1.1.19 "**NON-EXECUTIVE DIRECTOR**" means a Director appointed as contemplated in section 66(4)(a)(i) in accordance with the provisions of Clause 13 of this MOI;
- 1.1.20 "**NORMAL AND ORDINARY COURSE OF BUSINESS**" or any derivative thereof, means, with reference to the Company in respect of any transaction involving the Company, in the ordinary course of the Company's business, as conducted by the Company and undertaken by the Company;
- 1.1.21 "**PRESCRIBED OFFICER**" means any officer of the Company who has been designated as a Prescribed Officer as contemplated in Section 66(10) of the Act;

- 1.1.22 "**RECORD**" means records required to be maintained by the Company, including without limitation the records contemplated in Clause 33 of this MOI;
- 1.1.23 "**RECORD OF MEMBERS**" means the register of Members of the Company;
- 1.1.24 "**REGISTERED OFFICE**" means the registered office of the Company from time to time;
- 1.1.25 "**REGISTER**" means the register of Directors of the Company as required by Section 24(3)(b) of the Act;
- 1.1.26 "**REGULATIONS**" means the regulations published in terms of the Act from time to time;
- 1.1.27 "**REPUBLIC**" or "**RSA**" means the Republic of South Africa;
- 1.1.28 "**ROUND ROBIN RESOLUTION**" means a resolution passed by either the Board or a committee of the Board other than in a meeting of the Board or a meeting of the committee of the Board; or by the Members other than in a General Meeting;
- 1.1.29 "**RRVA**" means the Company;
- 1.1.30 "**RULES**" means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act and Clause 6 hereof.
- 1.1.31 "**SIGN**" includes the reproduction of a signature by lithography, printing or any kind of stamp or any other mechanical or electronic process; and the term 'Signature' has the corresponding meaning;
- 1.1.32 "**SPECIAL GENERAL MEETING**" means any meeting of shareholders other than an Annual General Meeting;
- 1.1.33 "**STATUTES**" means any of the Companies Act, the ECA, and any other legislative or statutory provision in force that directly concerns and necessarily affects the Company from time to time;
- 1.1.34 "**WRITING**" means legible writing in English and which includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

## **1.2 Interpretation**

Unless the context otherwise requires:

- 1.2.1 words importing any gender include the other genders and words importing the singular include the plural, and vice versa;

- 1.2.2 words importing a natural person includes a juristic person and vice versa;
- 1.2.3 any words or expression that has been defined in any applicable Statutes shall, in this MOI, to an extent applicable, have the statutory meaning assigned to such word or expression;
- 1.2.4 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.2.5 the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.2.6 if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 1.2.7 when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first such event occurs and including the day on or by which the event is to occur.
- 1.2.8 if the due date for performance of any obligation in terms of this MOI is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.9 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;
- 1.2.10 the words "include" and "including" mean "include without limitation" and "including without limitation"; the use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 1.2.11 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.2.12 whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of this MOI, then;

- i.the determination of the expert shall (in the absence of manifest error) be final and binding;
- ii.subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly subject to an approved quotation;
- iii.the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- iv.the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- v.having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

1.2.13 Unless otherwise provided for in this MOI or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning;

## **2 JURISTIC PERSONALITY**

2.1 The Company is a pre-existing non-profit company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in Clause 2 of the Fifth Schedule to the Act, and this MOI replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the approval hereof;

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

2.2.1 the unalterable provisions of the Act, save to the extent that this MOI does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement;

2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this MOI;

2.2.3 clause 10 and schedule “1” to the Act detailing specific provisions concerning non-profit companies; and

2.2.4 the other provisions of this MOI.

### **3 LIMITATION OF LIABILITY**

No person shall, subject to the provisions of section 77 of the Act, solely by reason of being an incorporator, Associate or Director or Prescribed Officer of the Company, be liable for any liabilities or obligations of the Company

### **4 OBJECTS AND POWERS OF THE COMPANY**

4.1 The main objects of the Company shall be to promote, encourage and protect the interest of Members and, without limiting the generality of the foregoing, to:

4.1.1 promote, advance and protect the communal interests of all the owners, lessees, occupiers, businesses and visitors in the Area, more specifically, to protect and promote the interest of the Members through the provision of security services, environmental services and any allied services;

4.1.2 to do all such things as are incidental or conducive to the attainment of the foregoing objects or any of them which may be conveniently carried on and done in connection therewith which may be calculated directly or indirectly to enhance the values, benefits and interest of the Members of the Area;

4.1.3 to deal with such matters as may affect the common interests of the Members;

4.1.4 to execute agreements for the attainment of any of its objects;

4.1.5 to make such rules as it may deem necessary for the proper conduct of the Members’ activities;

4.1.6 to do or perform all such other acts, deeds, things or functions as may be incidental or conducive to the attainment of the foregoing objectives or any one of them.

4.2 The Company shall have all of the legal powers and capacity contemplated in the Act, and no provision contained in this MOI should be interpreted or construed as negating, limiting or restricting those powers in any way whatsoever.

- 4.3 The legal powers and capacity of the Company is not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Act.
- 4.4 The Company is not subject to any provisions contemplated in section 15(2)(b) or (c) of the Act.
- 4.5 The financial year-end of the Company shall be on 28 February in each year.

## **5 AMENDMENTS TO THE MEMORANDUM OF INCORPORATION**

Save for correcting errors substantiated as such from object evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in this MOI, which the Board is empowered to do, all other amendments of this MOI shall only be effected if approved by the Members of the Company by passing a special resolution to that effect through either a Round Robin Resolution or in a General Meeting (Please refer to Clause 15). The Board shall publish a copy of any such correction effected by the Board on the Company's web site.

## **6 THE MAKING OF RULES**

- 6.1 Except to the extent that the Company's MOI may provide otherwise, the Board is hereby empowered, as contemplated in Section 15(3) of the Act, to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MOI.
- 6.2 A copy of such rules must be:
- 6.2.1 distributed to all the Members in the manner contemplated in clause 32 of this MOI;
  - 6.2.2 Filed

## **7 SPECIAL CONDITIONS**

- 7.1 The Company shall use all of its assets and income, however derived, to advance its objects as set out in Clause 4 of this MOI.
- 7.2 The Company may not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of where the income or assets was derived, to any person who is or was an incorporator of the Company, or who is or was a Member or Director or former Member of the Company prior to the adoption of this MOI of the Company, except:
- 7.2.1 as payment or reimbursement for expenses incurred to advance a

- stated object of the Company;
- 7.2.2 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 7.2.3 as a payment of an amount due in terms of a bona fide agreement between the Company and that person;
- 7.2.4 in respect of any legal obligation binding on the Company.
- 7.3 Directors will not be remunerated for their services as a Director – all services rendered by a Director to advance a stated object of the Company will be carried out on a pro-bono and voluntary basis.
- 7.4 The Company shall be entitled to bind Members to contribute by way of subscriptions and levies towards the funds of the Company and to enforce payment of and collect and receive from Members such contributions and levies.
- 7.5 The Directors shall determine the amount of the Membership fees each year, including any increase thereof and that determination shall be ratified at the annual general meeting of the Company which will be held within 6 (six) months from 30 March of the relevant year whether or not statements of account in respect of the increased Subscription fees have been received by the Members by that date.
- 7.6 Upon the winding-up or dissolution of the Company:
- 7.6.1 no past or present Member or Director or person appointed as a Director or officer of the Company is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 7.6.2 the entire net value of the Company must be distributed to one or more non-profit companies, external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts:
- 7.6.2.1 having objects similar to the objects set out in this Memorandum of Incorporation; and
- 7.6.2.2 as determined in this MOI, or by the Members or Directors as provided for in the MOI, subject to the provisions of clause 1 (4) of Schedule 1 to the Act.
- 7.7 The Board may not authorise the Company to issue secured or unsecured debt

instruments as contemplated in section 43(2) of the Act.

## **8 FINANCIAL ASSISTANCE**

8.1 The Company must not provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any Membership or any Association status.

8.2 The Company must not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related Company, or to a person related to any such Director.

## **9 MEMBERS**

### **9.1 Voting Members**

As contemplated in Clause 4(1) of Schedule 1 of the Act, the Company has Members, who are in a single class, being voting members, each of whom shall have one vote in the Company per property owned, consequently each property being represented by a single vote in any matter to be decided by the Members of the Company.

### **9.2 Definition of Member and Voting Rights:**

9.2.1 Any Resident, Owner of property in the area, Representative of a Body Corporate or Owner of a Business situated in the Area shall be eligible for membership provided that:

- i. The resident intends to reside and the owner of property or business intends to own the property or business, as the case may be, in the Area for at least three (3) calendar months;
- ii. Any such person or representative shall be aged twenty-one (21) years or more;
- iii. Subject to Committee approval, the Directors shall have the discretion to decline membership for any reason whatsoever and shall be obliged to provide reasons therefor in writing;

9.2.2 A paid-up household is any Member as contemplated in 9.2.1 above who has paid all Subscription fees;

9.2.3 Each paid-up household is entitled to one vote in any matter to be decided by the Members of the Company

9.2.4 A Member in default of his / its Subscription fees will not be entitled to vote

### **9.3 Terms and Conditions of Membership**

9.3.1 Members may be any person including natural persons, companies or other bodies corporate, or statutory bodies or partnerships or associates of persons;

9.3.1 the Members of the Company shall be the subscribers to the Company's MOI and any other persons as from time to time are admitted to membership as hereinafter provided;

9.3.2 applications for membership shall be made in writing, directed to the Board of Directors and shall be accompanied by the Subscription fee as agreed upon by the Members in a general meeting from time to time;

9.3.3 contribute to the Company's security initiatives, environmental initiatives on either a monthly basis or annually in advance in the form of Subscription fees;

9.3.4 upon completion of such forms, payment of the relevant Subscription fees and agreement by the Member to abide to all terms and conditions of the relevant services, the RRVA Code of Business Conduct and Ethics, this MOI and any other Rules applicable thereto, as amended from time-to-time, the Member will qualify and be granted Membership

9.3.5 save as herein otherwise provided, the Company shall be entitled to treat a registered Member (household) as the only person to membership and accordingly shall not, except as ordered by the court of competent jurisdiction, or as required by the Act, be bound to recognize any trust, charge, encumbrance, lien or other claim to or interest in membership on the part of any other person.

### **9.4 Termination of Membership**

The Directors shall have the power to terminate a Member's membership of the Company if:

9.4.1 the Member's Subscription fees or any other sum due to the Company is more than 1 (one) month in arrears;

- 9.4.2 the Member ceases to make payment towards the Subscription fees applicable to it or terminates the provisions of services provided to the Member by the Company; or
- 9.4.3 the Member fails to abide with the RRVA Code of Business Conduct and Ethics, this MOI, any statute, code or legislation that may apply to the RRVA from time-to time.
- 9.4.4 A Member whose membership has been terminated, for any reason whatsoever, will remain liable for all sums that may, at the date of termination of his membership be due from him to the Company and shall not be entitled to any refund of subscription monies already paid (even in the case where the member has elected to pay annually in advance) nor have any claim on the Company or its officers, its property or its funds.

## **10 RIGHTS OF MEMBERS**

### **10.1 Members' Rights to Information**

Every Member shall, in accordance with the provisions of Clause 26(1) of the Act, have the right to inspect and copy the following information contained in the Company's records:

- 10.1.1 the Company's Memorandum of Incorporation and any amendments to it, and any Rules made by the Company;
- 10.1.2 the records in respect of the Company's Directors;
- 10.1.3 the reports to annual meetings and annual financial statements;

### **10.2 Members' Authority to Act**

If, at any time, every Member of the Company is also a Director of the Company, as contemplated in Section 54(4) of the Act, the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section is limited or restricted to the extent that if a member is also a Director, such Member may only act once that member has the support of the majority of the Board of the Company, given at a Directors meeting at which the appropriate quorum of Directors (see Clause 23.3) was present and voting.

## **11 GENERAL MEETINGS**

- 11.1 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Members' meeting at any time.

- 11.2 The Company must hold a Members' meeting:
- 11.2.1 at any time that the Board is required by the Act or the MOI to refer a matter to Members for decision;
  - 11.2.2 whenever required in terms of section 70(3) to fill a vacancy on the board; and
  - 11.2.3 when otherwise required:
    - i. in terms of Clause 61(3) or (7) of the Act; or
    - ii. by the Company's MOI;

## **12 SPECIAL GENERAL MEETINGS**

- 12.1 The Board or the Members may call a Special General Meeting at any time whenever either of them deems it to be desirable, on such date, at such place and at such time as shall be determined by the Board;
- 12.2 The notice requesting a Special General Meeting must describe the specific purpose for which the meeting is proposed.

## **13 ANNUAL GENERAL MEETINGS**

- 13.1 The Board must convene an annual general meeting of Members once in every calendar year, within 6 (six) months after the financial year end but not more than 15 (fifteen) months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown;
- 13.2 Each annual general meeting of Members of the Company shall provide for at least the following business to be transacted:
- 13.2.1 the presentation of the Directors' report and audited financial statements for the immediately preceding financial year of the Company;
  - 13.2.2 the appointment of an auditor for the following financial year;
  - 13.2.3 election of Directors, to the extent required by the Act or the Company's MOI;
  - 13.2.4 annual increase in Subscription fees; and
  - 13.2.5 any matters raised by the Members, with or without advance notice to the Company

## **14 NOTICE OF MEMBERS MEETINGS**

14.1 The Company must deliver a notice in Writing of each Members' meeting in the prescribed manner and form to all of the Members of the Company as of the record date for the meeting, at least 15 (fifteen) business days for general and special general meetings and 21 (twenty-one) business days before the annual general meeting and shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given and shall include:

14.1.1 the date, time and place of the meeting;

14.1.2 the general purpose of the meeting, and any specific purpose if the meeting has been called or demanded for a specific purpose;

14.1.3 a copy of any proposed resolution of which the Company has received notice and the percentage required for that resolution to be adopted;

14.1.4 in the case of an annual general meeting of Members, a summarised form of the audited financial statements to be presented and directions for obtaining a copy of the complete annual financial statements for the preceding financial year; and

14.1.5 a reasonably prominent statement that a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;

14.2 If the Company fails to give the required notice of a Meeting, or if there was a material defect in the giving of the notice, the meeting may proceed, subject to Clause 62(5) of the Act, if all of the persons who are entitled to exercise voting rights in respect of each item on the agenda of the meeting:

14.2.1 acknowledge actual receipt of the notice;

14.2.2 are present at the meeting;

14.2.3 waive notice of the meeting; or

14.2.4 in the case of a material defect in the manner and form of giving notice, ratify the defective notice.

14.2.5 If a material defect in the form or manner of giving notice of a meeting relates only to one or more particular matters on the agenda for the meeting:

- i. any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

- ii. the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of subsection Clause 62(4)(d) of the Act;
- 14.3 An immaterial defect in the form or manner of giving notice of a shareholders meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular shareholder to whom it was addressed, does not invalidate any action taken at the meeting;
- 14.4 A Member who is present at a meeting:
  - 14.4.1 is regarded to have received or waived notice of the meeting;
  - 14.4.2 has a right to:
    - i. allege a material defect in the form of notice for a particular item on the agenda for the meeting; and
    - ii. participate in the determination whether to waive the requirements for notice, or ratify a defective notice; and
  - 14.4.3 except to the extent set out in Clause 14.4.2 above, is regarded to have waived any right based on an actual or alleged material defect in the notice of the meeting
- 14.5 The Board may determine the location of any Members' meeting, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this MOI.

## **15 QUORUM**

- 15.1 The quorum for a Members' meeting to begin or for a matter to be considered shall be 7 (seven) Members who are entitled to vote present personally at the meeting or by proxy.
- 15.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to a day not earlier than seven (7) days and not later than twenty-one (21) days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present in person or by proxy shall constitute a quorum.
- 15.3 For an ordinary resolution to be adopted at a Members meeting, it must be

supported by at least 50% plus 1 of the Members entitled to vote on the resolution, as provided in section 65(7) of the Act.

- 15.4 For a special resolution to be adopted at a Members meeting, it must be supported by at least 65% of the Members entitled to vote on the resolution, as provided in section 65(10) of the Act.

## **16 PROXY**

- 16.1 The right of a Member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a) of the Act is limited, restricted or varied to the extent set out in this MOI.

- 16.2 The authority of a Member's proxy to delegate the proxy's powers to another person, as set out in section 58 (3)(b) of the Act is limited or restricted to the extent that the instrument appointing a proxy shall be in writing under the hand of the appointer or of his agent duly authorised in writing or, if the appointer is a body corporate, under the hand of an officer or agent authorised by the body corporate.

- 16.3 A proxy need not be a member of the Company. The holder of a general or special power of attorney, whether he is himself a member or not, given by a Member shall be entitled to attend and vote at any meetings on behalf of the Member granting such power. A proxy may not delegate the proxy's authority to act on behalf of the Member to another person.

- 16.4 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarial certified copy of such power or authority shall be tabled at the meeting at which the person named in the instrument proposes to vote.

- 16.5 No instrument appointing a proxy shall be valid after the expiration of six months from the date when it was signed, unless so specifically stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.

- 16.6 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time

"I/We \_\_\_\_\_

being a member of Randpark Ridge Village Association (NPC) ( do hereby appoint

\_\_\_\_\_

or failing him/her

\_\_\_\_\_

or failing him/her, the chairman of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held:

at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_ and at any adjournment thereof as follows:

IN FAVOUR OF

AGAINST

ABSTAIN

Special Resolution 1

Ordinary Resolution 1

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

\_\_\_\_\_

**SIGNED** this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

## 17 ADJOURNED MEETINGS

Should a *quorum* not be present within half an hour after the appointed time:

- 17.1 a general meeting convened by or on requisition of the Members, shall be dissolved;
- 17.2 notwithstanding anything to the contrary in the MOI, if the quorum is not achieved as a result of Members not being present, or the number of Members falling below the required threshold then the meeting shall be adjourned to the same time and same day in the following week, provided that day is a business day. This shall be known as the first adjourned meeting;
- 17.3 if at the first adjourned meeting the quorum is not achieved for any reason whatsoever, then the Directors present shall constitute a quorum despite the Members not being present. It shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **18 CHAIRMAN OF GENERAL MEETINGS**

- 18.1 The Chairman of the Board shall chair each general meeting, provided that, if the Chairman is not present or not willing to act, the Deputy Chairman shall act in his or her absence and when so acting exercise or perform any functions of the Chairman.
- 18.2 In the eventuality of the Chairman or Deputy Chairman not being able to be present or not willing to act, the Directors present may appoint any of them to act as Chairman for that particular general meeting, and when so acting exercise or perform any functions of the Chairman.

## **19 MEMBERS MEETINGS BY ELECTRONIC COMMUNICATION**

No Members' meetings may be held by means of electronic communication as contemplated in Section 63 of the Act.

## **20 MEMBERS ACTING OTHER THAN AT MEETINGS**

- 20.1 A resolution that could be voted on at a Members meeting may instead be:
- 20.1.1 submitted for consideration to the Members entitled to exercise voting rights in relation to the resolution; and
  - 20.1.2 voted on in writing by Members entitled to exercise voting rights in relation to the resolution within 20 business days after the resolution was submitted to them.
- 20.2 A resolution contemplated in 20.1 above 1:
- 20.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Members meeting;
  - 20.2.2 if adopted, has the same effect as if it had been approved by voting at a meeting;
- 20.3 An election of a director that could be conducted at a Members meeting may instead be conducted by written polling of all of the Members entitled to exercise voting rights in relation to the election of that director;
- 20.4 Within 10 business days after adopting a resolution, or conducting an election of directors, in terms of this Clause 60 of the Act, the Company must deliver a statement describing the results of the vote, consent process, or election to every

Member who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be;

20.5 For greater certainty, any business of the Company that is required by the Act or this MOI to be conducted at an annual general meeting of the Company may not be conducted in the manner contemplated in Clause 60 of the Act.

## **21 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS**

21.1 Over and above the minimum number of Directors that the Company must have to satisfy any requirement in terms of the Act, the Board shall comprise at least 5 (five) Directors and the Directors shall be entitled, by ordinary resolution, to determine such maximum number of Directors as they from time-to-time consider appropriate.

21.2 The Chairman and Deputy Chairman shall be elected from and by the Board Members at the first meeting of the new Board.

21.3 Directors must satisfy the qualification and eligibility requirements in the Act.

21.4 The Board has the power to:

21.4.1 appoint a person who satisfies the requirements for election as a director to fill any vacancy on the Board on a temporary basis, as set out in section 68(3) of the Act, until the next annual general meeting of Members of the Company, as required in terms of section 70(3)(b)(i) of the Act;

21.4.2 during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director of the Company.

21.5 If the number of Directors falls below the minimum number fixed in accordance with this MOI, the remaining Directors must as soon as possible and in any event not later than 4 (four) months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with clause 20.4 above or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 4 (four) month period does not limit or negate the authority of the Board of Directors or invalidate anything done by the Board of Directors while their number is below the minimum number fixed in accordance with this MOI.

21.6 Each Director shall, subject to the exemptions contained in sections 75(2) of the

Act and the qualifications contained in section 75(3) of the Act, comply with all of the provisions of section 75 in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board;

21.7 In addition to the foregoing, the Board may co-opt not more than 2 (two) individuals to the Board as advisors for the purpose of bringing specific expertise, experience or knowledge to the Board. The co-option is for the period where such expertise, knowledge or experience is required, but shall in any event not be longer than 1 (one) year, although the co-option may be renewable. Such co-opted individuals shall be non-voting Members of the Board.

21.8 Period of Office of Directors

21.8.1 Directors shall be appointed for a period of 1 (one) year provided that their appointment shall last until the following election of new Board Members as contemplated herein;

21.8.2 A Director shall retire at the end of his or her term of office but may be eligible for re-appointment for a further term but may not serve for more than 4 (four) terms consecutively, and the Chairperson may not serve as Chairperson for more than 2 (two) terms consecutively;

21.9 Delegation and Assignment

21.9.1 The Board may delegate any of its powers and assign any of its duties to any member of the Board or any committee established by the Board, or any employee of the Company, on such terms and conditions as the Board may determine and amend or revoke such delegation or assignment only in writing, and such delegation may include delegation to persons who are not Directors of the Company, but any such person must not be ineligible or disqualified to be a Director in terms of section 69 of the Companies Act and no such person has a vote on a matter to be decided by the Board;

21.9.2 Notwithstanding the delegation contemplated in paragraph 21.9.1 of this MOI, the Board is not divested of any power or duty so delegated or assigned;

21.9.3 The creation of a committee, delegation of any power to a committee or action taken by a committee, does not alone satisfy or constitute

compliance by a Director with the required duty of a Director to the Company as set out in section 72(3) of the Companies Act;

- 21.9.4 Upon such delegation the Board must communicate to the delegate or assignee in writing and such notice must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or duty must be performed;
- 21.9.5 Delegations of authority must be reviewed annually and approved by the Board.

## **22 DISQUALIFICATION OF BOARD MEMBERS**

A Director shall be disqualified from continuing to act as a Director and he/she shall be deemed to have resigned in the following circumstances:

- 22.1 where such Director is prohibited from becoming or remaining a Director on the Board by virtue of any provision of the Act;
- 22.2 where such Director resigns his office by notice in Writing to the Company;
- 22.3 where such Director is absent from Board meetings for more than 6 (six) consecutive months without approval by the Board;
- 22.4 where such Director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act, RRVA Policies and Codes;
- 22.5 where such Director is removed from office by an ordinary resolution of the Members of the Company

## **23 DIRECTORS MEETINGS**

### **23.1 Convening a meeting**

- 23.1.1 Save as may be provided otherwise herein, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, provided that they must meet at least bi-monthly.
- 23.1.2 The Chairman, or in his absence, the Deputy Chairman, shall be entitled to preside over all meetings of Directors. If no Chairman or Deputy Chairman is elected, or if at any meeting neither is present or willing to act as Chairman thereof within 15 (fifteen) minutes of the time appointed for holding the meeting, the Directors present shall choose 1

(one) of their number to be Chairman of such meeting

23.1.3 Any Director or the Chairman shall at any time be entitled to call a meeting of the Directors.

## **23.2 Power of the Board**

23.2.1 The Board has the power to:

- i. consider any matter and/or adopt any resolution at meetings or as contemplated in section 74 of the Act and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the 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;
- ii. conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3) of the Act, provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- iii. determine the manner and form of providing notice of its meetings contemplated in section 73(4) of the Act, provided that:
  - a. the notice period for the convening of any meeting of the Board will be at least 7 (seven) Days unless the decision of the Directors is required on an urgent basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the Chairman of the Board, or failing the Chairman for any reason, the decision of any 3 (three) Directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the Directors.
  - b. an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in clause 22.4.3.1; and
  - c. proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided in section 73(5), and the powers of the Board in respect of the above matters are not limited or restricted

by this MOI.

### **23.3 Quorum Requirement**

23.3.1 The quorum requirement for a Directors' meeting, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting shall be as set out in section 73(5) of the Act, and accordingly:

23.3.2 if all of the Directors of the Company:

- i. acknowledge actual receipt of the notice convening a meeting;
- ii. are present at a meeting;
- iii. waive notice of a meeting, the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;

23.3.3 a majority of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors:

- i. each Director has 1 (one) vote on a matter before the Board;
- ii. a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;
- iii. in the case of a tied vote:
  - a. the Chairman may cast a deciding vote, if the Chairman did not initially have or cast a vote; or
  - b. the matter being voted on fails, in any other case.

### **23.4 Minutes and Resolutions of the Board**

23.4.1 The Board and Board committees must cause minutes to be kept in accordance with section 73(6) of the Companies Act, which shall include the following particulars:

- i. any declaration given by notice made by a director required by section 75 of the Companies Act;
- ii. the names of the Directors present at each meeting of the Board or Board committee; and
- iii. all resolutions and proceedings at each Board meeting, each meeting of Board committees, general meetings and any other meetings as it

thinks fit.

23.4.2 Resolutions adopted by the Board:

- i. must be dated and sequentially numbered; and
- ii. are effective as of the date of the resolution, unless the resolution states otherwise;

**23.5 Signing of Minutes**

Minutes shall be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next succeeding meeting and shall be evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be;

**23.6 Extracts from Minutes**

Any extract from or copy of minutes purporting to be signed by the chairperson of that meeting shall be *prima facie* proof of the facts therein stated.

**23.7 Directors' Round Robin Resolution**

23.7.1 A decision that could be voted on at a meeting of the Board may instead be adopted by written consent by the majority of the Directors eligible to cast a vote in respect of the matter, given in person, or by Electronic Communication, provided that each Director has received notice of the matter to be decided.

23.7.2 For avoidance of doubt, any Director that would have been required to recuse themselves at a meeting of the Board shall not be counted in the determination of voting by Round Robin Resolution;

23.7.3 A decision made in the manner contemplated in paragraph 23.7.1 is of the same effect as if it had been approved by voting at a meeting of the Company;

23.7.4 Such written resolution may consist of one or more documents signed by one or more Directors and shall be delivered to the Chairman without delay, and shall be recorded by him or her in the Company's minute book;

23.7.5 Such written resolution shall be deemed to have been passed on the day it was signed by the last Director, unless a statement to the contrary is made in the resolution;

23.7.6 A written resolution which is not signed by the majority of the Directors shall be inoperative until confirmed by a meeting of the Board.

## **24 REMUNERATION OF NON-EXECUTIVE DIRECTORS**

- 24.1 The Company may not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of where the income or assets was derived, to any person who is Director of the Company except as payment or reimbursement for approved expenses incurred by the Director to advance the stated objects of the Company;
- 24.2 Directors will not be remunerated for their services as a Director – all services rendered by a Director to advance a stated object of the Company will be carried out on a pro-bono and voluntary basis;
- 24.3 A Non-Executive Director shall be recompensed or reimbursed reasonable expenses properly and necessarily incurred by him or her concerning the business of the Company, including, without limitation, reasonable travelling and out of pocket expenses, provided that the incurrence of such expenses have been approved in advance by the Chairman;
- 24.4 The Non-Executive Directors' are not to be remunerated for any extra services performed, except where such remuneration has been prior approved by the Board, and in writing.

## **25 INDEMNIFICATION OF DIRECTORS**

- 25.1 The Company may, subject to the provisions of section 78 of the Act:
- 25.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings;
- 25.1.2 indemnify a Director in respect of liability; and/or
- 25.1.3 purchase insurance to protect the Company or a Director, and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation
- 25.2 The same provisions contemplated above shall apply mutatis mutandis in respect of any former Director, prescribed officer or Member of any committee of the Board.

## **26 DUTIES OF THE BOARD AND INDIVIDUAL DIRECTORS**

### **26.1 Fiduciary Duties of the Board of Directors**

- 26.1.1 A Director must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting his or her fiduciary duties, must:
- i. appoint other committees of Directors and delegate to any such committee any of the authority of the Board; and/or
  - ii. take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
  - iii. exercise an active and independent discretion with respect to all matters to be decided by the Board;
  - iv. not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a Director;
  - v. ensure that the Company has an affirmative action plan in place to advance members of groups historically discriminated against, including on the grounds of race, colour and gender;
  - vi. never permit a conflict of duties and interests in violation of law;
  - vii. act independently;
  - viii. ensure that the Members are fully informed of any material matter affecting the Company's business, with openness and substance rather than form;
  - ix. exercise the care and skill which can reasonably be expected of a person with his or her expertise;
  - x. always act in the best interests of the Company and never for any improper interest;
  - xi. ensure that confidential matters of the Company, learned in their capacity as Director, should be treated as such and not be divulged to anyone without the authority of the Company;
  - xii. ensure that the Company prepares annual budgets against which the Company's performance can be monitored; and

- xiii. be satisfied that they are in a position to make informed decisions;
- xiv. take reasonable steps to inform himself or herself about the RRVA, its business and activities and the circumstances in which it operates.

## **26.2 Managing Conflicts of Interest**

- 26.2.1 A Director shall not vote in respect of any contract or proposed contract with the Company in which he or she is interested, or any matter arising therefore, and if he or she does so vote, that vote shall not be counted.
- 26.2.2 A Director must disclose any financial interest he or she has in respect of matters to be discussed at any meeting of the Board and/or committees, and its general nature, before the matter is considered at the meeting.
- 26.2.3 If requested to do so by the other Directors, a Director must disclose any material information relating to the matter known to the Director, disclose any observations or pertinent insights relating to the matter, and if present at the meeting must leave the meeting immediately after making any such disclosures.
- 26.2.4 A Director may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that Director or his or her family member, business partner or associate has a direct or indirect interest.
- 26.2.5 A Director or his or her family member, business partner or associate or an organisation or enterprise in which a Director or his or her family member, business partner or associate has a direct or indirect interest, may not:
  - i. offer goods or services to the Company or conclude any business with the Company; or
  - ii. make improper use, in any manner whatsoever, of the position of a Board member or of any information acquired by a Board member by virtue of his or her position as a Board member.

## **27 BORROWING POWERS**

The Directors may not exercise the powers of the Company to borrow for the purposes of the Company

## **28 COMMITTEES OF THE BOARD**

28.1 The Board may:

28.1.1 appoint any number of committees of Directors and delegate to any such committee any of the authority of the Board unless expressly prohibited from doing so by any Applicable Statutes, or by this MOI;

28.1.2 include in any such committee persons who are not Directors of the Company, but any such person must not be ineligible or disqualified to be a Director in terms of section 69 of the Act; and no such person has a vote on a matter to be decided by the committee;

28.1.3 The Board shall at all times ensure that any decision taken and any exercise of management powers is not inconsistent with any Applicable Statutes or this MOI; and complies with any Applicable Statutes;

28.1.4 Except to the extent that the resolution establishing a committee, provides otherwise, the committee:

- i. may consult with or receive advice from any person; and
- ii. has the full authority of the Board in respect of a matter referred to it.

28.2 Notwithstanding the delegation contemplated in paragraph 21.9 of this MOI, the Board is not divested of any power or duty so delegated or assigned;

28.3 The creation of a committee, delegation of any power to a committee or action taken by a committee, does not alone satisfy or constitute compliance by a Director with the required duty of a Director to the Company as set out in section 76 of the Companies Act.

## **29 AUDITORS**

### **29.1 Appointment of External Auditors**

29.1.1 The Members shall appoint the auditors of the Company at each and every annual general meeting, and shall take into account the recommendations of the Board but shall not be obliged to appoint the recommended auditors.

29.1.2 If a firm is appointed as auditors, the individual determined by that firm, in terms of section 44(1) of the Auditing Profession Act 26 of 2005, to be a person responsible for performing the functions of auditor must satisfy the requirements of section 90(2) of the Act.

## **29.2 Resignation of Auditors and Vacancies**

- 29.2.1 The resignation of an auditor is effective when the notice of resignation is filed;
- 29.2.2 If a vacancy arises in the office of the auditor of the Company, the Board must appoint a new auditor within 40 (forty) Business Days;
- 29.2.3 If the Company appoints a firm as its auditor, any change in the composition of the members of that firm does not by itself create a vacancy in the office of auditor for that year;

## **29.3 Rotation of Auditors**

- 29.3.1 The person referred to in paragraph 29.1.2 of this MOI may not serve as the auditor or designated auditor of the Company for more than 3 (three) consecutive financial years.
- 29.3.2 If an individual has served as the auditor or designated auditor of the Company for 2 (two) or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor of the Company until after the expiry of at least 2 (two) further financial years.

## **29.4 Rights and restricted functions of Auditors**

The auditor of the Company:

- 29.4.1 has the right of access at all times to the accounting records and all books and documents of the Company, and is entitled to require from the Directors or prescribed officers of the Company any information and explanations necessary for the performance of the auditor's duties; and
- 29.4.2 is entitled to attend any general meeting; receive all notices of and other communications relating to any general meeting; and be heard at any general meeting contemplated in this paragraph of this MOI on any part of the business of the meeting that concerns the auditor's duties or function;
- 29.4.3 An auditor appointed by the Company may not perform any services for the Company that would place the auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the Auditing Profession Act and the Public Audit No 25 of 2004.

### **30 MANAGER**

30.4 The Board shall appoint a Manager upon such terms and conditions and for such period as it shall determine in its sole discretion.

30.5 The Manager shall report to the Board and assist the Board with the day-to-day operations of the Company and be delegated such powers and authority levels as the Board may, in its discretion, determine, which powers may be resolved, varied or withdrawn by the Board from time to time.

### **31 ANNUAL FINANCIAL STATEMENTS**

31.4 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of:

31.4.1 the Act;

31.4.2 any other law with respect to the preparation of financial statements to which the Company may be subject;

31.4.3 this MOI; and

31.4.4 the Rules pertaining to the Company's Financial Procedures from time to time.

31.5 The Company shall each year prepare annual financial statements within 1 (one) month and no longer than 6 (six) months after the end of its financial year, or such shorter period as may be decided upon by the Board of Directors to provide the required notice of an annual general meeting in terms of section 61(7);

31.6 The annual financial statements of the Company must be audited by an independent auditor at least annually subject to the provisions of section 30 of the Act;

31.7 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act.

### **32 MAINTENANCE OF COMPANY RECORDS**

#### **32.1 Accounting Records**

32.1.1 The Company must keep accurate and complete accounting records in one of the official languages of the Republic as necessary to enable the Company to satisfy its obligations in terms of the Companies Act or any

other law with respect to the preparation of financial statements; and including any prescribed accounting records, which must be kept in the prescribed manner and form.

- 32.1.2 Any documents, accounts, books, writing, records or other information that the Company is required to keep in terms of the Act or any other regulation must be kept in written form, or other form or manner that allows that information to be converted into written form within a reasonable time; and for a period of seven years, or any longer period of time specified in any other applicable public regulation.

### **32.2 Records of Memorandum of Incorporation**

The Company must maintain a copy of this MOI and any amendments or alterations to it, and any rules of the Company made in terms of section 15(3) to (5) of the Companies Act.

### **32.3 Records of General Meetings**

The Company must maintain copies of all:

- 32.3.1 Documents presented at an Annual General Meeting of the Company, for a period of seven years after the date of any such meeting;
- 32.3.2 annual financial statements required by the Companies Act, for seven years after the date on which each such particular statements were issued; and
- 32.3.3 accounting records required by the Companies Act, for the current financial year and for the previous seven completed financial years of the Company;
- 32.3.4 notice and minutes of all general meetings, including all resolutions adopted by them, for seven years after the date each such resolution was adopted; and any document that was made available by the Company to the Members in relation to each such resolution.

### **32.4 Record of Board and Committee Meetings**

The Company must maintain:

- 32.4.1 minutes of all meetings and resolutions of the Board and its committees for a period of seven years after the date of each such meeting; or on which each such resolution was adopted;

32.4.2 the records of its auditors, including the name, any former name, of each such person; and the date of every such appointment; and if a firm or juristic person is appointed, the name, registration number and registered office address of that firm or juristic person; and the name of any individual contemplated in section 90 of the Act

### **32.5 Record of Particulars of Directors**

The Company's record of Directors must include, in respect of each Director:

- 32.5.1 full name, and any former names;
- 32.5.2 date of birth; nationality;
- 32.5.3 occupation;
- 32.5.4 date of their most recent election or appointment as Director of the Company;
- 32.5.5 name and registration number of every other company or foreign company of which the person is a Director; and
- 32.5.6 any other prescribed information.

### **32.6 Location of Company Records**

The records referred to in Clause 33 must be accessible at or from the Company's registered office or another location, or other locations, within the Republic.

### **32.7 Access to Company Records and Financial Statements or Related Information**

The Members, or any person, who holds or has a beneficial interest in the Company, has a right to inspect and copy the information contained in the records of the Company maintained by the Company.

## **33 NOTICES**

33.1 Each Member of the Company:

- 33.1.1 shall notify in Writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post and if he has not named such an address he shall be deemed to have waived his right to be so served with notices; and;

- 33.1.2 shall notify in Writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication;
- 33.2 Any Member, whose address in the Members Register is an address not within South Africa, shall be entitled to have notices served upon him at such address.
- 33.3 Any notice sent as contemplated above shall be deemed to have been delivered as provided for that method of delivery.

**34 PUBLIC BENEFIT ORGANISATION**

The Company is a Public Benefit Organisation as provided for in terms of section 10(1) (cN) with section 30 of the Income Tax Act at the time of the adoption of this Memorandum.

**ADOPTION OF MEMORANDUM OF INCORPORATION**

This Memorandum of Incorporation was adopted by the Members of the Company, in accordance with section 13(1), as evidence by the following signatures made by each of them, or on their behalf.

\_\_\_\_\_  
  
\_\_\_\_\_

SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2019