

# **MEMORANDUM OF INCORPORATION**

of

## **AMBERFIELD VALLEY HOME OWNERS ASSOCIATION (NPC)**

**Registration Number: 2005/023582/08**

(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 Amberfield Valley 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 upkeep, maintenance and control of buildings, walling, fencing, gates, lighting, signage, landscaping and to ensure compliance with such rules by the **Members**;
  - 2.3 ensure that Members comply with the Township Establishment Conditions, building restrictions and requirements and, where necessary, to ensure that the Local Authority enforces such conditions, restrictions or requirements;
  - 2.4 formulate and implement rules 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 and any building activities;

- 2.6 ensure that members maintain their **Units** in a clean and tidy condition;
- 2.7 consent to consolidation, sub-division or re-zoning of any **Unit(s)** 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 and regulations concerning the conduct, rights and obligations of **Members** and the use of **Common Property** and **Units** within the **Township** and rules for enforcement of any rules created 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**;
- 2.12 enforce any Rules made.

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

This Memorandum of Incorporation was adopted by Special Resolution of the **Members** in General Meeting, as evidenced by **Annexure "X"** attached hereto.

## **C) DEFINITIONS:**

- (a) In this Memorandum of Incorporation –
  - (i) a reference to a **section** by number refers to the corresponding section of the Companies Act, 2008;

- (ii) any word or expression which is defined in the **Act** and which is not otherwise defined in the **MOI** shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the **Company**;
  - (iii) a reference to any Act shall include any amendment thereto or Act in substitution thereof;
  - (iv) 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;
- (b) The Schedule 1 Rules attached to this Memorandum are part of the Memorandum of Incorporation.
- (c) Unless the context otherwise requires, any words importing:-
- (i) the singular number, shall include the plural number and *vice versa*;
  - (ii) the one gender shall include the other two genders; and
  - (iii) persons shall include partnerships, trusts and corporate bodies, and *vice versa*;
- (d) Reference to the **MOI** means this **Memorandum of Incorporation**, including all schedules and annexures hereto;
- (e) If the due date for performance of any obligations in terms of the **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 succeeding **Business Day**.
- (f) 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 permitted in terms of the **Act** and/or the Regulations
- (g) 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;
- (h) Unless otherwise provided in this **MOI** or the **Act**;
- (i) Defined terms appearing herein in upper 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 the plain English meaning, and;

- (ii) Any words and expressions defined in any Article shall, unless the application of such word or expression is specifically limited to that Article, bear the meaning assigned to such word;
  - (iii) 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;
- (i) Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this **MOI**, then;
- (i) such expert may be a natural person or, as far as is practical, a firm or organisation;
  - (ii) the findings of the expert shall (in the absence of manifest error) be final and binding;
  - (iii) subject to any express provision to the contrary, the expert shall determine the liability for its charges, which shall be paid accordingly;
  - (iv) the expert shall be entitled to determine such methods and processes as he or she may, in his or her sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
  - (v) the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or her sole discretion) prior to rendering a determination, and;
  - (vi) having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or her to have expert knowledge with reference to the matter in question;
- (j) The following words, expressions and abbreviations shall 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 at any General Meeting of the **Company**;
- (iv) **"Board"** : Means the **Board of Directors** of the **Company** from time to time;
- (v) **"Business day"** : When, in this **Memorandum of Incorporation**, a particular number of 'business days' is provided for between the happening of one event and another, the number of days must be calculated by:
  - (a) excluding the day on which the first such event occurs;
  - (b) including the day on or by which the second event is to occur; and
  - (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in para-graphs (a) and (b), respectively;
- (vi) **"Chairman"** : Means the **Chairman** of the **Board of Directors**, elected in accordance with this **Memorandum of Incorporation**, or if that expression is used with reference to a General Meeting or meeting of the **Directors** at which that person is not present or does not act as **Chairman**, the person acting as **Chairman** in accordance with the provisions of this Memorandum of Incorporation;
- (vii) **"Common Property"** : Refers to the **Common Property**

**Areas** in the **Township**, including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the **Common Property Areas** and within servitude areas registered in favour of the **Company**, that are owned by the **Company** and for which the **Company** bears the responsibility to maintain, and may include, but not limited thereto, the streets, streetscapes, pavements, fencing, security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, storm water reticulation and any equipment or amenities used ancillary to such **Common Property Areas**, including gardens and buildings;

- (viii) **"Common Property Areas"** : Means all those areas transferred to or registered in the name of the **Company** and located in the **Township** or those areas within the **Township**, excluding the **Units**;
- (ix) **"Company"** : Means the Amberfield Valley Home Owners Association (NPC), Registration Number: **2005/023582/08**;
- (x) **"Directors"** : Means the **Directors** of the **Company** who shall, for the purposes of the **Act**, be the **Directors** of the **Company** appointed or elected in accordance with the provisions of this Memorandum of Incorporation;
- (xi) **"Effective Date"** : Means the date upon which CIPC issues a Registration Certificate, or accepts this Memorandum of Incorporation, or the date as recorded on the Notice of Incorporation, whichever event first occurs;
- (xii) **"Law"** : Means any law of general

application 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 and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;

- (xiii) **"Levies"** : Means all contributions levied from time to time by the **Directors** upon **Members** for the purpose of meeting all the expenses which the **Company** has incurred or which the **Directors** reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Article 1.5(6) of the Memorandum of Incorporation;
- (xiv) **"Managing Agent"** : Means any person or body or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed by the **Company** as an independent contractor from time to time, if at any time there is no MA then the reference to the MA shall be reference to the Board;
- (xv) **"Member / Members"** : Means any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a **Unit** in the **Township** and/or any person who has successfully applied for membership of the **Company** and has become a registered **owner** of a **Unit** in the **Township**;
- (xvi) **"MOI"** : Means the Memorandum of Incorporation of the **Company**;

- (xvii) **"Resident(s)"** : Means a person in occupation of a **Unit** on a temporary or permanent basis by agreement with and/or consent from the **Member** of a relevant **Unit** or through his affiliation or association with such **Member**;
- (xviii) **"Township" / "Estate"** : Means the property/ies comprising the Amberfiled Valley Estate, being Rooihuiskraal north Ext 24;
- (xix) **"Unit"** : Means an erf, whether consolidated or comprising a sub-division thereof, improved or unimproved, and including any outbuildings;
- or
- a Sectional Title Unit established in terms of the Sectional Titles Act, Act 95 of 1986;
- (xx) **"Vice-Chairman"** : Means the **Vice-Chairman** of the **Board of Directors**;
- (xxi) **"in Writing"** : Means written, printed, type-written, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.



## **D) COMPANY ADMINISTRATION:**

### **Article 1 – Incorporation and Nature of the Company**

#### **1.1 Incorporation**

- (1) The **Company** is a pre-existing Non-Profit Company, as defined in the Companies Act, 2008.
- (2) The **Company** is incorporated in accordance with, and governed by-
  - (a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies;
  - (b) the alterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
  - (c) the provisions of this Memorandum of Incorporation.
- (3) This Memorandum of Incorporation is in a form unique to the Company, as contemplated in Section 13(1)(a)(ii).

#### **1.2 Objects and Powers of the Company**

- (1) The Objects of the **Company** are as set out on the cover sheet (**Part A**) and, except to the extent necessarily implied by the stated objects, the **Company** has all of the legal powers and capacity of an individual and the purposes and powers of the **Company** are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii). This MOI does not limit the powers of the Company.
- (2) The **Company** is not subject to any provision contemplated in section 15(2)(b) or (c).
- (3) Upon dissolution of the **Company**, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, 2008, which holds that :-
  - (a) the 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 of South Africa, voluntary associations or non-profit trusts – having objects similar to the **Company's** main object; and

- (b) as determined:
  - (i) by majority resolution of the **Members**, immediately before the time of dissolution or, failing such determination;
  - (ii) by the Court.
  
- (4) The **Company** is not permitted to distribute its funds to any person or entity other than a Non-profit Company, Voluntary Association or Non-profit Trust, having objects similar to the **Company's** main object.

### **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** in the prescribed manner in terms of Article 8.
  
- (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(4), 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**, whether upon or within the boundaries of any **Unit**, which may affect the general aesthetic appearance of the **Township**;
  
  - (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** 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 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** 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 to and activities within 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** 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** 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 Guidelines and 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, generators, 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.;
- (q) the control and recycling of refuse, littering and other safety and anti-pollution related measures;
- (r) the maintenance of all roads, pavements, buildings, outbuildings, structures, electricity-, water- and sewage reticulation, irrigation of **Common Property**, improvements of any nature and landscaping within the **Scheme** of any **Common Property** and **Units**;
- (s) the right of reasonable access to any **Unit** in order to affect the maintenance of any matters referred to in this **Memorandum of Incorporation** or the rules;
- (t) the conditions for the use of all or certain parts of the **Common Property**, such as streets and other open spaces, etc.;
- (u) the restriction of domestic workers and other employees and their movement on the **Property**;
- (v) directives concerning processes to be followed regarding internal dispute resolution between **Members** and/or between **Members** and the **Company** concerning conduct and/or the use of **Common Property**;
- (w) rules that may become applicable or necessary from time to time to effectively discharge all the obligations of the **Company** as a juristic person and "responsible party" under the Protection of Personal Information Act No. 4 of 2013 and also the prescriptions of the Promotion of Access to Information Act No. 2 of 2000 for the proper protection, processing, control of and access to the personal information of its Members and any other data subjects that may come under its control.
- (x) in general, rules in order to maintain tranquillity and a peaceful living environment in the **Township**.

- (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 ("*the first demand*") will be sent to the **Member**, specifying the nature of the breach and demanding him to remedy the breach where applicable, within a period stipulated in terms of the letter of demand and which demand period shall be reasonable depending on the nature and/or urgency of the matter concerned;
    - (ii) Should the **Member** fail to adhere to the **first demand** and to remedy the breach, then a letter of demand, incorporating a penalty ("*the final demand*") will be sent to the **Member**;
    - (iii) Should the **Member** fail to adhere to the **final demand** and to remedy the breach and/or to pay the penalty then, unless written objection is received from the **Member** concerning the alleged contravention, the prescribed penalty 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;
    - (iv) For any consecutive breach or transgression of the same rule within a period of 6 (six) months, it would not be necessary for the **Board** to issue a **first demand** and in such event a **final demand** shall be issued.
    - (v) If a **Member** disputes any breach, a Committee of 3 (three) **Directors** appointed by the **Chairman** shall on receipt of the **Member's** written objection convene a meeting with the **Member** within a period or 10 (ten) days 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.

- (vi) The decision of the **Board** shall be final unless objected to **in writing** within 10 (ten) days from notification of its decision;
  - (vii) Should the **Member** refuse to accept the decision of the **Committee** on any matter, such dispute shall then be referred to mediation and/or arbitration in terms of Article 5;
  - (viii) Any fine imposed upon any **Member** will be deemed to be a debt due by the **Member** to the **Company** and shall be recoverable by ordinary civil process.
- (4) In the event of any breach of the Rules by a **Member's** lessee, occupant, visitor, employee, contractor, guest, member of his family or of his lessee or occupant, such breach shall be deemed to have been committed by the **Member** himself, but without prejudice to the rights of the **Company** to take or cause to be taken, such action against the person actually committing the breach, as the **Board** in their discretion may deem fit.
- (5) The **Board** must publish any notice or 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** in the prescribed manner in terms of Article 8.
- (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 as accepted by the **Members**, will remain of force and effect as if they were issued in terms of 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 1.3(3) 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**

Although the **Board** may elect to appoint an Auditor, such election will be voluntary and not subject to the provisions of Chapter 3 and specifically not subject to Sections 90, 91, 92 and 93 of the **Act**.

#### **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**

(2.1) Membership of the **Company** shall be limited to those persons (natural persons or juristic entities) who, at incorporation or thereafter are reflected in terms of the Deeds Registries Act No. 47 of 1937, in the records of the Deeds Office concerned as the registered owners of a **Unit(s)** in the **Township**, notwithstanding the provisions of Article 1.5(3), and who will be bound by the provisions of the Companies Act, 2008, this Memorandum of Incorporation and any Rules made and incorporated hereunder;

(2.2) 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(2.1), 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)** in the **Township**.

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

All **Members** shall be liable for 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** in the **Township**, and a **Member** shall therefore not be entitled to resign as a **Member** of the **Company** unless he ceases to be an owner of a **Unit** 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 exterior 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** 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** 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** or of any other **Unit** or the common property;
- (5.2.9) maintain his **Unit/Erf**, and any area allocated for his exclusive use, 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** for purposes of inspecting any structure to be erected on his **Unit**. **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**, not erect a second dwelling on any **Unit**;
- (5.2.12) abide by the Memorandum of Incorporation and adhere to the rules and regulations 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 the occupant or tenant has agreed, **in writing**, to be bound by all the terms and conditions of this **MOI** and any **Rules** made thereunder, and such written undertaking is lodged with the **Board** and/or the **Managing Agent** 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 transfer his **Unit** to any other person without the written consent of the **Company** first having been obtained under the hand of the **Board** or the **Managing Agent**, which consent will not be withheld unless:
- (5.5.1) such **Member** is in arrears 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 he remains in breach, unless such breach is disputed **in writing** by the **Member** and forms the subject of a dispute resolution process;
- (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 the **Board** or the **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, Act 95 of 1986,

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** 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 and will be subject to ratification/amendment/repeal by the **Members** in General Meeting.
- (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 nominate and elect the **Directors** of the **Company**;
  - (5.9.2) the right to have access to the **Company** records in accordance with the provisions of Section 26 of the **Act**;
  - (5.9.3) the right to receive notice of, attend, speak and vote at General Meetings of the **Company**;
  - (5.9.4) the right to have access to the Financial Statements or related information of the **Company**;
  - (5.9.5) 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 vote at all meetings of the **Company**.
- (5.10) A **Member/(s)** shall not have the right to attend, to vote or to 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 arrears 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 (other than payment of levies) 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, unless such breach is disputed in writing by the **Member** and forms the subject of a dispute resolution process;
- (5.10.3) 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**.
- (5.11) Every **Member**, if so required by the **Company**, shall sign all documents required to create a condition in the Title Deed of his **Unit**, which will ensure that the **Unit** may not be sold or transferred without the buyer or transferee binding himself to become a **Member** of the **Company** and without a certificate as contemplated in Article 1.5(5.6). The condition referred to shall be worded as near as possible to the following format:

"Amberfield Valley Home Owners Association (NPC):

- (1) *This property is subject to the following condition imposed by the developer/transferee in favour of **Amberfield Valley Home Owners Association (NPC)**, a Non-Profit Company as referred to in the Companies Act, 2008 with **Registration Number: 2005/023582/08**:*
- 1.1 *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 Unit into his/her/their name.*
- 1.2 *The transferee, their successors in title or assigns/(his heirs, executors, administrators or assigns) shall not be entitled to transfer the Unit in any manner, without obtaining the prior written permission of the **Amberfield Valley Home Owners Association (NPC)** and further subject*

*to the condition that the purchaser have accepted in writing (in terms of the Purchase and Sale Agreement, a letter or other document), to become a member of the said **Amberfield Valley Home Owners Association (NPC)** on the date of registration of the property into his name and that the purchaser have accepted to abide by the provisions of the MOI and Rules of the Company.*

- 1.3 The Purchaser undertakes to apply in writing, for membership of the **Amberfield Valley 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 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.*
- 1.4 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 a Unit in the Township.*
- 1.5 Should the Purchaser sell his Unit, he will be obliged to inform the new Purchaser of these provisions and the new Purchaser's obligation in terms of these provisions.*
- 1.6 The Purchaser shall require the written consent of the **Company** to transfer the Unit to a third party, which consent will not unreasonably be withheld.*
- 1.7 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."*

(5.12) **Binding Nature**

- (5.12.1) 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** shall be binding on the member of any **Unit** and any lessee or other occupant of any **Unit** 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;
- (5.12.2) 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** and to refer in any Lease Agreement to the binding nature of this Memorandum of Incorporation and Rules upon such lessee or occupant.
- (5.13) If a member ceases to be a **Member** of the **Company** as a result of the transfer of a **Unit** 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**.
- (5.14) Where a **Unit** is owned by more than 1 (one) person, all the registered owners of that **Unit** 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** shall be jointly and severally liable for the due performance of any obligation to the **Company**.
- (5.15) 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.
- (5.16) 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 made in terms of this clause, be dealt with at the next General Meeting of the **Company**.

(5.17) To the extent reasonably possible, the **Directors** shall respond to any request or complaint by a **Member** within 7 (seven) business days from receipt of such complaint/request and will at least advise how and when they intend to deal with the complaint/request, if same is not immediately addressed.

## (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 30 (thirty) days prior to the end of each financial year or so soon thereafter as is reasonably possible, publish a notice indicating an estimate ("*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) in accordance with the **estimate**, 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(4).

The annual levy shall be payable in equal monthly instalments due in advance on the 1<sup>st</sup> day of each and every month of each financial year, provided that **Members** in General Meeting may give directions to the **Directors** to deviate from this arrangement.

Any special- or other levy shall be payable in a form that the **Directors** may direct, subject to the approval of **Members** in General Meeting by a mere majority and/or in terms of such directions as the **Members** may impose at any General Meeting.

(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(6.3) 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**, 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).
- (6.8) All **Levies** and any special levies referred to in Article 1.5(6.1) and (6.7), becomes due on the passing of a 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 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 interest rate shall be 18% (eighteen percent) per annum or the prime interest rate levied by the **Company's** banker plus 6% (six percent), whichever rate is the greater. The interest rate shall not exceed any limitation as may be prescribed from time to time in terms of the National Credit Act, No. 34 of 2005, in which event the interest rate shall be limited to the maximum interest rate allowed. 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** shall be liable for payment of **Levies** and/or special levies that are still payable in respect of the **Unit**,



from as from the date upon which he becomes the registered owner of the **Unit** 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 or as may be determined by the **Directors** from time to time), 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**.
- (6.14) Interest imposed by the **Directors** shall be subject to review by the **Members** in General Meeting and shall not exceed any limitations set by legislation.
- (6.15) 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.
- (6.16) **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.
- (6.17) Should a **Member** fail to effect payment of contributions (annual and/or special) levied in terms of the **MOI** 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 re-payment 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.

(6.18) All levies shall be due and payable in advance on the 1<sup>st</sup> (first) day of each month.

## **Article 2 – Rights of Members**

### **2.1 Members' right to Information**

A **Member** has the right to information as set out in Section 26(1) of the **Act**. A **Member** shall be entitled to the information as recorded in the **Member's** Register. Unless authorised by a **Member**, the **Company** shall not be entitled to disclose any further contact details.

### **2.2 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.

### **2.3 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**) at any time before commencement of the proceedings or meeting at which the proxy exercises any rights of the **Member**.

### **2.4 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.

### **2.5 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 6 (six) 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 10% 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, preferably within the **Township** or vicinity thereof, not exceeding 10km from the main gate of the **Township**.

### **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 at least 15 (fifteen) **Business Days**.
- (2) The notice convening each meeting of the **Company** shall specify the place, the date 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 not limited or restricted by this Memorandum of Incorporation, 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) The quorum requirement for a Members Meeting to begin, or for a matter to be considered, is 25% (twenty five percent) of the votes entitled to be exercised by the **Members** present in person or by proxy. Notwithstanding the quorum requirement, a **Members'** Meeting shall not begin unless at least 3 (three) **Members** are present in person.
- (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) [*10% requirement*] or 64(3) [*at least 3 (three) Members present in person*], 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 subsection 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), as set out in section 64(9), 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) – (13).
- (2) The maximum period allowable for an adjournment of a **Members** meeting is 15 (fifteen) **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.
- (4) Notwithstanding any quorum requirement that may be applicable, a **Members'** Meeting shall not begin unless at least 3 (three) **Members** are present in person.

### **3.8 Members resolutions**

- (1) For any ordinary resolution to be adopted at a **Members** meeting, it must be supported by at least 50% (fifty percent) plus 1 vote of the **Members** who voted on the resolution, as stipulated in 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(9).
- (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 authorize the basis for compensation to **Directors** of the **Company**, as required by Section 66(9);
- (g) to remove the Managing Agent, as contemplated in Article 11.4(3).

### 3.9 Votes of Members

At every General meeting:

- (1) Every **Member**, in person or by proxy and entitled to vote, shall have 1 (one) vote for each **Unit** registered in his name;
- (2) If a **Unit** 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 this **MOI**, no person other than a **Member**, duly registered and who has paid every levy or other sum due and payable to the **Company** in respect of or arising out of his membership, and who has complied with their obligations as are envisaged in Article 1.5(5), shall be entitled to be present or to speak or to vote on any question, either personally or by proxy, at any General Meeting;
- (4) With reference to section 63(4) and section 63(5) of the **Act**, 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**. 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.
- (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 **Company** or the **Managing Agent** (if any), not less than 48 (forty eight) hours before the appointed time of the meeting and if required to form a quorum, the Chairman of the relevant meeting may accept the late delivery of a proxy at any time 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) The instrument appointing a proxy shall include a copy of the Identification document of the **Member** concerned (or of his appointed agent, duly authorized in writing) and where the **Member** is not a natural person, the instrument shall include a resolution of the entity authorizing the signatory, being the resolution of a Trust/CC/Company.
- (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.
- (7) 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:

**AMBERFIELD VALLEY 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: \_\_\_\_\_**

Note:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. A proxy need not be a member of the Company.
2. The instrument appointing a proxy shall include a copy of the Identification document of the **Member** concerned (or of his appointed agent, duly authorized in writing) and where the **Member** is not a natural person, the instrument shall include a resolution of the entity authorizing the signatory, being the resolution of a Trust/CC/Company.

### 3.11 Conduct of Meetings

- (1) The **Members** may, from time to time, at the Annual General Meeting, 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 election of **Directors**;
- (3) 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;
- (4) The consideration of the accountant/auditors of the **Company** for the ensuing financial year;
- (5) The consideration of the report of the auditors;
- (6) The ratification/amendment/repeal of any rules made by the **Board**;
- (7) Confirmation of the estimate of income and expenditure and determination of levies payable by **Members**, as determined by the **Directors**;
- (8) The appointment of an auditor for the ensuing financial year.

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

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

- (1) The **Board of Directors** of the **Company** comprises the elected **Directors**, and their alternate **Directors** each of whom is to -
  - (a) be elected in the following manner:
    - (i) There shall be a **Board of Directors** of the **Company** which shall consist of not less than 3 (three) and not more than 5 (five) **Directors**;
    - (ii) **Directors** shall serve for a term of 1 (one) year or until the next **Members'** Meeting, and shall be eligible for re-election;
    - (iii) If a **Members** meeting for the election of **Directors** is not convened before the expiry of the 1 (one) year term within which a Director serves, then and in that event, such Director(s) shall continue to hold office from the date of his/her/their appointment until the next Annual General Meeting following such appointment and at which meeting each Director shall be deemed to have retired from office but will be eligible for re-election to the **Board of Directors** at such meeting;
    - (iv) Nominations for election of **Directors** 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**) at any time before commencement of the proceedings or meeting at which the nomination is to be considered;
    - (v) Upon any vacancy occurring in the **Board of Directors** prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by the **Chairman** of the **Board of Directors** for the time being and in his absence or inability, the **Vice-Chairman**;
    - (vi) Within 7 (seven) 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 Annual General Meeting held next after their said appointments, provided that the office of the **Chairman** or **Vice-Chairman** shall *ipso facto* be vacated

by the Director holding such office upon his ceasing to be a Director for any reason;

- (vii) The majority of **Directors** should be resident owners or their spouses, unless insufficient nominations have been received; and
  - (b) serve for a term of 1 (one) year.
- (2) In addition to the elected **Directors** there may be directly appointed **Directors** of the **Company**, or the appointment or election of alternate **Directors** of the **Company**, as contemplated in section 66(4), to be designated in the following manner: The **Chairman** of the **Board of Directors** for the time being, and in his absence or inability to act, the **Vice-Chairman** of the **Board of Directors** may, upon any vacancy occurring in the **Board of Directors**, appoint a Director to fill such vacancy until election of Board Members at the next Annual General Meeting or Special General Meeting convened for this purpose.
- (3) 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 and he must therefore:
- (a) be a paid-up **Member**, or a representative of a paid-up **Member** where the **Member** is a legal entity, and/or the spouse of a paid-up **Member**, of the **Company** at the time of appointment as Director;
  - (b) not be in breach of any of his/her obligations as a **Member** of the **Company**, as stipulated in the **MOI** or the **Rules**;
  - (c) not be disqualified from acting as Director of the **Company** in terms of the Companies Act, 2008;
  - (d) not be a nominee or representative of a **Member**, where the **Member** is a legal entity and such legal entity is in breach of any of its obligations in terms of the **MOI** or the **Rules**;
  - (e) not be an employee of the **Company** and/or the **Managing Agent** or a **Member/Director** of the **Managing Agent** or any of its employees.
- (4) Each *appointed* (not elected) Director of the **Company** serves for an indefinite term, until substituted by the person or entity that made the appointment or until the next Annual General Meeting following his appointment.

- (5) 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 2 (two) consecutive meetings of the **Directors** without leave having been granted to him and if the **Board** so resolve;
  - (f) his removal has been approved by ordinary resolution of the **Members** in General Meeting;
  - (g) he is suspended by the **Board** due to disciplinary procedures pending or to be initiated, notwithstanding the fact that the cause of such disciplinary action is disputed by the Director concerned.
- (6) 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**.
- (7) 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 (round-robin resolution) 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, subject to the following provision:
  - (a) A **Member** shall be entitled to attend and speak at any meeting of the **Directors**, but shall not in his or her capacity as such, be entitled to vote thereat.
- (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**].
- (8) Each **Director** has 1 (one) vote on a matter before the **Board**.
- (9) A simple majority of the votes cast on a Resolution is sufficient to approve a Resolution of the **Board of Directors**.
- (10) 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**.
- (11) 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.

- (12) Any **Director** who has such a personal interest or conflict of interest regarding any matter as mentioned in Article 4.3(11), shall be obliged to disclose such personal interest or conflict of interest to the **Board** forthwith.
- (13) Should there be an equality of votes for or against any Resolution of the **Board**, the Resolution shall be deemed to have been defeated.
- (14) The **Directors** shall cause the Minutes of each **Board** Meeting to be kept in accordance with Sections 73(6) and (7) of the **Act**, which Minutes shall be reduced to writing and circulated within 14 (fourteen) days of the meeting and certified as correct by the **Board** at the next **Board** meeting.
- (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** and the **Auditors**.
- (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 **Chairman** shall direct.
- (18) A Resolution signed ("**in Writing**") by a majority of the **Directors** shall be valid in all respects as if it had been duly passed at a meeting of the **Board of Directors** provided that the proposed resolution was circulated to all the **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 to hold office as such for 1 (one) year or until the next Annual General Meeting, whereafter the newly elected **Directors** will elect a new **Chairman** at their first meeting after the Annual General Meeting.
  - (b) The **Chairman** elected shall hold his office until the Annual General Meeting next after his appointment, 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 **Directors**



present shall immediately appoint one of their number or a **Member** present, 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**, to be appointed by the Board of **Directors**, shall preside at such meeting and failing such appointment, 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(4) 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(7) 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(7) is not limited or restricted by this Memorandum of Incorporation.

#### 4.5 Officers and Committees

- (1) The **Board of Directors** may appoint any officers it considers necessary to better achieve the objects of the **Company**.
- (2) The authority of the **Company's Board of Directors** to appoint committees, chaired by a **Director**, 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 72(2)(a) is not limited or restricted by this **MOI**.

- (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) The **Directors** shall ensure that each committee is under the Chairpersonship of a **Director**.
- (5) The appointment of a committee shall be effected **in writing** with duly defined rights, powers and duties.
- (6) The **Directors** reserve the right to terminate the existence of any committee, or to withdraw or suspend any of the rights, powers and duties so delegated.
- (7) The Minutes of Meetings of each committee shall be promptly provided to the **Directors**.
- (8) The **Directors** furthermore reserve the right to remove any committee member, without reasons being advanced therefor, and similarly, to appoint and/or co-opt further **Members** to such committee.
- (9) Each committee shall meet as frequently as deemed necessary (or as otherwise directed by the **Directors**).

#### **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**.
- (3) Before every **AGM**, the **Directors** shall cause to be prepared an itemised estimate of the anticipated income and expenses of the **Company** during the ensuing financial year, which estimate shall be laid before the **AGM** for consideration and approval.
- (4) The estimate of expenses referred to in Article 4.6(3) above shall include a reasonable provision for contingencies and maintenance of the **Common Property**.
- (5) The **Directors** shall cause to be prepared, and shall lay before every **AGM**, for consideration and approval, a financial statement in

conformity with generally accepted accounting practice and in compliance with section 29 and 30 of the **Act**, which statements shall present the state of affairs of the **Company** and its finances and transaction as at the end of the financial year concerned.

- (6) The financial statements shall include information and notes pertaining to the proper financial management by the **Company**, including:
  - i. an analysis of the periods of debts due and the amounts due in respect of **Levies**, special levies and other contributions;
  - ii. an analysis of the periods and the amounts due, owing by the **Company** to the creditors and in particular to any public or local authority in respect of charges for consumption or services, including but not limited to, water, electricity, gas and refuse removal;
  - iii. the expiry dates of all insurance policies.
- (7) The **Directors** shall further cause to be prepared and shall lay before every **AGM** a report signed by the **Chairman** reviewing the affairs of the **Company** during the past year, for consideration by the **Members**.
- (8) The **Directors** shall cause copies of the schedules, estimate, audited statement and report referred to in this Article and Article 8.6.3 to be delivered to each **Member**, and to any **Registered Mortgagee** which has advised the **Company** of its interest, at least (15) fifteen business days before the date of the **AGM** at which they are to be considered.
- (9) Delivery under Article 13.6 above shall be deemed to have been effected if the documents referred to are sent to the **Member** at his *domicilium* referred to in Article 6.
- (10) A copy of the **AFS** shall be provided to a **Member** at the written request thereto, or shall be open for inspection at the registered office of the **Company** during normal business hours and upon reasonable notice.

#### **4.7 Annual Financial Statements, Audit and Independent Review**

- (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 **Company's** Annual Financial Statements shall be prepared in accordance with the provisions of Section 30 of the **Act** and is subject to either a statutory audit, or non-statutory audit by **Board** Resolution only, independent review or neither, if so required in terms of Sections 30(2), 30(2A) and 30(7) and Regulations 26, 28 and 29.
- (3) In the event that the **Company** appoints an Auditor in terms of a **Board** Resolution as contemplated in Section 30(2)(b)(ii)(aa), the Auditor shall not be subject to Section 90 (Appointment of Auditor), Section 91 (Resignation of Auditors and vacancies), Section 92 (Rotation of Auditors), and Section 93 (Rights and restricted functions of Auditors) of the **Act**.
- (4) In terms of the **Act** and this **Memorandum of Incorporation**, a copy of the relevant Annual Financial Statements must be presented at the first Members Meeting after the statements have been approved by the **Board**, provided that such copy may be made available electronically to the **Members**.
- (5) 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 Remuneration of Directors

**Directors** shall be entitled to reasonable remuneration for services rendered in their capacities as such, only when determined by the **Members** in General Meeting and **Directors** shall further be entitled to be reimbursed in respect of all reasonable and proven expenses necessarily incurred by them respectively in or about the performance of their duties as Directors.

#### 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 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 – Dispute Resolution, Fines and Penalties and Rule Enforcement**

### **5.1 Dispute Resolution**

- (1) Any dispute between the **Company**, and a **Member** or between **Members** arising out of or in connection with or related to the provisions of this **MOI** (including any or all of its Annexures) and concerning any of the rights/obligations of the parties, including any dispute as to the validity of the **MOI**, save where an interdict or any form of urgent and/or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these dispute resolution provisions.
  
- (2) Mediation:
  - (i) The parties will agree to the appointment of an independent person to act as mediator to the dispute.
  - (ii) If the parties are unable to agree to the appointment of a mediator, application will be made to the Association of Arbitrators, Southern Africa (AOA), for a suitably qualified mediator to be appointed.
  - (iii) The mediator shall endeavour to assist the parties to settle the dispute by agreement. The mediator shall not adjudicate the dispute, make any recommendations to the parties or advise any party on the merits of the dispute.
  - (iv) The mediator shall have the discretion to conduct the mediation in such a manner as he/she determines.
  - (v) The mediator shall be responsible for the administration of the mediation including the process and conduct of the mediation, which shall be done in an expeditious and cost-effective manner.
  - (vi) Should the mediator be unable to mediate the matter successfully within 10 (ten) days of being appointed, the matter will be deemed to have failed mediation.
  
- (3) Arbitration:
  - (i) In the event of the mediation failing, the dispute will automatically be referred to arbitration.
  - (ii) 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 **MOI**, 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.

- (iii) Notwithstanding the provisions of Article 5.1(3)(ii) any dispute concerning the payment of monies due to the **Company**; shall be excluded from arbitration and mediation.
- (iv) If 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, if appointed, the **Managing Agent** 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.
- (v) 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 shall 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.
- (vi) 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 of any of the parties, appoint **in writing** an arbitrator within 7 (seven) days after they have been required to make the appointment.
- (vii) 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 for payment was made, the other party shall be entitled to abandon arbitration proceedings.
- (viii) 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.
- (ix) 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 **MOI** 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 for the outcome of the arbitration.

- (x) 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.
- (xi) 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.
- (xii) The provisions of the Arbitration Act, No. 42 of 1965 shall be applicable.
- (xiii) 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 a **Member** or more than one **Members** or between a number of **Members** 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.

## **5.2 Enforcement of Rules:**

For the enforcement of any Rules made by the **Directors** or the **Company**, the **Directors** shall be entitled to:

- (a) take such action, including proceedings in Court, as they may deem fit;
- (b) 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.
- (c) Any penalties imposed by the **Directors** are subject to adjustment and/or ratification by **Members** in General Meeting.



- (d) 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 ("*the first demand*") will be sent to the **Member**, specifying the nature of the breach and demanding him to remedy the breach where applicable, within a period stipulated in terms of the letter of demand and which demand period shall be reasonable depending on the nature and/or urgency of the matter concerned;
  - (ii) Should the **Member** fail to adhere to the **first demand** and to remedy the breach, then a letter of demand, incorporating a penalty ("*the final demand*") will be sent to the **Member**;
  - (iii) Should the **Member** fail to adhere to the **final demand** and to remedy the breach and/or to pay the penalty then, unless written objection is received from the **Member** concerning the alleged contravention, the prescribed penalty 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;
  - (iv) For any consecutive breach or transgression of the same rule within a period of 6 (six) months, it would not be necessary for the **Board** to issue a **first demand** and in such event a **final demand** shall be issued;
  - (v) If a **Member** disputes any breach, a Committee of 2 (two) **Directors** and 3 (three) **Members** appointed by the **Chairman** shall on receipt of the **Member's** written objection convene a meeting with the **Member** within a period or 10 (ten) days 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;
  - (vi) The decision of the **Board** shall be final unless objected to **in writing** within 10 (ten) days from notification of its decision;
  - (vii) Should the **Member** refuse to accept the decision of the **Committee** on any matter, such dispute shall then be referred to mediation and/or arbitration in terms of Article 5;

- (viii) Any fine imposed upon any **Member** will be deemed to be a debt due by the **Member** to the **Company** and shall be recoverable by ordinary civil process.

## **Article 6 – Company Rules**

- 6.1 In accordance with the provisions of Section 15 of the **Act**, the Rules as set out in Schedule 1 hereto, are effective as at the **Effective Date**, which Rules may from time to time be ratified, 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 **MOI** 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 **MOI** or the Rules to each **Member** in the prescribed manner in terms of Article 8.
  - (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** in the prescribed manner in terms of Article 8.
- 6.2 The Rules concern all matters referred to in Article 1.3(2) and 1.3(3), 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**.
- 6.3 Save to the extent that the Rules as set out in Schedule 1 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 **MOI** is accepted by the **Members**, will remain of force and effect as if they were issued in terms of Article 1.3(2).

## **Article 7 – Domicilium Citandi Et Executandi**

- 7.1 The address of the **Company** constituting its *domicilium citandi et executandi*, shall be as is registered in terms of the Notice of Incorporation registered with the Companies and Intellectual Property Commission ("CIPC").
- 7.2 The *domicilium citandi et executandi* of each **Member** shall be the address of the **Unit** registered in his name, provided that such **Member** shall be entitled to change the said domicilium but that any new domicilium selected shall be situated in the Republic of South Africa, and that the change shall only be effective upon receipt of written notice thereof by the **Company**.

## **Article 8 – Notices**

- 8.1 For any notice or document to be delivered or published for any purpose contemplated in the **Act**, the Regulations, this **MOI** or the **Rules** of the **Company**, the provisions of Table CR3 in terms of Regulation 7, as amended in terms of this **MOI**, shall apply and for which purpose such notice may be delivered:
- (1) by fax, if the addressee has a fax number; or
  - (2) by electronic mail, if the addressee has an address for receiving electronic mail; or
  - (3) by registered post to the addressee's *domicilium citandi et executandi* or last known address; or
  - (4) by hand to the addressee or to any representative authorized in writing by the addressee to accept service; or
  - (5) by leaving the notice at the addressee's place of residence or business with a person who is apparently at least 16 years old and in charge of the premises at the time; or
  - (6) by leaving the notice at the addressee's place of employment with a person who is apparently at least 16 years old and apparently in authority.
- 8.2 A notice will be deemed to have been delivered if:
- (1) by fax – on the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or a different time;

- (2) by electronic mail – on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time;
  - (3) by registered post – on the 3<sup>rd</sup> (third) day following the day on which the notice or document was posted, as recorded by the Post Office, unless there is conclusive evidence that it was delivered on a different day;
  - (4) by hand – on the date and at the time recorded on a receipt for the delivery;
  - (5) by leaving the notice at the place of residence or business of the addressee – on the date and at the time recorded on a receipt for the delivery;
  - (6) by leaving the notice at the addressee's place of employment – on the date and at the time recorded on a receipt for the delivery.
- 8.3 Any notice to be given by a **Member** to the **Company** shall be delivered to the **Company** by delivery of such notice to the registered address of the **Company**, as recorded in the records of CIPC from time to time, unless a **Managing Agent** is appointed, in which event such notice shall be delivered to the office of the **Managing Agent**, as will be recorded and reflected in the Minutes of the Annual General Meeting from year to year.

## **Article 9 – Deposit and Investment of Funds**

- 9.1 The **Directors** shall cause all moneys received by the **Company** to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the **Company** and, subject to any direction given or restriction imposed at a general meeting of the **Company**, such moneys shall only be withdrawn for the purpose of payment of the expenses of the **Company** or investment in terms of Article 9.3.
- 9.2 The **Directors** may authorise the **Managing Agent** to administer and operate the accounts referred to in Article 9.1 and 9.3, provided that where the **Managing Agent** is an estate agent as defined in the Estate Agents' Act (Act 112 of 1976), the **Directors** may authorise such **Managing Agent** to deposit moneys contemplated in Article 9.1 in a trust account as contemplated in section 32 (3) of the Estate Agents' Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in Article 9.1.
- 9.3 Any funds not immediately required for disbursement, may be invested in a savings or similar account with any bank approved by the **Directors**.

- 9.4 Interest on moneys invested shall be used by the **Company** for any purpose consistent with its objectives.

### **Article 10 – No refunds or distribution of profits or assets**

- 10.1 The **Members** shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.
- 10.2 No portion of the profits or gains of the **Company** shall be distributed to any **Member** or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

### **Article 11 – Appointment, powers and duties of a Managing Agent**

- 11.1 The **Directors** may from time to time, and shall if required by a Registered Mortgagee of 25% (twenty five percent) of the **Units** or by the **Members** of the **Company** in a general meeting, appoint in terms of a written contract, a **Managing Agent** to control, manage and administer the **Property** and the obligations to any public or local authority by the **Company** on behalf of the **Members**, and to exercise such power to collect **Levies** and to appoint a supervisor or caretaker.
- 11.2 The appointment of a **Managing Agent** shall be in **writing**.
- 11.3 The **Directors** shall ensure that there is included in the contract of appointment of any **Managing Agent**, a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the **Directors** may, without notice, cancel such contract of appointment, and that the **Managing Agent** shall have no claim whatsoever against the **Company** or any of the **Members** as a result of such cancellation.
- 11.4 The contract with the **Managing Agent** shall further provide for the appointment to be revoked, and such **Managing Agent** shall cease to hold office, if:-
- (1) where the **Managing Agent** is a juristic person, an order is made for its provisional or final liquidation or, where the **Managing Agent** is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the

**Managing Agent** is a company, it is placed under business rescue;  
or

- (2) the **Managing Agent** is convicted of an offence involving an element of fraud or an element of dishonesty or, where the **Managing Agent** is a company or a close corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty; or
  - (3) a special resolution of the **Members** of the **Company** is passed to that effect; provided that in such event the **Managing Agent** so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.
- 11.5 The **Managing Agent** shall keep full records of his/her/its administration and shall report to the **Company** and all holders of registered sectional mortgage bonds who have notified the **Company** of their interest of all matters which in his/her/its opinion detrimentally affect the value or amenity of the **Property** and any of the sections.
- 11.6 The **Directors** shall give reasonable prior notice to the **Managing Agent** of all meetings of the **Directors** and he may with the consent of the **Directors** be present thereat.
- 11.7 The **Directors** shall from time to time furnish the **Managing Agent** with copies of all minutes of the **Directors** and of the **Members**, unless the **Managing Agent** has prepared such Minutes.

# **Schedule 1**

## **Rules**

### **Introduction:**

These Rules are intended to preserve the prime objectives of the **Company**, namely to protect and advance the communal interest of owners, occupants, visitors and users of any of the properties comprising the **Township**, to set uniform standards for development of the properties within the **Township**, to regulate the use by owners, members and occupiers of common areas within the **Township** and to set Rules and standards which will protect the rights of all interested parties and will promote good neighbourliness.

These Rules may be amended from time to time by the Directors of the **Company** in accordance with the provisions of Section 15 of the Act.

### **Definitions:**

In these Rules 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 at any General Meeting of the **Company**;
- (iv) **"Board"** : Means the **Board of Directors** of the **Company** from time to time;
- (v) **"Business day"** : When, in this **Memorandum of Incorporation**, a particular number of 'business days' is provided for between the happening of one event and another, the number of days must be calculated by:
  - (a) excluding the day on which the first such event occurs;

- (b) including the day on or by which the second event is to occur; and
  - (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in para-graphs (a) and (b), respectively;
- (vi) **"Chairman"** : Means the **Chairman** of the **Board of Directors**, elected in accordance with this **Memorandum of Incorporation**, or if that expression is used with reference to a General Meeting or meeting of the **Directors** at which that person is not present or does not act as **Chairman**, the person acting as **Chairman** in accordance with the provisions of this Memorandum of Incorporation;
- (vii) **"Common Property"** : Refers to the **Common Property Areas** in the **Township**, including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the **Common Property Areas** and within servitude areas registered in favour of the **Company**, that are owned by the **Company** and for which the **Company** bears the responsibility to maintain, and may include, but not limited thereto, the streets, streetscapes, pavements, fencing, security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, storm water reticulation and any equipment or amenities used ancillary to such **Common Property Areas**, including gardens and buildings;
- (viii) **"Common Property Areas"** : Means all those areas transferred to or registered in the name of the **Company** and located in the **Township** or those areas within the



**Township**, excluding the **Units**;

- (ix) **"Company"** : Means the Amberfield Valley Home Owners Association (NPC), Registration Number: **2005/023582/08**;
- (x) **"Directors"** : Means the **Directors** of the **Company** who shall, for the purposes of the **Act**, be the **Directors** of the **Company** appointed or elected in accordance with the provisions of this Memorandum of Incorporation;
- (xi) **"Effective Date"** : Means the date upon which CIPC issues a Registration Certificate, or accepts this Memorandum of Incorporation, or the date as recorded on the Notice of Incorporation, whichever event first occurs;
- (xii) **"Law"** : Means any law of general application 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 and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- (xiii) **"Levies"** : Means all contributions levied from time to time by the **Directors** upon **Members** for the purpose of meeting all the expenses which the **Company** has incurred or which the **Directors** reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuit of its business, and as more

- fully stipulated in Article 1.5(6) of the Memorandum of Incorporation;
- (xiv) **"Managing Agent"** : Means any person or body or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed by the **Company** as an independent contractor from time to time, if at any time there is no MA then the reference to the MA shall be reference to the Board;
- (xv) **"Member / Members"** : Means any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a **Unit** in the **Township** and/or any person who has successfully applied for membership of the **Company** and has become a registered **owner** of a **Unit** in the **Township**;
- (xvi) **"MOI"** : Means the Memorandum of Incorporation of the **Company**;
- (xvii) **"Resident(s)"** : Means a person in occupation of a **Unit** on a temporary or permanent basis by agreement with and/or consent from the **Member** of a relevant **Unit** or through his affiliation or association with such **Member**;
- (xviii) **"Township" / "Estate"** : Means the property/ies comprising the Amberfield Valley Estate, being Rooihuiskraal North Ext 24;
- (xix) **"Unit"** : Means an erf, whether consolidated or comprising a sub-division thereof, improved or unimproved, and including any outbuildings;
- or
- a Sectional Title Unit established in terms of the Sectional Titles Act, Act 95 of 1986;

- (xx) **"Vice-Chairman"** : Means the **Vice-Chairman** of the **Board of Directors**;
- (xxi) **"in Writing"** : Means written, printed, type-written, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.
- (xxii) Words importing -
- (i) the singular shall include the plural and *vice versa*;
  - (ii) the masculine gender shall include females; and
  - (iii) persons shall include partnerships, trusts and corporate bodies, and *vice versa*.
- (xxiii) Head notes to paragraphs in this **MOI** are inserted for purposes of reference only and shall not affect the interpretation of provisions to which they relate.
- (xxiv) Reference to the **MOI** means this **Memorandum of Incorporation**, including all schedules and annexures hereto.
- (xxv) Any word or expression which is defined in the Act and which is not otherwise defined in these Rules shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the **Company**.
- (xxvi) These Rules shall be deemed to authorise the **Company** to do anything which the Act empowers a Company to do if so authorized by its **MOI** unless that authority is expressly excluded.