

DATED JULY 2012

Memorandum of Incorporation for a non-profit Company

Republic of South Africa

Companies Act, 71 of 2008

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**Memorandum of Incorporation of:**

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**THE ISLAND LAND OWNERS ASSOCIATION (RF) NPC**

**(REGISTRATION NUMBER: 2000/022487/08)**

which is referred to in this Memorandum of Incorporation as "the Company".

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In this memorandum:

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 71 of 2008 ("the Act");

This memorandum is to be construed as not including:

- (b) the headings to paragraphs; and
- (c) sections of the Act designated by the letter "S", and the numbers of the sections referred to.

## 1. **INTERPRETATION**

1.1 In this memorandum, unless clearly inconsistent with or otherwise indicated by the context, the following words and phrases will have the corresponding meanings assigned to them and cognate expressions will have similar meanings:-

- 1.1.1 "the Association" means "The Island Landowners Association NPC".
- 1.1.2 "the Auditors" means the Auditors appointed at the AGM.
- 1.1.3 "building" means any building in the Scheme;
- 1.1.4 "business day" means weekdays other than Saturdays, Sundays and Public Holidays.
- 1.1.5 "Chairman" means the Chairman of the board of directors of the Company elected in terms of paragraph 26;
- 1.1.6 "common areas" mean:
  - 1.1.6.1 the right of way servitudes on SG Diagram No 7625/1999, No 843/70, No 1645/1971 and No 5715/2000;
  - 1.1.6.2 the right of way servitudes in favour of properties situated on Portion 3;
  - 1.1.6.3 portion 4;
  - 1.1.6.4 portion 51;
  - 1.1.6.5 servitude in favour of portion R/45;

- 1.1.6.6 the perimeter fence and/or walls around the Scheme;
  - 1.1.6.7 the access gates to the Scheme;
  - 1.1.6.8 the guardhouse/s;
  - 1.1.6.9 all roads in the Scheme;
  - 1.1.6.10 all the lighting and the landscaping in the Scheme situated in and on the verges of all roads referred to in paragraph 1.1.6.9;
  - 1.1.6.11 street frontages of all roads referred to in paragraph 1.1.6.9;
  - 1.1.6.12 fencing (electrical or palisade) and such other common facilities in the Scheme as determined by the directors of the Company;
  - 1.1.6.13 all services taken over under council conditions, but excludes the common areas situate within a sectional title development/s within the scheme;
- 1.1.7 "Company Rules" means rules made by the board in terms of paragraph 12;
  - 1.1.8 "Consent" means in terms of the Subdivisions of Agricultural Land Act 1970;
  - 1.1.9 "detached (house, home or dwelling)" means that the building does not share an inside wall with any other house or dwelling. It has only outside walls and does not touch any other dwelling. This excludes duplexes, triplexes, fourplexes, or linked houses (which are more properly called semi-detached);
  - 1.1.10 "the Development" means any subdivided portions of portion 3 of the Island No 13 no 502 IQ District of North West Province;
  - 1.1.11 "Development Schemes" means any Scheme developed on the land;
  - 1.1.12 "Developer" means WOOD BRIDGE PROPERTY DEVELOPMENT (PTY) LTD (No 1994/010113/07);
  - 1.1.13 "duet" means two residential dwellings units per erf.

The following erven are Duet: 16, 17, 22, 23, 34, 35, 36, 38, 40, 46 & 73.

- 1.1.14 "erf" means any subdivided portions of portion 3 of the Island No 13 no 502 IQ District of North West Province and include (but not limited to) residential erven, duet erven group housing erven and common areas;
- 1.1.15 "financial year" means a financial period of twelve months ending 28 February each year;
- 1.1.16 "flat" means a self-contained housing unit (a type of residential real estate) that occupies only part of a building;
- 1.1.17 "group housing" means a group of detached and/or attached dwelling units on an erf that form an integrated, harmonious and architectural unit and include concepts like cluster housing, townhouses, simplexes, duplexes and all such developments, but excludes uses included in the definition of "Single Dwelling House", Residential Building" or "Flat"; and the following erven are Group Housing: 52, R/5, 53, R/6, 7, 8 and 50;
- 1.1.18 "Local Authority Rules" means the rules imposed by Tlokwe Municipality;
- 1.1.19 "Member" means a Member referred to in paragraph 8.1;
- 1.1.20 "Memorandum" means this Memorandum of Incorporation;
- 1.1.21 "North West Provincial Administration" means Department Local Government, housing, Planning and Development;
- 1.1.22 "Ngwathe" means the Free State Provincial District Council of which Parys Municipality forms part of;
- 1.1.23 "Owner" means the registered owner or owners of an erf or erven transferred into its name or in respect of which the Developer has taken out a Certificate of Registered Title;
- 1.1.24 "Portion 2", total area 105,5828 HA consisting of 354 residential erven and Remaining Extent shown on the Land Surveyor's Plan (subdivisions No's 30701 and 30711)";

- 1.1.25 "Portion 3", total area 45,985 HA consisting of 81 erven shown on the Land Surveyor's Plan (subdivision No 32231)";
- 1.1.26 "Property" means freehold immovable property transferred to an Owner or in respect of which the Developer has taken out a Certificate of Registered Title in the Scheme, as appears on a General Plan or Subdivisional Diagram and shall have the same meaning as erf and erven as defined;
- 1.1.27 "Registered Office" means the Registered Office for the time being of the Company;
- 1.1.28 "Regulations" means the regulations promulgated under the Act;
- 1.1.29 "Republic" means the Republic of South Africa;
- 1.1.30 "Resolution" means a Resolution other than a Special Resolution passed at an Annual General Meeting or any other General Meeting by ordinary majority of total votes represented at such meetings by Members present in person or by proxy;
- 1.1.31 "Residential owner" means the owner of an erf which is intended to be used for private residential purposes;
- 1.1.32 "Rules" means Scheme Rules and if the context so requires, the Company Rules and the provisions of this memorandum collectively;
- 1.1.33 "Scheme Rules" means rules made by the board referred to in paragraph 10.2.2;
- 1.1.34 "Secretary" means the secretary of the Company;
- 1.1.35 "Scheme" means the freehold, sectional, and other residential or development on the Land and all subdivisions thereof;
- 1.1.36 "single-residential (home, house, or dwelling)" means that the building is usually occupied by just one household or family, and consists of just one dwelling unit. It does exclude, however, any short term accommodation (guesthouse, hotel and motels); and the following erven are Single Residential: R/9, R/10, R/11, R/12,

R/13, R/14, R/15, R/18, R/19, R/20, R/21, R/24, R/25, R/26, R/27, R/28, R/29, R/30, R/31, R/32, R/33, R/37, R/39, R/41, R/42, R/43, R/44, R/45, R/47, R/48, R/49, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84;

- 1.1.37 "sign" includes the reproduction of a signature by lithography, printing with an india-rubber stamp or any other mechanical process or partly the one and partly the other process, and "signature" has the corresponding meaning;
- 1.1.38 "Special Resolution" means a Resolution passed at an Annual General Meeting or any other General Meeting whereat Members present in person or by proxy present not less than 25% (twenty five per centum) of the total votes; and passed by majority of at least 75% (seventy five per centum) of the total votes represented by Members present in person or by proxy;
- 1.1.39 "Vice-Chairman" means the Vice-Chairman of the board of directors of the Company elected in terms of paragraph 26;
- 1.1.40 "writing" includes printing, typewriting, lithography or any other mechanical process, or partly one and partly the other;
- 1.2 words that are defined in the Act and the Sectional Titles Act bear the same meaning in this memorandum as contemplated in those Acts;
- 1.3 the Schedules attached to this memorandum form part hereof;
- 1.4 words importing the singular will include the plural and vice versa;
- 1.5 a reference to any person will include a reference to natural person, partnership, syndicate, society or other voluntary association, a close corporation, company or body, whether corporate or not; and
- 1.6 any word herein signifying the masculine will include the feminine and the neuter.

## 2. **INCORPORATION AND NATURE OF THE COMPANY**

- 2.1 The Company is incorporated in accordance with, and governed by:

- 2.1.1 the unalterable provisions of the Act that are applicable to non-profit companies;
- 2.1.2 the alterable provisions of the Act that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this memorandum; and
- 2.1.3 the provisions of this memorandum.

### **3. OBJECTS AND POWERS OF THE COMPANY**

- 3.1 The Company is a non-profit company with Members, with the following objects:
  - 3.1.1 to act as the supreme authority managing and controlling all development on the Land;
  - 3.1.2 to establish, control, and maintain an effective and efficient access control system for the benefit of occupants of the Scheme;
  - 3.1.3 to maintain, and control for the benefit of occupants of the Scheme all roads in the Scheme;
  - 3.1.4 to control, and promote and provide for the maintenance and upkeep of all common area improvements in the Scheme;
  - 3.1.5 to control, promote enforce and maintain architectural, aesthetical, and environmental standards in the Scheme as may be prescribed by the Directors and the Architectural and Environmental Guidelines;
  - 3.1.6 to determine, control, and enforce the uses that properties in the Scheme may be put to;
  - 3.1.7 to enforce title deed conditions applicable in favour and/or against properties in the Scheme;
  - 3.1.8 to control, promote and maintain an acceptable standard in respect of all services provided in the Scheme;
  - 3.1.9 generally promote and manage the communal interests of all the owners of all properties in the Scheme;
  - 3.1.10 to impose Scheme Rules to facilitate good order in the Scheme, and the attainment of the objects of the Company;



- 3.1.11 to formulate a penalty system for non-compliance of, or breach of any Scheme Rules, standards and regulations made by the Company, and to enforce same;
  - 3.1.12 to enforce the Municipality of Tlokwe's conditions as contained in paragraph 30 hereof.
  - 3.1.13 to perform all such functions of a body corporate as described and provided for in terms of the Sectional Titles Act as amended, *mutatis mutandis* as if the Company were a body corporate as described in the Sectional Titles Act as amended, in respect of all properties in the Scheme *mutatis mutandis* as if the properties in the Scheme were units, common areas and roads in the Scheme were common property, and Land in the Scheme was land as described in the Sectional Titles Act as amended;
  - 3.1.14 to exercise all such powers of a body corporate as described and provided for in terms of the Sectional Titles Act as amended, *mutatis mutandis* as if the Company were a body corporate as described in the Sectional Titles Act as amended, in respect of all properties in the Scheme *mutatis mutandis* as if the properties in the Scheme were units, common areas and roads in the Scheme were common property, and Land in the Scheme was land as described in the Sectional Titles Act as amended;
  - 3.1.15 to take assignment of all functions and powers of bodies corporate of development schemes (as defined, described, or referred to in the Sectional Title Act) in respect of all such development schemes erected or to be erected in the Scheme;
  - 3.1.16 to do all such other things as are necessary incidental or conducive to the attainment of the foregoing objects or any of them which may be conveniently carried on and done in connection therewith or which may be calculated directly or indirectly to enhance the enjoyment and value of property in the Scheme; and
  - 3.1.17 to promote the interests of its Members and owners of all property, common areas and or interests in the Scheme.
- 3.2 Except to the extent necessarily implied by the stated objects hereof, the purpose and powers of the company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)b(ii).

#### **4. RESTRICTIVE CONDITIONS IN THE MEMORANDUM**

The restrictive provisions contained in this memorandum referred to in sections 15(2)(b) and 15(2)(c) of the Act are located in paragraph/s:

- 4.1 6 dealing with the disposal of the Company's net assets upon its winding-up, deregistration or dissolution;
- 4.2 7.1 imposing a higher voting requirement for the amendment of paragraphs 3, 9.8.2, 9.10., 9.11, 10.2, 15.7, 16, 19.5, 23.2 of this memorandum;
- 4.3 7.2 imposing a higher voting requirement for the amendment of paragraph 30 of this memorandum;
- 4.4 14.1.1 relating to required notice periods to convene Members' meetings;
- 4.5 15.4 and 15.5 relating to voting conducted by way of hands and/or polling;
- 4.6 16.1 relating to:
  - 4.6.1 a quorum of Members required before a meeting may begin or any matter considered; and
  - 4.6.2 a quorum of Members required to remain at the meeting after quorum has been established in order to continue with the meeting and/or consider any matter;
- 4.7 16.2 relating to:
  - 4.7.1 the period after which a quorum can no longer be established resulting in the meeting not being able to begin or any matter considered;
  - 4.7.2 the minimum and maximum adjournment permissible for a meeting to begin; and
  - 4.7.3 the minimum and maximum adjournment permissible for the consideration of a particular matter;
- 4.8 17.6 relating to the prescribed form and procedure for delivering proxies and whether a Member's proxy may without direction from the Member whether to exercise, or abstain from exercising any voting right, exercise such right;

- 4.9 20.1 relating to the minimum number of directors to be in office at any one time;
- 4.10 22 relating to the appointment of alternate, ex officio or additional directors;
- 4.11 25.3 relating to the rights of directors to request that a board meeting be held;
- 4.12 27 relating to the establishment of board committees and the governance thereof; and
- 4.13 30 which contains local authority conditions.

## **5. INCOME AND PROPERTY OF THE COMPANY**

- 5.1 The income and property of the Company irrespective of when it arises/arose, must be applied solely towards the promotion of the objects of the Company. No portion thereof must be paid or transferred, *in specie*, directly or indirectly by way of dividend, bonus or otherwise whatsoever to any Member of the Company or to its holding company and/or subsidiary.
- 5.2 Having regard to the objects of the Company, this paragraph does not preclude:
  - 5.2.1 the payment or transfer of property in good faith; or
  - 5.2.2 reasonable remuneration to any officer or servant of the Company or to any Member thereof in return for any services actually rendered to the Company; or
  - 5.2.3 reasonable remuneration of any person or persons in cash for services rendered in its formation or in the development of the Company's activities.

## **6. WINDING UP, DEREGISTRATION OR DISSOLUTION**

- 6.1 The Company may be voluntarily wound-up as contemplated in section 80 of the Act by way of a special resolution of its Members or creditors.
- 6.2 Should the Company be liquidated each Member liable to make payment of any levies in terms of paragraph 9 at the time of such

liquidation must contribute to the assets of the Company to a maximum amount of R1 000.00 (one thousand rand) for:

- 6.2.1 payment of the debts and liabilities of the Company;
  - 6.2.2 the costs, charges and expenses of the winding-up; and
  - 6.2.3 adjustment of the rights of the contributories amongst themselves.
- 6.3 Upon dissolution of the Company, its net assets must be distributed in the manner set out below determined in accordance with item 1(4)(b) of schedule 1 to the Act in that:
- 6.3.1 no past or present Member or director of the Company, or person appointing a director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
  - 6.3.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objectives similar to the Company's objectives.
- 6.4 In the event that the net assets of the Company cannot be distributed as set out in paragraph 6.3 above, the distribution of assets will take place as decided by:
- 6.4.1 the Company's Members or its directors, at or immediately before the time of its dissolution; or
  - 6.4.2 a court if the Members or directors fail to make such a determination.

## **7. AMENDMENT OF MEMORANDUM**

- 7.1 Paragraphs 3, 9.8.2, 9.10, 9.11, 10.2, 15.7, 16, 19.5, 23.2 of this memorandum will not be amended without it being so agreed upon by a majority in number of the Members having a right to attend and vote at the meeting, being Members holding not less than 100% (one hundred per centum) of the total voting rights of all the Members.

- 7.2 Paragraph 30 of the memorandum must not be amended without the consent of the North West Provincial Administration first having been obtained.
- 7.3 Any amendment contemplated above or otherwise effected by way of special resolution:
- 7.3.1 must be proposed by:
- 7.3.1.1 the board of the company; or
- 7.3.1.2 Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution;
- 7.3.2 must be adopted at a Members' meeting by voting by way of hand or any other method as contemplated in this memorandum.
- 7.4 The Company must:
- 7.4.1 deliver a notice to all Members, as of the record date of the meeting as contemplated in paragraph 13, in the manner prescribed by the Act, not less than 21 days before the meeting is to begin; and
- 7.4.2 publish a notice of any alteration of this memorandum made in terms of section 17(1) of the Act by delivering a copy of those amendments to each director by ordinary mail or electronic mail;
- "If notice is transmitted by telefax or electronic mail it shall be deemed (in absence of proof to the contrary) to have been received within 1 (one) hour of the transmission where it is transmitted during normal business hours by the receiving instrument and within 2 (two) hours of the commencement of the following business day where it is transmitted outside business hours.

## **8. MEMBERS AND MEMBERSHIP**

- 8.1 The Company is a non-profit company with Members.
- 8.2 Members of the Company may be any person including natural persons, companies or other bodies corporate, or statutory bodies, partnerships or associations of persons whether corporate or not.

- 8.3 The Members of the Company are the registered owners of the Erven.
- 8.4 No person can become a registered owner of an erf or erven unless:
- 8.4.1 he has made application to be a Member of the Company and has agreed to the satisfaction of the Company that:
- 8.4.1.1 on registration of transfer of an erf to him he will become a Member;
- 8.4.1.2 he will remain a Member as long as he remains the registered owner of the erf;
- 8.4.1.3 he will automatically cease to be a Member when he ceases to be a registered owner of the erf; and
- 8.4.1.4 he will be bound to the terms, conditions, Scheme Rules, and provisions, contained in this memorandum as well as any Rules made by the Company from time to time;
- 8.4.2 the Company consented to such transfer in writing and issued a clearance certificate to the effect that all amounts owing to the Company by the transferor of such Property have been paid or payment thereof has been secured to the satisfaction of the Company.
- 8.5 All Members of the Scheme on the Property must be Members of the Company. No unit must be transferred into the name of any person unless such person agrees to become a Member of the Company on registration of transfer of such unit into the name of such person.
- 8.6 A Member who is an Owner of an erf in the Scheme may not resign as a Member of the Company. A Developer, by virtue of the issue of a Certificate of Registered Title, is deemed to be an Owner as defined in paragraph 1.1.20 of "Property" as defined in paragraph 1.1.27 , and as such is obliged to obtain a clearance certificate in terms of paragraph 8.4.2.
- 8.7 A person will cease to be a Member upon him ceasing to be an Owner.

- 8.8 The Company must maintain at its registered office a register of Members of the Company as provided in section 23 of the Act.

## **9. FEES AND SUBSCRIPTIONS**

- 9.1 The directors will have the right to prescribe from time to time levies, special levies and additional levies payable by Members at such times and calculated on such basis as they may determine in order to defray all the costs and expenses which the Company may have incurred, or which the directors reasonably anticipate the Company will incur in the attainment of its objects, or in the pursuit of its business.

- 9.2 In determining the levies, special levies and additional levies the directors may differentiate between costs and expenses:

9.2.1 incurred or to be incurred in relation to the common areas or such expenses which the Company may have incurred, or which the directors reasonably anticipate the Company will incur in the attainment of its objects, or in the pursuit of its business in relation to common areas; and

9.2.2 incurred or to be incurred in respect of common areas where such costs and expenses are covered by levies raised by the Body Corporate within the Sectional Title Component within the scheme. In such event the directors may deviate from allocating levies to the Sectional Title Component in proportion to Participation Quotas specified in 7.4 below.

- 9.3 Members will be liable to pay monthly levies to the Company in proportion with the Participation Quotas of their respective Properties. The amount of these levies will be determined by the directors as frequently as circumstances may require, and such determination will be legally binding on all Members liable to pay levies. Such levies will be determined on the basis that it will be

sufficient to meet the expenses of the Company. Such levies will be payable monthly in advance by debit order or other method as approved by the directors.

- 9.4 The directors will from time to time determine the rate of interest chargeable on arrear levies, provided that such rate of interest will not exceed the rate of interest prescribed from time to time in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975) as amended.

- 9.5 The directors will recover all legal costs (including collection commissions and legal costs on an attorney-and-own-client scale and such is recoverable whether or not legal proceedings are instituted by the Company in respect thereof) incurred by the Company in recovering or attempting to recover any levies from Members which are not paid on the due date for payment thereof.
- 9.6 A Member who is more than 2 (two) months in arrears with any levy payment or other sum due to the Company will not be entitled to exercise any of the rights or privileges of membership of the Company, and will specifically without derogating from the generality of the aforesaid not be entitled to vote at Members meetings or other meetings of the Company.
- 9.7 A Member who is liable to pay levies, and who becomes a Member on any day other than the first day of the a calendar month concerned, will become liable on the date of his becoming a Member to pay a proportionally reduced levy, based on the date of his becoming a Member.
- 9.8 A Member will notwithstanding anything to the contrary contained in this memorandum not be liable for the payment of any levy:
- 9.8.1 unless he is an Owner; or
- 9.8.2 until he becomes an Owner.
- 9.9 A Member whose membership has been terminated will remain liable for all sums that may at the date of termination of his membership be due by him to the Company and will not be entitled to any refund of subscription monies already paid nor will he have any claim on the Company or its officers, its property, its funds or other assets.
- 9.10 Where a Property is owned by more than one person, all registered owners of that Property will jointly be regarded as one Member and will jointly have the rights and obligations of one Member; provided however that all co-owners of any Property will be jointly and severally liable for the due performance of any obligation to the Company in respect of that Property.
- The Owner/Member of one or more properties that have been consolidated shall have only one vote in respect of the consolidated property.
- 9.11 Notwithstanding anything to the contrary contained in this memorandum the Developer will, save for instances referred to in paragraph's 1.1.9 and 1.1.10 where levies will be due, be exempt from having to pay any levies pertaining to and relating to the common areas.



The Developer shall be exempted from paying 100% (hundred per centum) and will pay 50% (fifty per centum) of the levies on the following properties being:-

52, R/5, 53, 16, 17, 23, 34, 35, 46 & 50.

This paragraph 9.11 may not be amended without the Developer specifically agreeing thereto and 100% (one hundred per centum) of the remaining Members voting in favour thereof agree thereto. This condition however terminates upon transfer of the last portion, unit, section or property in the Scheme as set out above.

## **10. RIGHTS AND DUTIES OF MEMBERS**

10.1 An Owner will:

10.1.1 with reference to 8.4.2 not transfer his Property without the written consent of the Company, which consent the Company will not be required to give unless such Owner has paid all outstanding amounts due to the Company and complied with all his obligations towards the Company, whether in terms of this memorandum or otherwise; and

10.1.2 upon the sale of his Property procure that the purchaser of his Property becomes a Member of the Company with effect from the registration of transfer of such Property into the name of his successor in title as owner of such Property.

10.2 A Member and co-Member must at all times:

10.2.1 further the objects and interests of the Company to the best of their ability; and

10.2.2 observe all Rules made by the Company whether such Rules form part of this memorandum or otherwise.

## **11. SCHEME RULES**

11.1 Subject to the provisions of the memorandum the directors will be vested with the sole power and obligation to make Scheme Rules, which includes but is not limited to:

- 11.1.1 the provision of guidelines for the architectural design of all buildings and outbuildings, structures and improvements on the Land of any nature;
- 11.1.2. to the regulation of the aesthetical appearance of all improvements on the Land;
- 11.1.3 the setting of minimum standards to which all improvements on the Land must comply with;
- 11.1.4 the regulation of the preservation and control of vegetation and improvements on the Land as provided for and prescribed in the Environmental Guidelines;
- 11.1.5 the prohibition, restriction or controlling of the keeping of any animal on the Land;
- 11.1.6 the regulation of the conduct and activities of all persons on the Land including without derogating from the generality of the aforesaid, the conduct of Owners, employees, tenants, and invitees;
- 11.1.7 the regulation of all sanitary aspects on the Land;
- 11.1.8 the regulation of access and egress to and from the Land and regulate traffic on the Land;
- 11.1.9 the regulation of parking of motor vehicles, motorcycles, and other vehicles and all other activities pertaining therewith or thereto on the Land;
- 11.1.10 the regulation of the provision of and charges for entertainment, amenities and facilities on the Land;
- 11.1.11 the regulation of all access matters on the Land;
- 11.1.12 the furtherance and promotion of any of the objects of the Company and/or for the management of the affairs of the Company and/or for the advancement of the interests of Members and/or occupants on the Land;
- 11.1.13 the regulation of the maintenance of common properties, common buildings, and other common improvements, as well as the access systems;

- 11.1.14 the creation and enforcement of a penalty system in order to enforce compliance of all Rules, and other rights of the Company;
  - 11.1.15 the conduct of any person and the prevention of nuisance of any nature to the owner of any property forming part of the development;
  - 11.1.16 the introduction of traffic calming measures;
- 11.2 All rules made by the directors in accordance with the provisions of Article 11 shall be reasonable and shall apply equally to all owners of erven.
- 11.3 For purposes of the enforcement of any of the rules made by the directors in terms hereof, the directors may –
- 11.3.1 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rules of which the Members may be guilty, and debit the cost of so doing to the Members concerned, which amount shall then be deemed to be a debit by the Member concerned to the Association. Such debit shall bear interest at the rate as fixed in 9.4 a tempore morae from date the imposition of the fine until the date of final payment.
  - 11.3.2 Notwithstanding anything contained herein to the contrary, the directors may in the name of the Company enforce the provisions of the Rules of the Company in any Court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 11.4 In the event of any breach of the rules by any Member's tenants, or his guests, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 11.4.1 In the event of any Member disputing the fact that he has committed a breach of any of the rules

aforesaid, a committee of three directors appointed by the Chairman for that purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure as the Chairman may direct.

- 11.4.2 Notwithstanding the foregoing, the directors may in the name of the Association enforce the provisions of any rules by proceedings in a court of competent jurisdiction and for his purpose may appoint such attorney and counsel as they may deem fit.
- 11.5 It shall be the duty of the Manager, or such other person or body as may be empowered by the directors, to ensure compliance by the Members with the rules, and to this end, to issue such notices or do such things as may be necessary or requisite.
- 11.6 Each Member undertakes to the Association that he shall comply with all rules made in terms of Article 11.1
- 11.7 Notwithstanding anything contained herein to the contrary, the directors may in the name of the Company enforce the provisions of the Rules of the Company in any Court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.

## **12. COMPANY RULES**

- 12.1 The authority of the Company's board to make rules for the Company, as contemplated in section 15(3) to (5) of the Act is not limited or restricted in any manner by this memorandum.
- 12.2 The board of the Company may make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters which are not addressed in the Act or this memorandum by:
- 12.2.1 publishing a copy thereof in any manner permitted or required by the board; and
- 12.2.2 filing a copy thereof with the CIPC as contemplated in regulation 5 to the Act read together with column 1 of CR1.

- 12.3 The company rules: -
- 12.3.1 must be consistent with the Act and memorandum and to the extent that they are inconsistent they will be void;
  - 12.3.2 will take effect on a date which is the later of:
    - 12.3.2.1 10 business days after the company rules are filed; or
    - 12.3.2.2 the date, if any, specified in the company rules;
    - 12.3.2.3 will be binding:
      - 12.3.2.3.1 on an interim basis from the time they take effect until it is put to vote at the next general Members' meeting of the Company; and
      - 12.3.2.3.2 on a permanent basis only if it has been ratified by an ordinary resolution
- 12.4. If the company rules filed in terms of paragraph 12.1:
- 12.4.1 are subsequently ratified when put to the vote as contemplated in paragraph 12.3.2.3, the Company must file a notice of ratification within the period and in the manner and form as prescribed in the Act and Regulations, or
  - 12.4.2 are not subsequently ratified as contemplated in paragraph 12.3.2.3, the Company must file a notice of non-ratification within the period and in the manner and form as prescribed in the Act and Regulations.
- 12.5 If the rules are not ratified, the board may not make substantially similar company rules within the ensuing twelve (12) months unless it has been approved in advance by an ordinary resolution of the Members.
- 12.6 Any failure to ratify the company rules does not affect the validity of anything done in terms of those company rules during the period

that they had an interim effect as provided in paragraph 12.3.2.3.1.

- 12.7 The Company must publish a notice of any alteration of its rules made in terms of section 17(1) of the Act by delivering a copy of those amendments to each director by ordinary mail.

### **13. MEMBERS GENERAL MEETINGS**

- 13.1 The Company must hold its first annual Members meeting within 18 (eighteen) months after the date of its incorporation.

- 13.2 In addition to those instances where Members' meetings are specifically required by the Act, the Company is required to convene Member's meetings:

13.2.1 annually, provided that no more than fifteen months must elapse between the date of one annual general meeting and that of the next;

13.2.2 whenever 10% of the Members demand a Members' meeting of which such meetings may be held at any time.

- 13.3 Annual general meetings and other Members' meetings will be held at such a time and place as the board appoints, irrespective of whether the location is within the Republic or elsewhere.

### **14. NOTICE OF GENERAL MEETINGS**

- 14.1 The minimum number of days for the Company to deliver notice in writing of a Members' meeting is in respect of:

14.1.1 the annual general meeting is 21 days;

14.1.2 a meeting called for the passing of a Special Resolution is 21 days; and

14.1.3 any other Members' meetings is 14 days.

- 14.2 The Company may call a Members' meeting with less notice than required by this memorandum, but such a meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda –

14.2.1 is present at the meeting; and

14.2.2 votes to waive the required minimum notice of the meeting.

14.3 A notice may be given by the Company to any Member, either personally or by telefax or electronic mail or by sending it by post in a prepaid letter addressed to such Member at his registered address outside the Republic, or at the address, if any, within the

Republic supplied by him to the Company for the giving of notices to him.

14.4 Any notices given by post will be deemed to have been served at the time when the letter containing same is put into the Post Office and, in proving the giving of notice sent by post, it will be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office.

"Any notice transmitted by telefax or electronic mail shall be deemed (in absence of proof to the contrary) to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours of the receiving instrument and within 2 (two) hours of the commencement of the following business day where it is submitted outside those business hours".

14.5 Notice of every Members' meeting will be given in any manner authorised by the board to the Members as set out in paragraph 14.6 hereof and to the auditor for the time being of the Company.

No other persons will be entitled to receive notice of Members' meetings.

14.6 A notice of a Members' meeting must be in writing, and must include:

14.6.1 the date, time and place for the meeting, and the record date for the meeting;

14.6.2 the general purpose of the meeting, and any specific purpose contemplated in section 61(3)(a), if applicable;

14.6.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;

14.6.4 in the case of an annual general meeting of the Company:

- 14.6.4.1 the financial statements to be presented or a summarised form thereof; and
- 14.6.4.2. a reasonably prominent statement that:
  - 14.6.4.2.1 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member, or two or more proxies if the memorandum so permits; and
  - 14.6.4.2.2 a proxy need not also be a Member of the Company; and
  - 14.6.4.2.3 section 63(1) requires that meeting participants provide satisfactory identification.
- 14.7 If there was a material defect in the giving of the notice of a Members' meeting, the meeting may proceed subject to paragraph 14.8, provided that every Member and person present and who is entitled to exercise voting rights in respect of any item on the agenda of the meeting, votes in favour of the ratification of the defective notice.
- 14.8 If a material defect in the form or manner of giving notice of a meeting relates only to one or more particular matters on the agenda for the meeting:
  - 14.8.1 any such matter may be severed from the agenda, and such notice will remain valid with respect to any remaining matters on the agenda; and
  - 14.8.2 the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of paragraph 14.7.
- 14.9 An immaterial defect in the form or manner of giving notice of a Members meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed, does not invalidate any action taken at the meeting.



## **15. PROCEEDINGS AT GENERAL MEETINGS**

- 15.1 The Chairman, and failing him the Vice Chairman will preside over the meeting. The person chairing the meeting will have the right to cast a deciding vote.
- 15.2 Before any person may attend or participate in a Members meeting:
  - 15.2.1 that person must present reasonably satisfactory identification; and
  - 15.2.2 the Chairman must be reasonably satisfied that the right of that person to participate and vote, either as a Member, or as a proxy for a Member, has been reasonably verified.
- 15.3 A Members meeting may be conducted entirely by electronic communication, provided that the electronic communication technology employed enables all persons participating in the meeting to communicate reasonably effectively and concurrently with each other without an intermediary, and provided further that:
  - 15.3.1 the notice of that meeting must inform Members of the availability of that form of participation, and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication; and
  - 15.3.2 access to the medium or means of electronic communication is at the expense of the Member or proxy.
- 15.4 Method of Voting:
  - 15.4.1 At a meeting of Members, voting may be either by a show of hands or by polling.
  - 15.4.2 If voting:
    - 15.4.2.1 is by a show of hands, any person who is present at the meeting, whether as a Member or a proxy for a Member, and is entitled to exercise voting rights

has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise.

15.4.2.2 on a particular matter is by way of polling, any person who is present at the meeting whether as a Member or a proxy for a Member, and is entitled to exercise voting rights, has the number of votes determined in accordance with the Participation Value of the Property owned by such Member.

15.5 Irrespective of any provision of this memorandum indicating the contrary, a polled vote must be held on any particular matter to be voted on at a meeting if a demand for such is made by:

15.5.1 at least 5 (five) Members having the right to vote on that matter, either as a Member or proxy representing a Member; or

15.5.2 a person or persons who together are entitled as a Member or proxy representing a Member, to exercise at least 10% of the voting rights entitled to be voted on that matter.

15.6 Only Members entitled to vote in terms of this memorandum will be allowed to vote on a resolution proposed at a Members meeting, and only the votes of Members entitled to vote in terms of this memorandum will be taken into account for purposes of determining the result of the vote on such proposed resolution.

15.7 The annual Members meeting must deal with and dispose of all matters prescribed by the Act, and may deal with any other business laid before it.

15.8 Notwithstanding anything to the contrary contained in this memorandum, the Members in a Members meeting will not have the power to make Scheme Rules as envisaged in paragraph 0 nor to make any amendment to such Scheme Rules.

15.9 Despite anything to the contrary in this memorandum, for an ordinary resolution to be adopted at the Members' meeting, it must be supported by at least 50% of the Members who voted on the resolution.

15.10 Despite anything to the contrary in this memorandum, 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 of which such special resolution will be required only relating to matters as contemplated in section 65(11) of the Act.

## **16. QUORUM AND ADJOURNMENT OF MEMBERS MEETINGS**

16.1 No meeting may begin, or a matter begin to be debated, nor must any business be transacted at any Members meeting unless a quorum of at least 20% (twenty percent) of the Members is present in person including proxies at the commencement of and throughout the meeting.

16.2 If within a half an hour after the time appointed for the meeting a quorum is not present:

16.2.1 for the meeting to commence, it must stand adjourned without motion or vote, to a day not earlier than seven (7) days and not later than twenty-one (21) days after the date of the meeting and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person or by proxy will be a quorum; or

16.2.2 for a consideration of a particular matter if there is:

16.2.2.1 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

16.2.2.2 no other business on the agenda of the meeting, the meeting will be adjourned for a minimum of 7 (seven) days without motion or vote.

16.3 No business will be transacted at the resumption of any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.

16.4 The Chairman at a meeting that cannot begin due to the operation of paragraph 16.1, may extend the half-hour limit allowed in paragraph 16.2 for a reasonable period on the grounds that:

- 16.4.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
  - 16.4.2 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of paragraph 16.1.
- 16.5 The Company is not required to give further notice of a meeting that is postponed or adjourned in terms of paragraph 0, unless the location for the meeting is different from:
- 16.5.1 the location of the postponed or adjourned meeting; or
  - 16.5.2 a location announced at the time of adjournment, in the case of an adjourned meeting.
- 16.6 A Members meeting, or the consideration of any matter being debated at the meeting, may be adjourned from time to time without further notice, subject to paragraph 16.7, on a motion supported by the Members entitled to exercise, in aggregate, a majority of the voting rights:
- 16.6.1 held by all of the Members who are present at the meeting at the time; and
  - 16.6.2 that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be.
- 16.7 An adjournment of a meeting, or of consideration of a matter being debated at the meeting, in terms of paragraph 16.6 may be either:
- 16.7.1 to a fixed time and place;
  - 16.7.2 as agreed at the meeting; or
  - 16.7.3 until further notice, in which event further notice must be given to Members.

- 16.8 If at any meeting neither the Chairman nor the Vice-Chairman is present within fifteen (15) minutes after the time appointed for holding the meeting or he is unwilling to act as Chairman, the Members present must choose one of their number to act as Chairman of the meeting.

## **17. PROXIES**

- 17.1 A Member is entitled to appoint a proxy to attend, speak or vote (whether on a show of hands or poll) in his stead at any general meeting.
- 17.2 A proxy need not be a Member of the Company.
- 17.3 The holder of a general or special power of attorney, whether he is himself a Member or not, given by a Member will be entitled to attend meetings and to vote, if duly authorised under that power to attend and take part in the meetings.
- 17.4 The right of a Member of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a) is not permissible in terms of this memorandum.
- 17.5 The authority of a Member's proxy to delegate the proxy's power to another person, as set out in section 58(3)(b) is not limited or restricted by this memorandum provided that the prescribed form and procedure in this memorandum is followed.
- 17.6 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 vote at a Member's meeting, as set out in section 58(3)(c) and the authority of a Member's proxy to decide without direction from the Member whether to exercise or abstain
- from exercising any voting right, as set out in section 58(7), is varied to the extent that the instrument appointing a proxy:
- 17.6.1 must be in writing under the hand of the appointee or his duly authorised agent, or, if the appointed proxy is a juristic person duly incorporated under the Act, under the hand of an officer of or agent of the juristic person;
- 17.6.2 the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power of authority, must be delivered at the registered office of the

Company not less than 48 hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default of complying herewith, the instrument of proxy will not be treated as valid;

17.6.3 cannot be used at an adjourned meeting which could not have been used at the original meeting; and

17.6.4 must be in the following form or as near thereto as circumstances permit:

I, \_\_\_\_\_, of \_\_\_\_\_, being a Member of  
**The Island Landowners Association (RF) NPC**

hereby appoint

OF \_\_\_\_\_ or failing him

OF \_\_\_\_\_ or failing him

OF \_\_\_\_\_ or failing him

as my proxy to vote for me and on my behalf at the annual general/members' meeting (as the case may be) of the Company to be held on \_\_\_\_\_ and at my adjournment thereof as follows:

In favour of      Against      Abstain

Resolution to \_\_\_\_\_

Resolution to \_\_\_\_\_

Resolution to \_\_\_\_\_

(Indicate instruction to proxy by way of a cross in space provided above).

Signed on \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_  
Signature

(Note: A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak on a poll, vote in his stead, and such proxy need not also be a Member of the Company)

- 17.7 If a Company issues an invitation to Members to appoint one or more persons named by the Company as a proxy, or supplies a form of instrument for appointing a proxy:
- 17.7.1 the invitation must be sent to every Member who is entitled to notice of the meeting at which the proxy is intended to be exercised;
  - 17.7.2 the invitation, or form of instrument supplied by the Company for the purpose of appointing a proxy, must:
    - 17.7.2.1 bear a reasonably prominent summary of the rights which a proxy is entitled to in terms of the provision of this Memorandum;
    - 17.7.2.2 contain adequate blank space, immediately preceding the name or names of any person or persons named in it, to enable a Member to write in the name and, if so desired, an alternative name of a proxy chosen by the Member; and
    - 17.7.2.3 provide adequate space for the Member to indicate whether the appointed proxy is to vote in favour of or against any resolution or resolutions to be put at the meeting, or is to abstain from voting;
  - 17.7.3 the Company does not require that the proxy appointment be made irrevocable; and
    - 17.7.3.1 the proxy appointment remains valid only until the end of the meeting at which it was intended to be used;

- 17.7.3.2 paragraph's 17.7.1 and 17.7.3 do not apply if the Company merely supplies a generally available standard form of proxy appointment on request by a Member.

## **18. RECORD DATE FOR DETERMINING MEMBER RIGHTS**

18.1 The board of the Company may set a record date for the purpose of determining which Members are entitled to:

- 18.1.1 receive notice of a Members meeting;
- 18.1.2 participate in and vote at a Members meeting;
- 18.1.3 decide any matter by written consent or electronic communication, as contemplated in section 60 of the Companies Act;
- 18.1.4 be allotted or exercise other rights.

18.2 A record date determined by the board in terms of paragraph 0 may not be:

- 18.2.1 earlier than the date on which the record date is determined; or
- 18.2.2 more than 10 business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and
- 18.2.3 must be published to the Members in a manner that satisfies any prescribed requirements contemplated in the Act.

18.3 If the board does not determine a record date for any action or event, the record date is:

- 18.3.1 in the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or
- 18.3.2 the date of the action or event, in any other case.

## **19. MEMBERS ACTING OTHER THAN AT MEETING**

19.1 A resolution that could be voted on at a Members meeting may instead be:



- 19.1.1 submitted for consideration to the Members entitled to exercise voting rights in relation to the resolution; and
  - 19.1.2 voted on in writing by Members entitled to exercise voting rights in relation to the resolution within 20 business days after the resolution was submitted to them.
- 19.2 A resolution contemplated in paragraph 19:
- 19.2.1 will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Members meeting; and
  - 19.2.2 if adopted, has the same effect as if it had been approved by voting at a meeting.
- 19.3 An election of a director that could be conducted at a Members meeting may instead be conducted by written polling of all of the Members entitled to exercise voting rights in relation to the election of that director.
- 19.4 Within 10 business days after adopting a resolution, or conducting an election of directors, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote in the election of the director, as the case may be.
- 19.5 Any business of the Company that is required by the Companies Act or this memorandum to be conducted at an annual general meeting of the Company, may not be conducted in the manner contemplated in this paragraph 19.

## **20. DIRECTORS**

- 20.1 The number of directors, unless otherwise determined by the Company in a Members' meeting, must be at least 5 (five) directors.
- 20.2 Each incorporator of the Company is a first director of the Company, and serves until sufficient other directors to satisfy the

requirements of paragraph 20.1, have been first elected in accordance with the procedures as set out in paragraph 22.1 of this memorandum.

## **21. APPOINTMENT OF DIRECTORS**

- 21.1 Subject to Schedule 1 of the Act and this memorandum, directors are to be appointed yearly by the Members of the Company in a Members' meeting by way of secret ballot.
- 21.2 At least one third of the current directors must be re-elected.
- 21.3 All persons nominated must be present at the annual Members meeting failing which they will not be eligible for election.
- 21.4 If a vocation is not filled during a Members' meeting, the meeting will stand adjourned till the same day in the next week at the same time and place. If the vocation is not filled during the adjourned meeting, the vacating directors or such of them as have not had their places filled, will be deemed to have been re-elected at the adjourned meeting.
- 21.5 Retiring directors will be eligible for re-election.
- 21.6 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a director, a person need only satisfy the eligibility requirements and qualifications as set out in paragraph 21, 22 and 23 hereof.

## **22. ALTERNATE DIRECTORS, VACANCIES AND EX OFFICIO DIRECTORS**

- 22.1 Directors are not entitled to appoint alternate directors.
- 22.2 In addition to the elected directors the Board of Directors will have the power at any time, and from time to time, to appoint a person as an additional director, who must retire from office at the next following Members' meeting, but he will be eligible for election by the Company at the meeting as an additional director.
- 22.3 There are no *ex officio* directors of the Company.

## **23. DISQUALIFICATION AND/OR REMOVAL OF DIRECTORS BY MEMBERS' RESOLUTION**

- 23.1 A director will for purposes of this paragraph include a person who is a Member of a committee of the board.

23.2 The Company may remove any director by resolution, where at least 55% of the Members of the company have voted in favour of such resolution, once special notice has been given and the director has been given a reasonable opportunity to make a presentation as contemplated in section 71(2) of the Act. This power remains regardless of:

- 23.2.1 anything mentioned in this memorandum;
- 23.2.2 any agreement between the Company and the director; or
- 23.2.3 the fact that the directors prescribed term has not expired.

Such removal will be without prejudice to any claim the director may have for damages or breach of any contract of service between him and the Company.

23.3 A director or Member of a committee will cease to be a director or a Member as such, if:

- 23.3.1 his estate is finally sequestrated;
- 23.3.2 an application has been filed to surrender his estate;
- 23.3.3 he is placed under curatorship by any court of competent jurisdiction;
- 23.3.4 he delivers a notice of his resignation at the registered office of the Company with effect from:
  - 23.3.4.1 the date on which that notice is delivered; or
  - 23.3.4.2 any later date stated in that notice to which the directors agree; or
- 23.3.5 he fails to attend 3 (three) consecutive meetings without prior apology and without good cause; or
- 23.3.6 when the person's term of office as director expires; or
- 23.3.7 he:
  - 23.3.7.1 resigns or dies;

- 23.3.7.2 becomes incapacitated to the extent that he is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, subject to section 71(3) of the Companies Act;
  - 23.3.7.3 is declared a delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the company, in terms of section 162 of the Companies Act;
  - 23.3.7.4 becomes ineligible or disqualified in terms of section 69 of the Companies Act, subject to section 71(3) of the Companies Act; or
  - 23.3.7.5 is removed as contemplated in the Act.
- 23.4 A person is ineligible to be a director of a company if the person:
- 23.4.1 is a juristic person;
  - 23.4.2 is an unemancipated minor, or is under a similar legal disability; or
  - 23.4.3 does not satisfy any qualification set out in this memorandum or the Company Rules.
- 23.5 A person is disqualified to be a director of the company if:
- 23.5.1 a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, of the Companies Act or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
  - 23.5.2 subject to sections 69(9) to 69(12) of the Companies Act, the person:
    - 23.5.2.1 is an unrehabilitated insolvent;
    - 23.5.2.2 is prohibited in terms of any public regulation to be a director of a company;

- 23.5.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- 23.5.2.4 has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
  - 23.5.2.4.1 involving fraud, misrepresentation or dishonesty;
  - 23.5.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in sections 69(2) or 69(5) of the Companies Act; or
  - 23.5.2.4.3 under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

## **24. VACANCIES ON BOARD**

- 24.1 If a vacancy arises on the board it must be filled by a new election conducted:

- 24.1.1 at the next annual general meeting of the Company;  
or
- 24.1.2 in any other case, within six months after the  
vacancy arose:
  - 24.1.2.1 at a Members meeting called for the  
purpose of electing the director; or
  - 24.1.2.2 by a written poll of the persons entitled  
to exercise voting rights in an election  
of the director, as contemplated in  
section 60(3) of the Companies Act.
- 24.2 If, as a result of a vacancy arising on the board there are no  
remaining directors of the Company, any holder of voting rights  
entitled to be exercised in the election of a director may convene a  
Members meeting for the purpose of such an election.

## **25. PROCEEDINGS OF DIRECTORS**

- 25.1 A meeting of the board may be conducted by electronic  
communication or one or more directors may participate in a  
meeting by electronic communication, as long as the electronic  
communication facility employed ordinarily enables all persons  
participating in that meeting to communicate concurrently with  
each other without an intermediary, and to participate effectively in  
the meeting.
- 25.2 The authority of the Company's board to consider a matter other  
than at a meeting, as contemplated in section 74 of the Act, is not  
limited or restricted by this memorandum. Any such resolution may  
consist of several documents in a like form, each signed by one or  
more of the signatories to the resolution. A resolution of directors  
passed in terms of this paragraph must be placed in a minute book  
of the Company and will be noted at the next succeeding meeting  
of directors and must also be signed by the Chairman.
- 25.3 The right of the Company's board to requisition a meeting at any  
time, as set out in section 73(1), may be exercised by any 2 of the  
directors despite the provisions of that section.
- 25.4 In addition to the provisions of section 73(4) of the Act, prior  
written notice must be given of each meeting and the agenda for  
each meeting must be distributed beforehand. In the event that

notice is defective in some way, the provisions of section 73(5) of the Act will apply in that if all of the directors:

25.4.1 acknowledge actual receipt of the notice;

25.4.2 are present at a meeting; or

25.4.3 waive notice of the meeting,

the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice;

25.5 Each director has one vote on a matter before the board;

25.6 The Company must keep minutes of the meetings of the board, and any of its committees, and include in the minutes:

25.6.1 any declaration given by notice or made by a director as required by section 75 of the Companies Act; and

25.6.2 every resolution adopted by the board.

25.7 Resolutions adopted by the board:

25.7.1 must be dated and sequentially numbered; and

25.7.2 are effective as of the date of the resolution, unless the resolution states otherwise.

25.8 Any minutes of a meeting, or a resolution, signed by the Chairman is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

25.9 Questions arising at any meeting will be decided by a majority of votes. In the event of an equality of votes, the Chairman of the meeting will have a second or casting vote.

25.10 The quorum necessary for the transaction of the business of the directors must be at least 4 (four), and must include the Chairman or Vice-Chairman.

25.11 The continuing directors may act notwithstanding any vacancy, but, if and for so long as their number is reduced below the number fixed by or pursuant to this memorandum as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of convening a Members meeting of the Company, but for no other purpose.

**26. OFFICERS**

- 26.1 The directors will from amongst their number elect one or more of the following office bearers:
- 26.1.1 Chairman; and
  - 26.1.2 Vice-Chairman.
- 26.2 Any officer will cease to be an officer if he ceases to be a director of the Company.
- 26.3 Within 30 (thirty) days of an officer ceasing to hold that office either because he resigns from that office or as a result of the provisions of paragraph 23, a replacement must be appointed in accordance with the provisions of paragraph 24.
- 26.4 The directors may from time to time confer upon any officer the powers and authority vested in them, for such time, for such purposes, upon such terms and conditions and with such restrictions as they may think fit and the directors may from time to time revoke or vary all or any of such powers and authorities.

**27. COMMITTEES**

- 27.1 The directors may provide for the management of the business and affairs of the Company in such manner as they deem fit.
- 27.2 The directors may:
- 27.2.1 establish committees to manage any part of the business and affairs of the Company, provided that committees must consist of not more than seven (7) persons. A Member of the Board of Directors must be a Member of all committees, such Member shall not be obliged to act as Chairman of the Committee of which he is selected as a Member.
  - 27.2.2 authorise the Members of a committee, or any of them, to fill any vacancies on that committee;
  - 27.2.3 delegate, on such terms and conditions and with such restrictions as they think fit, to a committee any of the powers, authorities and discretions vested in the directors with power to sub-delegate and may revoke, withdraw, alter or vary any such delegation; or



- 27.2.4           appoint any persons as managers or agents of the Company in any specified locality on such terms, as to remuneration or otherwise, as they think fit.
- 27.3    The meetings, procedures and acts of a committee will be governed by the provisions of this memorandum relating to meetings, proceedings and acts of directors so far as the same are applicable and are not superseded by any express provisions in this memorandum or by any Company Rules made by the directors in relation to committees or powers vested by the Directors from time to time in the committee.
- 27.4    The quorum for meetings of Committees will be 50% (fifty per centum) of the Members thereof, provided that should the number of Members not be divisible by 2 then the quorum will be the next whole number after 50% (fifty per centum).
- 27.5    All committees must meet at agreed regular intervals.
- 27.6    Except to the extent that a resolution establishing a committee provides otherwise, the committee may include persons who are not directors of the company, but:
- 27.6.1           any such person must not be ineligible or disqualified to be a director in terms of section 69 of the Companies Act; and
- 27.6.2           no such person has a vote on a matter to be decided by the committee;
- 27.6.3           it may consult with or receive advice from any person; and
- 27.6.4           it has the full authority of the board in respect of a matter referred to it.
- 27.7    The creation of a committee, delegation of any power to a committee, or action taken by a committee, does not alone satisfy or constitute compliance by a director with the required duty of a director to the company, as set out in section 76 the Companies Act.

**28. COMPANY AND ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR**

- 28.1 The directors must cause such company records as are referred to in sections 24, 25 and 26 read with regulations 22, 23, and 24 of the Regulations to the Act to be kept, and made accessible to a Member as required by the Companies Act.
- 28.2 The directors must cause such accounting records as are referred to in sections 27, 28, 29, 30, and 31 read with regulations 25, 26, 27 and 24 of the Regulations to the Act to be prepared, kept, and made accessible to a Member and other persons entitled thereto in terms of section 31 of the Companies Act.
- 28.3 Every Member of the company has the rights to access information by direct request made to the Company in the prescribed manner either in person, or through an attorney or other personal representative designated in writing or in accordance with the Promotion of Access to Information Act 2 of 2000.

**29. LIABILITY OF DIRECTORS**

- 29.1 Each:
- 29.1.1 director, Secretary and other officer of the Company; and
  - 29.1.2 person employed by the Company as its auditor,
- will be indemnified by the Company against any liability incurred by him from time to time in that capacity that is not inconsistent with the provisions of sections 77 and 78 of the Companies Act.
- 29.2 the Company:
- 29.2.1 may advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the Company; and
  - 29.2.2 may directly or indirectly indemnify a director for expenses contemplated in paragraph 29.2.1, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or exculpate the director or arise in respect of any liability for which the Company may indemnify the

director, in terms of sections 78(5) and 78(6) of the Companies Act.

- 29.3 The Company indemnifies a director in respect of any liability arising other than as contemplated in section 78(6) of the Companies Act.
- 29.4 The Company must purchase insurance to protect:
- 29.4.1 a director against any liability or expenses for which the company is permitted to indemnify a director in accordance with section 78 (5) of the Companies Act; or
- 29.4.2 the Company against any contingency including but not limited to:
- 29.4.2.1 any expenses:
- 29.4.2.1.1 that the Company is permitted to advance in accordance with section 78(4)(a) of the Companies Act; or
- 29.4.2.1.2 for which the Company is permitted to indemnify a director in accordance with subsection 78(4)(b) of the Companies Act; or
- 29.4.2.1.3 any liability for which the Company is permitted to indemnify a director in accordance with section 78(5) of the Companies Act.
- 29.5 The Company will be entitled to claim restitution from a director of the Company for any money paid directly or indirectly by the Company to or on behalf of that director in any manner inconsistent with section 78 of the Companies Act.

### 30. **NORTH WEST PROVINCIAL ADMINISTRATION CONDITIONS**

- 30.1. The establishment of a Landowners Association in terms of the Companies Act 71 of 2008 in compliance with the provisions concerning non profit companies.

- 30.2 The main object of the Landowners Association may not be amended without the written consent of the Local North West Provincial Government first having been obtained.
- 30.3 The Island Landowners Association NPC must at all times comply with the legal requirements and/or provisions for the incorporation, existence and continuation of the company as a legal entity.
- 30.4 The Island Landowners Association NPC may not apply for de-registration at the Registrar of Companies without the written consent of the Local North West Provincial Government first having been obtained.
- 30.5 Erven 4 and 51 are registered in the name of The Island Landowners Association and may not be sold, encumbered, mortgaged or transferred to any other person/entity except by special resolution of the Members General Meeting.
- 30.6 The street name allocated to the internal road/s and the street numbers allocated to the newly created erven in the Scheme, shall be properly and clearly displayed and must be maintained by The Island Landowners Association NPC to the satisfaction of the Tlokwe City Council.
- 30.7 Portion 2 and Portion 3 in the Development comprise of 436 Residential erven in total of which 336 are Duet erven and 5 Group Housing erven of 20 units per hectare. Total of 772 units (1996/08/08 – GO 15/19/2/1/35/7 Evz.nett/Permit.LLC/evz).
- 30.8 The whole development on the property to be developed according to the approved development plan, with the understanding that with written approval of The Island Landowners Association this development plan may be altered from time to time.
- 30.9 The Landowners Association is responsible for the maintenance of the whole development on the property. The Landowners Association will have full responsibility for the functioning and proper maintenance of the Development on the property as well as the servitudes referred to in paragraph 1.1.6 and the engineering services within the said erven / servitudes as well as any attenuation system on the erven / servitudes, all

to the satisfaction of the Tlokwe City Council failing which such maintenance will be done by the Tlokwe City Council at the costs of the Landowners Association.

- 30.10 The 1:50 year flood line must be adhered to for all development on the property.
- 30.11 ERF 50 being 19,69 Ha to be rezoned and subdivided as approved by North West Province. All costs will be for the account of the DEVELOPER as embodied in the Deed of Sale.
- 30.12 This memorandum of Incorporation may not be amended as far as such proposed amendments relate to paragraph's 30.1 to 30.11 above, as well as this clause, without the written consent of the North West Provincial Administration first being had and obtained.
- 30.13 Insofar as the following condition is embodied in the Deed of Sale and the Deed of Transfer relating to each Erf resulting from the Development as a condition of title: "the erf shall not be transferred without the written consent of The Island Landowners Association NPC of which the Transferee and his successor in title shall be a Member". The association was granted approval by the Deeds Office in Pretoria to issue Clearance Certificates for all transfers of properties in the development without which registration of transfer shall not be effected.

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Particulars of incorporators

Date and signature

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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of witness

Date and signature

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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of incorporators	Date and signature
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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of witness	Date and signature
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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of incorporators	Date and signature
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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of witness	Date and signature
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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:



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Particulars of incorporators

Date and signature

---

1. Full names:

---

Occupation:

Residential Address:

Business Address:

Postal Address:

---

Particulars of witness

Date and signature

---

1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of incorporators

Date and signature

---

1. Full names:

Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of witness

Date and signature

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1. Full names:

Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of incorporators	Date and signature
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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of witness	Date and signature
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1. Full names:

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Occupation:

Residential Address:

Business Address:

Postal Address:

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Particulars of incorporators

Date and signature

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1. Full names:

Occupation:

Residential Address:

Business Address:

Postal Address:

---

Particulars of witness

Date and signature

---

1. Full names:

Occupation:

Residential Address:

Business Address:

Postal Address: