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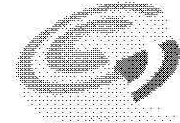
## Memorandum of Incorporation

Grotto Bay Homeowners Association NPC (RF)

Registration Number 1993/005714/08

*This document is a consolidated version of the following:*

- *Deletion of existing MOI and amendments, and insertion of revised MOI, adopted by Special Resolution at the Annual General Meeting held on 05 September 2020.*
- *Amendment to Clause (7) Conservation Area, of the MOI, adopted by Special Resolution at the Annual General Meeting held on 08 May 2021.*
- *CIPC registered: 22 November 2021.*



Companies and Intellectual  
Property Commission

a member of the SAG group

Date: 22/11/2021

Our Reference: 112131689  
Box: **224991**  
Sequence: **11**

DUDLEY IAN SHONE  
PO BOX 23502  
CLAREMONT  
**CAPE TOWN**  
7735

**RE: Amendment to Company Information**

**Company Number: 1993/005714/08**

**Company Name: GROTTO BAY HOMEOWNERS ASSOCIATION (RF) NPC**

We have received a COR15.2 (Amendment of Memorandum of Incorporation) from you dated 03/09/2021.  
The Amendment of Memorandum of Incorporation (1) was accepted and placed on file.

Yours truly

**Commissioner: CIPC**

THN THN

**Please Note:**

The attached certificate can be validated on the CIPC web site at [www.cipc.co.za](http://www.cipc.co.za).  
The contents of the attached certificate was electronically transmitted to the South African Revenue Services.



The Companies and Intellectual Property Commission  
of South Africa

P.O. BOX 429, PRETORIA, 0001, Republic of South Africa. Docex 256, PRETORIA.

Call Centre Tel 086 100 2472, Website [www.cipc.co.za](http://www.cipc.co.za)



# 1 Definitions and Interpretations

## 1.1 In this Memorandum of Incorporation

- (1) A reference to a section number refers to a section of the Act;
- (2) Unless inconsistent with the context, words that are defined in the Act bear the same meaning in this Memorandum of Incorporation;
- (3) The headings to the clauses are for reference purposes only and do not affect the terms of this Memorandum of Incorporation.

## 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

- (1) **Act** means the Companies Act, 2008, as amended, together with any regulations published in terms thereof;
- (2) **Board** means the board of Directors of the Company;
- (3) **Chairman** means the chairman of the Board appointed in terms of clause 5.5;
- (4) **Commission** means the Companies and Intellectual Property Commission;
- (5) **Company** means Grotto Bay Homeowners Association NPC, registration number 1993/005714/08;
- (6) **Conservation Area** means erven 15, 54, 66, 81, 92, 103, 108, 119, 123, 132, 135, 148, 150, 166, 173, 190, 201, 206, 223 and 241 as depicted on General Plan No. 10389/1992 and the Remainder of Portion 2 of the Farm Modder River No.721, situated in the district of Malmesbury;
- (7) **Consultants** means such agricultural, town planning and/or landscaping professionals appointed by the Board from time to time;
- (8) **Design Manual** means as referred to in clause 8.8;
- (9) **Director** means a member of the Board and the alternate Directors thereof;
- (10) **Estate** means the Property and the Remainder of Portion 2 of the Farm Modder River No. 721, situated in the District of Malmesbury
- (11) **Member** means a person who holds membership in, and specified rights in respect of, the Company and who is registered as such in the Company's members register;
- (12) **Member of good standing** means a member who paid all levies, interest, water overuse charged, penalties and any other monies which may be due and is not suspended.
- (13) **Property** means Erf 1 Grotto Bay in the Swartland Municipality, Division of Malmesbury, Province of the Western Cape;

- (14) **Registered Owner** means the registered owner of any of the Unit Erven;
- (15) **Unit Erven** means the residential erven resulting from the subdivision of the Property and “Unit Erf” shall have a corresponding meaning;
- (16) **Vice-Chairman** means the vice-chairman of the Board appointed in terms of clause 5.5; and
- (17) **Voting Rights** means the rights of a member to vote in connection with any matter to be decided by the Company. Only a member of good standing may exercise such voting right.

**1.3** If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Memorandum of Incorporation.

**1.4** Unless inconsistent with the context, an expression which denotes:

- (1) any gender includes the other genders;
- (2) a natural person includes an artificial person (including a trust) and vice versa;
- (3) the singular includes the plural and vice versa.

**1.5** The schedules to this Memorandum of Incorporation, if any, form an integral part hereof and words and expressions defined in this Memorandum of Incorporation shall bear, unless the context otherwise requires, the same meaning in such schedules.

**1.6** 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:

- (1) excluding the day on which the first such event occurs;
- (2) including the day on or by which the second event is to occur; and
- (3) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.6 (1) and 1.6 (2), respectively.

**1.7** Where any term is defined within the context of any particular clause in this Memorandum of Incorporation, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes in terms of this Memorandum of Incorporation, notwithstanding that that term has not been defined in this interpretation clause.

## **2 Incorporation and Nature of the Company**

### **2.1 Incorporation**

- (1) The company is incorporated as from 29 September 1993 as a non-profit company.
- (2) The company is constituted subject to;
  - (a) the unalterable provisions of the Act that are applicable to non-profit companies;
  - (b) the alterable provisions of the Act, subject to the limitations, extensions, restrictions, variations, or substitutions set out in this Memorandum of Incorporation, that are applicable to non-profit companies; and
  - (c) the provisions of this Memorandum of Incorporation.

### **2.2 Powers of the Company**

- (1) This Memorandum of Incorporation does contain restrictive conditions applicable to the company and any requirement, in addition to the requirements set out in clause 2.3, for the amendment of any such conditions; and
- (2) The company has all of the legal powers and capacity of an individual, to the extent possible, subject to any restrictions, limitations or qualifications arising from this Memorandum of Incorporation.

### **2.3 Objects of the Company**

- (1) The objects of the Company are to:
  - (a) promote, advance and protect the communal interests of the owners of the Residential Erven resulting from the subdivision of the Property;
  - (b) exercise control over;
    - (i) all buildings and/or structures erected or to be erected on the Residential Erven resulting from the subdivision of the Property;
    - (ii) the maintenance of the buildings and/or structures erected on the Property;
    - (iii) the maintenance of the services and amenities on those portions of the Property which are not allocated for the development of the Residential Erven.

- (iv) the management, conservation and maintenance of the portions of the Estate which are not allocated for the development of the Residential Erven;
  - (v) engaging in the conservation, rehabilitation, or protection of the natural environment, including flora, fauna or the biosphere on the Estate; and
  - (vi) the management, conservation, and maintenance of the portions of the Estate which are not allocated for the development of the Residential Erven.
- (2) Except to the extent necessarily implied the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification as contemplated in section 19(1)(b)(ii).

#### **2.4 Memorandum of Incorporation and Company rules**

- (1) This Memorandum of Incorporation of the Company may be altered or amended:
- (a) in compliance with a court order effected by a resolution of the Company's Board; or
  - (b) by a special resolution of the Members but subject to that special resolution having been proposed by (i) the Board, or (ii) by Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution.
- (2) An amendment contemplated in clause 2.4(1)(b) may take the form of:
- (a) a new Memorandum of Incorporation in substitution for the existing Memorandum of Incorporation; or
  - (b) one or more alterations of the existing Memorandum of Incorporation by:
    - (i) changing the name of the Company;
    - (ii) deleting, altering or replacing any of its provisions;
    - (iii) inserting any new provisions; or
    - (iv) making any combination of such alterations.
- (3) After amending its Memorandum of Incorporation, the Company must file a Notice of Amendment with the Commission in accordance with the requirements contemplated in sections 16(7) and (8).
- (4) An amendment to this Memorandum of Incorporation takes effect:

- (a) in the case of an amendment that changes the name of the Company, on the date set out in the amended registration certificate issued by the Commission; or
  - (b) in any other case, on the later of:
    - (i) the date on, and time at which the Commission accepts the filing of the Notice of Amendment; or
    - (ii) the date, if any, set out in the Notice of Amendment.
- (5) The Board has authority to make, amend or repeal any necessary or incidental rules relating to the Governance of the Company in respect of matters that are not addressed in this Memorandum of Incorporation or the Act, by:
- (a) delivering a copy of those rules, or any amendment or repeal thereof, to every Member by email, provided that the Member has supplied the Company with an email address for the purposes of receiving communications. Alternatively, delivery may be by ordinary post (at such Member's registered postal address), provided that no email address has been supplied and/or the Member specifically requests delivery of such communications by ordinary post.; and
  - (b) filing a copy of those rules, or any amendment or repeal thereof, with the Commission.
- (6) Any necessary or incidental rules made, amended, or repealed as contemplated in clause 2.4(5):
- (a) Take effect on the later of:
    - (i) Ten business days after the rule is filed with the Commission; or
    - (ii) The date, if any, specified in the rule; and
  - (b) Are binding:
    - (i) On the interim basis from the time it takes effect until it is put to a vote at the next general Members meeting of the Company; and
    - (ii) On a permanent basis only if it has been ratified by an ordinary resolution at the meeting contemplated in clause 2.4(6)(b)(i).

## **2.5 Alterations of Memorandum of Incorporation and Company rules, translations, and consolidations of Memorandum of Incorporation.**

- (1) The Company's Board, or an individual authorised by the Board, may alter the Company's rules, or its Memorandum of Incorporation, in any Manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document, by:

(a) delivering a notice of the alteration in the manner contemplated in clause 2.4 (5)(a); and

(b) filing a notice of the alteration with the Commission

(2) At any time after having filed its Memorandum of Incorporation with the Commission, the Company may file one or more translations of it, in any official language or languages of the Republic, provided that every such translation must be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete representation of the Memorandum of Incorporation.

(3) At any time after having filed its Memorandum of Incorporation with the Commission, and having subsequently filed one or more alterations or amendments to it, the Company may (or if the Commission requires it to, must) file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, provided that every such consolidated revision filed with the Commission in terms of clause 2.5 (3) must be accompanied by:

(a) a sworn statement by a director; or

(b) a statement by an attorney or notary public,

stating that it is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered or amended up to the date of the statement.

## **2.6 Application of optional provisions of the Act**

(1) The Company, as a non-profit company, does not elect to comply voluntarily with the extended accountability requirements contained in Chapter 3 of the Act, other than that Part C – Auditors, shall be applicable to the Company excluding Section 92.

## **2.7 Non-Profit company provisions**

(1) The Company is a non-profit; and

(a) must apply all of its assets and income, however derived, to advance its stated objects as set out in this Memorandum of Incorporation; and

(b) subject to clause (a) may:

(i) acquire and hold securities issued by a profit company, or

(ii) directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to the Company's stated objects.



### **3 Members**

#### **3.1 Membership**

- (1) 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.
- (2) Membership of the Company shall be limited to and obligatory for all Registered Owners. Upon the registration of transfer of a Unit Erf into the name of any person, such person shall be vested with membership in the Company, subject to the prior consent of such person.
- (3) Where any Unit Erf is registered in the name of more than one person, all the Registered Owners of that Unit Erf shall be deemed jointly to be one Member. Any 1 (one) of such persons may exercise all of the rights attaching to membership of the Company at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint owners are present at any meeting, personally or by proxy, the person so present whose name stands first in the Member's Register shall alone be entitled to vote in respect thereof.
- (4) A juristic person, including a profit company, shall be entitled to become a Member, provided it has qualified as such in terms of paragraph (1) above. In the event of a Unit Erf being owned by a juristic person, it is recorded that the shareholders, members, trustees (as the case may be) shall not have individual membership in the Company and that the respective juristic person shall have the rights and obligations of 1 (one) Member of the Company.
- (5) Membership shall commence simultaneously with the transfer of the Erf into the name of the Registered Owner.
- (6) A Registered Owner may not resign as a Member of the Company.
- (7) A Member shall not be entitled to alienate or transfer a Unit Erf unless it is a condition of the alienation and transfer that:
  - (a) a transferee becomes a Member of the Company and the Company has been given written consent by the transferee to become a Member of the Company upon transfer of the registration of transfer of the Unit Erf to the transferee.
  - (b) he obtains the written approval of the Board to the proposed transfer, which approval may be withheld, without limitation in the following circumstances:
    - (i) if monies are due to the Company by the transferring Member; or

- (ii) if the transferring Member is in breach of any of his obligations to the Company and has not remedied the breach, despite having received written notice by the Board to do so; or
- (iii) if the transferee has not been provided with a copy of the Memorandum of Incorporation.

### **3.2 Rights and obligations of Members**

- (1) The rights and obligations of a Member shall not be transferable, and every Member shall:
  - (a) further the objects and interests of the Company to the best of his or her ability;
  - (b) observe all by-laws, rules and regulations made by the Company;
  - (c) have all the rights set out in this Memorandum of Incorporation;
  - (d) have the obligations set out in this Memorandum of Incorporation;
- (2) Without derogating from the generality of the foregoing, a Member shall:
  - (i) comply with and be bound by any regulations made by the Company, including the Design Manual and any rules and shall, when alienating its Unit Erf, disclose this obligation in the deed of alienation concerned;
  - (ii) not be entitled to erect any buildings and/or structures of any nature whatsoever, nor make any alterations, modifications or renovations to such buildings and/or structures of such Proposed Work on his Unit Erf without the written approval of the Directors, which approval shall only be given after.
    - (A) detailed plans of the Proposed Work have been submitted to the Consultants;
    - (B) the Consultants are satisfied that the Proposed Work is in accordance with the Design Manual, zoning regulations and any applicable rule; and
    - (C) the Member has made payment of such reasonable costs incurred by the Board in respect of the Consultants, provided that the Board has provided the Member with all supporting documentation in respect of such costs;
  - (iii) each Member intending to transfer a Unit Erf shall ensure that the obligation contained in clause (ii) above is brought forward in the deed of transfer.

### 3.3 Cessation of membership

A members' membership of the Company shall terminate

- (1) when a member ceases to be a Registered Owner of a Unit Erf;
- (2) Upon the liquidation, sequestration, whether final or provisional, placing into business rescue or death of a Member (**'the Incapacitated Member'**). The executor of the estate of a deceased, the trustee of the insolvent estate or the liquidator of the insolvent company, as the case may be, shall replace the Incapacitated Member as the Member of the Company. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of an Incapacitated Member shall be entered in the register as a Member of the Company.
- (3) No Member ceasing to be a Member, nor any such Member's executors, curators, trustees, or liquidators, shall have any claim upon or interest in the funds or other property of the Company. The Company shall, however, have the right to claim from such Member or his estate any arrears in subscriptions or others sums owed by him to the Company at the time of cessation of his membership, including all costs associated with the recovery of any amounts.

### 3.4 Suspension of membership

- (1) The Board shall be entitled to suspend the rights attaching to the membership of any Member if such Member:
  - (a) has breached any provision of this Memorandum of Incorporation and has failed to remedy such breach after having received 10 (ten) days written notice to do so; or
  - (b) has breached any provision of the Design Manual or any Rules that may be in place and has failed to remedy such breach after having received 10 (ten) days written notice to do so.
- (2) In the event that the Board has resolved to suspend a Member's rights in terms of clause (1), the Board shall give such Member written notice thereof. The suspension of a Member's rights as aforesaid shall –
  - (a) be effective from the date on which the Board delivers written notice to that effect to the Member; and
  - (b) shall cease upon the Board issuing such Member with written notice that it has satisfied itself that the Member has remedy any breach referred to in (1)(a) and/or (1)(b) above.
- (3) In the event that a Member fails to pay any levies, interest, water overuse charges and/or penalties, such Member's rights shall automatically and without further notice, be suspended until such time as the Member has made payment

of all arrear levies, interest, water overuse charges, penalties and/or any other charges.

- (4) Notwithstanding the foregoing, in the event that a Member has –
- (a) breached any provision of this Memorandum of Incorporation and has failed to remedy such breach after having received 10 (ten) days written notice to do so;
  - (b) breached any provision of the Design Manual or any Rules that may be in place and has failed to remedy such breach after having received 10 (ten) days written notice to do so,

and the Board receives written demand by at least 51% (fifty-one percent) of those Members entitled to exercising voting rights requesting the suspension of such Member's rights in terms of this Memorandum of Incorporation, the Board shall be obliged to suspend such Member.

- (5) For the avoidance of any doubt it is recorded that –
- (a) a Member whose rights have been suspended in terms of this clause 3.4 may not appoint a proxy in their stead; and
  - (b) A Member whose rights have been suspended in terms of this clause 3.4 shall continue to perform its obligations in terms of this Memorandum of Incorporation while being subject to such suspension.
  - (c) The record date for the lifting of suspension due to outstanding monies will be the day following the day the funds reflect in the GBHOA bank account or following the day on which cash has been received.
  - (d) The record date for the lifting of suspension due to any other breach than outstanding monies, will be the day following written confirmation from the Board thereof.

### **3.5 Register of Members**

The Company shall maintain a register of Members as required by section 24.

### **3.6 Non-transferability of Membership**

Membership shall be personal to the Member concerned and may not be assigned or transferred to any other person, company or concern.

### **3.7 Member's right to information**

Other than the rights to access information set out in section 26, a Member has no further rights to information pertaining to the Company.

### **3.8 Member's authority to act**

- (1) If the Company has only one Member, the ability of that Member to exercise any or all of the voting rights pertaining to the Company on any matter, at any time, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (2) If, at any time, every Member is also a director, the authority of the Members to act on any matter that is required to be referred by the Board to the Members for decision at any time after being referred by the Board, without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.
- (3) A resolution which could be voted on at a Members meeting may instead be adopted by written consent of the Members, given in person or by electronic communication, provided that the resolution was submitted for consideration to the Members entitled to exercise voting rights in relation to the resolution and the resolution is voted on in writing or by electronic communication by such Members within 20 business days after the resolution was submitted to them.
  - (a) The minimum requirement for participation for a written resolution to pass would be 25% of eligible votes as of the record date for determination of eligibility to vote.
  - (b) Unless otherwise communicated by the board, the record date for such eligibility to participate in the written resolution, would be the record date of when the resolution was submitted to members, as per 3.8 (3) above, but cannot be earlier than this date.

### **3.9 Votes of Members**

- (1) Each Member shall have one vote for each Unit Erf registered in his or her name and each such vote shall, unless otherwise provided in this Memorandum of Incorporation, be of equal value to the vote of each other voting Member on any matter to be determined by the Members.
- (2) Save as expressly provided for in these presents, no person other than a Member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Company in respect of or arising out of his membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

### **3.10 Proxies and voting under power of attorney**

- (1) A Member in good standing may, at any time, appoint any member in good standing or an individual who is not a Member, as a proxy to:
  - (a) participate in, and speak and vote at, a Members meeting on behalf of the Member, or

- (b) give or withhold written consent on behalf of the Member to a decision by Members acting other than at a meeting.
- (2) The instrument that appoints a proxy must:
  - (a) be in writing, dated and signed by the Member;
  - (b) be given by the person appointing such proxy or by their attorney duly authorised in writing or, if the appointer is a corporation, given by a representative so authorised.
  - (c) automatically lapse if the grantor of the proxy, in person, attend the meeting.
- (3) The holder of a power of attorney from a Member may, if so authorised by the power of attorney, vote for and represent such Member at any meeting of the Company.
- (4) Every instrument of proxy, whether for a specified meeting or otherwise, must comply with section 58 of the Act, subject to 3.4 above and subject thereto be in following format, or in such other form as the Company's Board may approve, and the Board may, if they think fit, send out with the notice of any meeting proxy forms for use at the meeting.

“I/We

.....

Of

..... being a  
Member/Members of the Company appoint

..... of ..... or  
failing him or her

..... of .....or failing him the  
chairman of the Company or failing him or her the chairman of the meeting as my / our proxy to:

[participate in and speak and vote for me / us at a Members meeting of the Company to be held at  
..... on ..... 20..... at ..... (time  
appointed) and at any adjournment thereof.]

[give or withhold written consent on my / our behalf to the written resolutions to which this form of  
proxy is attached, as contemplated in section 60 of the Act.]

[participate in and speak and vote for me / us at any Members meeting held by the Company or give  
or withhold written consent on my / our behalf in respect of any decision contemplated in section 60 of  
the Act, between the date of this proxy instrument and ..... 20.....] \*

Dated this ..... Day of ..... 20.....

Name (in full)

Address

.....

Signature

**\*Delete as applicable**

I/We desire to vote as follows:

	For	Against	Abstain
Resolution 1			
Resolution 2			

(Set out the numbers of the resolutions if more than 1)

Indicate voting preference by placing a mark (either a tick or a cross) in the appropriate block.”





### **3.11 Representative by concurrent proxies**

The right of a Member to appoint two or more persons concurrently as proxies is not restricted or varied by this Memorandum of Incorporation.

### **3.12 Authority of proxy to delegate**

The authority of a Member's proxy to delegate that proxy's authority to act on behalf of the Member, subject to any restriction set out in the instrument appointing that proxy, is not restricted or varied by this Memorandum of Incorporation.

### **3.13 Requirement to deliver proxy instrument to the Company**

The instrument of proxy or power of attorney appointing a proxy for any particular meeting must be delivered to the Company at its registered address not less than twenty-four hours (or such lesser period as the Directors may determine in relation to any particular meeting) before such meeting is due to take place, or the instrument of proxy or power of attorney shall not be treated as valid.

### **3.14 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, except to the extent that the Instrument appointing that proxy provides otherwise, is not restricted or varied by this Memorandum of Incorporation.

### **3.15 Validity of appointment**

- (1) The proxy appointment remains valid only for one year after its execution and for its intended purpose, provided that it may be revoked at any time by cancellation in writing, or the making of a later inconsistent appointment of another proxy and delivering a copy of the revocation instrument to the proxy, and to the Company.
- (2) The appointment of a proxy is suspended at any time and to the extent that the Member chooses to act directly and in person in the exercise of any rights as a Member.
- (3) A vote given in accordance with the terms of an instrument of proxy or power of attorney appointing a proxy shall be valid notwithstanding the legal incapacity of the Member or revocation of the instrument or power of attorney unless notice in writing of such legal incapacity or, revocation is received by or on behalf of the Company not less than twenty-four hours (or such lesser period as the Board may determine in relation to any particular meeting) before the time appointed for holding the meeting.

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

(1) If, at any time, the Company's Board fails to determine a record date for any action or event, the record date for the relevant matter is:

(a) In the case of a meeting, the latest date by which the Company is required to give Members notice of that meeting; or

(b) In any other case, the date of the action or event.

## **4 Members Meetings**

### **4.1 Requirement to hold meetings**

The Company is not required to hold any Members meetings other than those specifically required by section 61 and this clause 4, but may do so.

### **4.2 Members' rights to requisition a meeting**

The right of Members to requisition the Company's Board to call a Members meeting may be exercised if, in aggregate, written and signed demands for a meeting with substantially the same purpose are made by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, provided that each such demand describes the specific purpose for which the meeting is proposed.

### **4.3 Location of Members meetings**

The authority of the Company's Board to determine the location of any Members meeting and the authority of the Company to hold such meeting in Republic or in any foreign country, is not restricted or varied by this Memorandum of Incorporation.

### **4.4 Calling a Members meetings**

If the Company is unable to convene a Members meeting because it has no Directors or because all of its Directors are incapacitated, any Member may convene a meeting.

### **4.5 Notice of Members meetings**

(1) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members is fifteen business days before the meeting is to begin or twenty-four hours if agreed on in writing by Members holding not less than 90% of the votes exercisable at such meeting.

(2) A notice of a meeting must be in writing and include the information set out in sections 62 (3) and 63 (3).

(3) A notice of a meeting will be given by the Company as provided for in clause 8.5

### **4.6 Electronic participation in Members meeting**

The authority of the Company to conduct a Members meeting entirely by electronic communication, or to provide for participation in a meeting by electronic

communication, 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 in the meeting, is not restricted or varied by this Memorandum of Incorporation.

#### **4.7 Quorum for Members meetings**

- (1) Subject to the provisions of clause 4.7 (2) to clause 4.7 (6) (both inclusive), the quorum for:
  - (a) a Members meeting to begin is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
  - (b) a matter to begin to be considered at the meeting is sufficient persons present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- (2) Notwithstanding clause 4.7 (1), where the Company has more than two Members, a meeting may not begin, or a matter begin to be considered, unless at least three Members are present at the meeting and the requirements of clause 4.7 (1) are satisfied.
- (3) If, within thirty minutes after the appointed time for a meeting to begin, the requirements of clause 4.7 (1), or 4.7 (2) if applicable:
  - (a) for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for one week; and
  - (b) 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 one week, without motion or vote.
- (4) The person intended to preside at a meeting, where the quorum requirements in clause 4.7 (1), or clause 4.7 (2) if applicable, are not satisfied, may extend the 30-minute limit allowed for a reasonable period on the grounds that:
  - (a) exceptional circumstances affecting weather, transportation or electronic communication have impeded, or are impeding, the ability of Members to be present at the meeting; or

- (b) one or more delayed Members have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the quorum requirements; or
  - (c) any other reason such person considers appropriate.
- (5) After a quorum has been established for a meeting, or for a particular matter, the meeting may continue, or the matter may be considered, so long as at least one Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.
  - (6) If the quorum requirements in clause 4.7 (1), or clause 4.7 (2), if applicable, have not been satisfied at the time appointed for a postponed meeting to begin, or for an adjourned meeting to resume, the Members present in person or by proxy will be deemed to constitute a quorum.

#### **4.8 Adjournment of Members meetings**

- (1) Subject to clauses 4.8(2) and 4.8(3), a Members meeting or the consideration of any matter at the meeting, may be adjourned from time to time, on a motion supported by persons entitled to exercise, in aggregate, a majority of the voting rights held by all of the persons who are present at the meeting at the time and that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under consideration, as the case may be.
- (2) An adjournment of a meeting, or the consideration of a matter at the meeting, in terms of clause 4.8(1), may be either to a fixed time and place or until further notice, as agreed at the meeting.
- (3) A meeting may not be adjourned beyond the earlier of:
  - (a) 120 business days after the record date determined in accordance with clause 3.16 or
  - (b) 60 business days after the date on which the adjournment occurred.

#### **4.9 Members resolutions**

- (1) For an ordinary resolution to be approved by Members, it must be supported by the holders of more than 50% of the voting rights exercised on that resolution.
- (2) For a special resolution to be approved by Members, it must be supported by the holders of at least 75% of the voting rights exercised on that resolution.
- (3) Unless specifically provided for in the Companies Act and/or this Memorandum of Incorporation, all decisions of Members shall be made by the way of ordinary resolution.

#### **4.10 Annual General Meeting**

- (1) The Company must hold an annual general meeting:
  - (a) Initially, no more than 18 months after its date of Incorporation; and
  - (b) Thereafter within 9 months of each financial year end of the Company
- (2) In addition to the requirements of clause 4.5, the notice calling an annual general meeting must include:
  - (a) the financial statements to be presented, or a summarised form thereof; and
  - (b) directions for obtaining a copy of the complete annual financial statements for the preceding financial year.
- (3) The agenda at an annual general meeting shall include but shall not be limited to:
  - (a) presentation of the Directors' report and annual financial statements for the immediately preceding financial year; and
  - (b) election of Directors', to the extent required by the Act or this Memorandum of Incorporation; and
  - (c) any matters raised by Members, with or without advance notice to the Company.
- (4) At any general meeting, a resolution put to the vote of the meeting shall be
  - (a) decided by written ballot, if advance written notice was given with the notice of the meeting
  - (b) decided on by a show of hands, if the resolution was tabled at the general meeting
- (5) Voting on the election of a Chairperson of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy.
- (6) Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- (7) An abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, the Chairperson of the general meeting shall be entitled to a casting vote in addition to its deliberative vote.

- (8) 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 Chairperson of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to be a true and correct statement of the voting, and the meeting shall in all respects 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 lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairperson.
- (9) The Chairperson shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice Chairperson, shall act as Chairperson at such meeting, provided further that should the Vice Chairperson also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairperson for the meeting, who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- (10) Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

## **5 Directors and officers**

### **5.1 Composition of the Board**

- (1) The Company's Board must comprise not less than five and not more than nine Directors, elected by the Members.
- (2) Subject to clause 5.1(7), each Director, other than the first Directors and any Directors appointed in this Memorandum of Incorporation, must be elected by the persons entitled to exercise voting rights in such an election to serve for an indefinite period, or for a term as set out in this Memorandum of Incorporation.
- (3) All of the Directors must retire at the Company's annual general meetings or other general meetings on an annual basis. These retiring members of the Board may be re-elected, provided they are eligible.
- (4) In any election of Directors, the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy.
- (5) In each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.

- (6) There are no *ex officio* Directors in addition to any Directors appointed in terms of this Memorandum of Incorporation and the elected Directors.
- (7) The authority of the Board to fill any vacancy on the Board on a temporary basis is not restricted or varied by this Memorandum of Incorporation. A Director appointed on a temporary basis must be a person who satisfies the requirements for election as a Director and has all the powers, functions and duties, and is subject to all the liabilities, of any other Director.
- (8) Every Director, at the time of his appointment and for the duration thereof, be:
  - (a) a Member in good standing, or a representative of a member in good standing;
  - (b) Representatives of Members in good standing may be:
    - (i) a spouse of a Member;
    - (ii) a member of a close corporation which is a Member;
    - (iii) a director of a company which is a Member;
    - (iv) a trustee of a trust which is a Member; or
    - (v) a live-in partner of a Member, who has lived with said member continuously for more than 1 year (this will require a sworn affidavit from said member).
- (9) To become or to continue to act as a Director or a prescribed officer of the Company, a person must not be:
  - (a) a juristic person,
  - (b) an unemancipated minor, or a person under a similar legal disability.
  - (c) a person who has been declared a delinquent or placed under probation by a court in terms of section 162 or section 47 of the Close Corporation Act, 1984, except to the extent permitted by the order of probation;
  - (d) an unrehabilitated insolvent;
  - (e) prohibited in terms of any public regulation to be a Director;
  - (f) removed from an office or trust, on the grounds of misconduct involving dishonesty.
  - (g) a person who 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.
    - (i) Involving fraud, misrepresentation or dishonesty;

- (ii) In connection with the promotion, formation or management of a company;
- (iii) In connection with having been appointed or elected as a Director or acting as a Director whilst ineligible or disqualified, or whilst having been placed under probation by a court; or
- (iv) Under the Act, the *Insolvency Act, 1936*, the *Close Corporations Act, 1984*, the *Competition Act, 1998*, the *Financial Intelligence Centre Act, 2001*, the *Securities Services Act, 2004* or Chapter 2 of the *Prevention and Combating of Corruption Activities Act, 2004*.

## 5.2 Alternate Directors

- (1) An alternate Director may be elected or removed by the members entitled to exercise voting rights in such an election to act as an alternate Director in a Director's place as the occasion arises and during that Director's absence, provided that such person has been approved for that purpose by a resolution of the Company's Board.
- (2) All of the alternate Directors must retire at the Company's annual general meetings or other meetings on an annual basis.
- (3) An alternate Director shall, except as regards the power to appoint an alternate (if applicable) and to receive remuneration, be subject in all respects to the terms and conditions applicable to the Director appointing them, and each alternate Director shall be entitled.
  - (a) to receive notice of all meetings of the Directors or of any committee of the Directors of which the alternates appointer is a member.
  - (b) to attend and vote at any such meetings at which the alternates appointer is not personally present;
  - (c) to furnish written consent to adopt a decision which could be voted on at a Board meeting;
  - (d) to be appointed as an alternate to more than one Director and shall have a vote for each Director for whom such alternate acts, in addition to their own vote as Director, if any, and;
  - (e) generally, to exercise and discharge all the functions, powers and duties of the alternates appointer in such appointers absence as if such alternate were a Director.
- (4) An alternate Director shall cease to be an alternate Director if the alternates appointer ceases for any reason to be a Director, but if any Director retires and is re-elected at the same meeting, any appointment made by such Director shall remain in force as though the Director had not retired.



### **5.3 Authority of the Board**

- (1) The authority of the Company's Board to exercise all of the powers and perform any of the functions of the Company and to manage and direct the business and affairs of the Company, is not restricted or varied by this Memorandum of Incorporation.
- (2) Included in 5.3(1) above, the Company's Board is responsible for the safe keeping of all assets specifically the Conservation Area, Company buildings on the property, fire prevention and the water supply as is within their powers and have the right to take whatsoever fair action necessary to monitor, control and protect same including restricting access to and imposing fines for breach of Rules to be determined as may pertain too same.
- (3) If, at any time, the Company has only one Director, the authority of that Director to act without notice or compliance with any other internal formalities, is not restricted or varied by this Memorandum of Incorporation.

### **5.4 Directors**

- (1) A Director authorised by the Board of the Company:
  - (a) may call a meeting of the Board at any time; and
  - (b) must call such a meeting if required to do so by at least:
    - (i) two directors
- (2) Meetings of the Board shall be held at least once every quarter, provided that if all the Directors have, in writing, waived this requirement in respect of a particular quarter, then no meeting need be held for that quarter.
- (3) Notwithstanding clause 5.4(1), any Director may call a meeting of Directors if such Director considers there is good reason to do so.
- (4) The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, so 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, is not restricted or varied by this Memorandum of Incorporation.
- (5) The authority of the Board to adopt a decision, that could be voted on at a Board meeting, by way of 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, is not restricted or varied by this Memorandum of

Incorporation. Any decision made in the manner contemplated in this clause 5.4(5) has the same effect as if it had been approved by voting at a meeting.

- (6) The Board may determine the form and time for giving notice of its meetings, but such a determination must comply with any requirements set out in this Memorandum of Incorporation or the Company's rules, provided that no meeting of the Board shall be convened without notice to all of the Directors subject however, to the provisions of clause 5.4(7).
- (7) The authority of the Board to proceed with a meeting even if there was a failure to give the required notice or there was a defect in the giving of such notice, provided that all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, is not restricted or varied by this Memorandum of Incorporation.
- (8) The quorum requirement for a meeting is five Directors.
- (9) Each Director has one vote on a matter and a majority of votes cast on a resolution is sufficient to approve that resolution.
- (10) In the case of a tied vote the chair will not have a deciding vote and the resolution will fail.

## **5.5 Chairman of the Board**

- (1) Within seven days of the first annual general meeting, the Board of the Company shall meet and appoint, from amongst themselves, a Chairman and a Vice-Chairman, who shall hold their respective offices until the annual general meeting held next after their said appointments, provided that no one Director may be appointed to more than one of the aforesaid offices.
- (2) The office of the Chairman or Vice-Chairman shall be vacated by the Director holding such office upon him ceasing to be a Director for any reason.
- (3) In the event of any vacancy in the offices of Chairman or Vice-Chairman, the Board shall immediately meet to appoint, from amongst themselves, a replacement in such office.
- (4) Save as otherwise provided in this Memorandum of Incorporation, the Chairman shall preside at all meetings of Members and the Board and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Members.
- (5) The Vice-Chairman shall perform all such duties as may be assigned to him by the Chairman from time to time and shall assume the powers and duties of the Chairman in the latter's absence, or in the event of the Chairman's refusal or inability to act as such.

## **5.6 Directors' power to affect borrowing**

- (1) The Company's Board may raise or borrow from time to time for the purpose of the Company, or secure the payment, of such sums as they think fit and may secure the repayment or payment of any such sums by guarantee, bond or mortgage upon all or any of the property or assets of the Company or by the issue of debt instruments or otherwise as they may think fit.
- (2) Notwithstanding the Director's power above the amount to be raised or borrowed may be limited by the members in a general meeting.

#### **5.7 Directors' compensation and financial assistance**

- (1) The authority of the Company to pay remuneration to the Directors, in accordance with a special resolution approved by the Members within the previous two years, is not restricted or varied by this Memorandum of Incorporation.
- (2) The Company shall not, directly or indirectly pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or director, or person appointing a director, of the Company, except-
  - (a) As reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company.
  - (b) As payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
- (3) As payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the company; or
- (4) In respect of any legal obligation binding on the Company.

#### **5.8 Indemnification of Directors**

- (1) For purposes of this clause 5.8, **Director** includes a former Director, an alternate Director, a prescribed officer or a person who is a member of a committee of a Board of the Company, or of the audit committee of the Company, irrespective of whether or not the person is also a member of the Board.
- (2) The authority of the Company to advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company and to directly or indirectly indemnify a Director for such expenses if those proceedings are abandoned or exculpate the Director or arise in respect of any liability for which the Company may indemnify the Director, is not restricted or varied by this Memorandum of Incorporation.

- (3) The authority of the Company to indemnify a Director in respect of any liability for which the Company may indemnify a Director, is not restricted or varied by this Memorandum of Incorporation.
- (4) The authority of the Company to purchase insurance to protect:
  - (a) a Director against any liability or expenses for which the Company may indemnify a Director as contemplated in clause 5.8(2) or clause 5.8(3); or
  - (b) the Company against any contingency including but not limited to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director as contemplated in clause 5.8(2) or any liability for which the Company is permitted to indemnify a Director as contemplated in clause 5.8(3),is not restricted or varied by this Memorandum of Incorporation.
- (5) The Company shall be entitled to claim restitution from a Director or a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this clause 5.8 or the Act.

#### **5.9 Committees of the Board**

- (1) The authority of the Company's Board to appoint any number of committees of Directors for managing any of the affairs of the Company and to delegate to any such committee any authority of the Board, is not restricted or varied by this Memorandum of Incorporation.
- (2) Subject to the powers and authorities granted by the Board to any such committee, the authority of:
  - (a) the Board to include persons who are not Directors of the Company, provided that such persons are not ineligible or disqualified from being a Director as contemplated in Clause 5.1(9) and the Act and that no such person shall vote on a matter to be decided by the committee.
  - (b) the committee to consult with or receive advice from any other person; and
  - (c) the committee to exercise the full authority of the Board in respect of a matter referred to it,

Is not restricted or varied by this Memorandum of Incorporation.

#### **5.10 Authentication of Documents**

- (1) Any Director or any person appointed by the Directors for this purpose shall have power to authenticate any resolutions passed by the Members or the Directors, and any books, records, accounts and other documents relating to the Company, and to certify copies or extracts from those documents as true copies or extracts and where any books, records, documents or accounts are elsewhere than at the

registered office, the local manager or other officer of the Company having the custody of the document at such other place shall be deemed to be the person so appointed.

- (2) A document purporting to be a copy of a resolution of the Directors or Members or an extract from the minutes of a meeting of the Director or Members which is certified in accordance with clause 5.10(1) is *prima facie* evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that such extract is a true and accurate record of a duly constituted meeting of the Directors or Members.

## **6 Levies**

**6.1** The Board shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Company has incurred, or which the Directors reasonably anticipates the Company will incur in respect of:

- (1) maintenance, repair, improvements and keeping in order and condition of the Conservation Area and the private road area, represented by Erf 242;
- (2) payment of all rates and other charges payable by the Company in respect of the Conservation Area and the road area, and / or for the services rendered to it,
- (3) payment of the salaries and / or wages of employees of the Company; and
- (4) the payment of all expenses necessarily or reasonably incurred in connection with the management of the Company, the Conservation Area and the Company's Affairs.

**6.2** The Directors may determine that an increase in levies or that a special levy be raised and charged to the Members, provided that such increase or special levy is approved by the Members. Any adjustment, increase, or special levy shall take effect on the first business day of the month immediately following the month in which such adjustment is approved by the Members, unless otherwise resolved by the Members.

**6.3** A Member shall be liable to pay levies with effect from the date upon which the Member becomes a Registered Owner, pro-rated where applicable.

**6.4** The process by which monthly levies are determined are as follows: The Board shall estimate the amount which shall be required by the Company to meet the expenses (including VAT where applicable) during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the Members equal to or as near as is reasonably practical to such estimated amount, provided that any such levy shall be approved by the Members. The Board may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be payable by equal monthly instalments due in advance on the first day of each and every succeeding month of such year.

- 6.5** The Board, may from time to time, make special levies upon the Members in respect of all such expenses as are mentioned in clause 6.1, and such levies may be made in the sum or by such instalments and at such time or times as the Board shall think fit, provided that all such special levies shall be approved by the Members.
- 6.6** Any amount due by a Member by way of a levy shall be a debt due by him to the Company, the obligation of a Member to pay a levy shall cease upon his ceasing to be Member of the Company, without prejudice to the Company's right to recover arrear levies. No levies paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member. A Members successor in title to a Residential Erf shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that erf, to pay the levy attributable to that erf. No Member shall transfer his Residential Erf until the Company has certified that the Member has at the date of transfer fulfilled all his financial obligations to the Company.
- 6.7** The total levy payable by a Member shall bear the same proportion to the total levy imposed on Members, as the Unit Erf registered in the name of that Member bears to the total number of all the Unit Erven.
- 6.8** It is recorded that the water usage allocated to each Unit Erf in respect of each calendar month is limited ("Water Limit"). Based on the 220,000l daily limit set out on the registered servitude, the limit at the time of adoption of this MOI is 1,000l/day per Unit Erf, measured on a monthly basis, on a business day. The Board may from time adjust the Water Limit, provided that such adjustment is approved by the Members. In the event that any Member use in excess of the Water Limit, the Board may raise a reasonable charge on the additional litres used and restrict the water flow to such Unit Erf. Any charge or fee payable in respect of water usage in excess of the Water Limit will be determined by the board from time to time, and will be communicated to Members as per clause 2.4(5)(a).
- 6.9** No Member shall be entitled to any of the privileges of membership unless and until he shall have paid all levies and any other sum (if any) which shall be due and payable to the Company in respect of his membership thereof.

## **7 The Conservation Area**

- (1) Save by a special resolution of the Members, neither the whole nor any portion of the Conservation Area shall be:
- (a) sold, let, alienated, subdivided, transferred, or otherwise disposed of;
  - (b) mortgaged or subjected to any rights of use, occupation or servitude, whether registered in a deeds registry or not (except for the rights enjoyed by the Members in terms hereof); or
- (2) Save by a special resolution of the Members, neither the whole nor any portion of erven 15, 54, 66, 81, 92, 103, 108, 119, 123, 132, 135, 148, 150, 166, 173, 190, 201, 206 and 223, as depicted on General Plan No. 10389/1992, and the

Remainder of Portion 2 of the Farm Modder River No.721 shall be built upon, improved, or enhanced in value by the

(a) construction of buildings, erections, facilities or amenities, or

(b) clearing or planting of vegetation, or

(c) introduction of fauna,

irrespective of the costs (directly or indirectly) to the Company. Ordinary maintenance, fire prevention and conservation activities and related expenditure and clearing, burning, or planting of vegetation shall not be subject to this condition.

- (3) Save by a standalone ordinary resolution of the Members, neither the whole nor any portion of erven 241 and 247 shall be built upon, improved, or enhanced in value by the construction or additions to buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Company exceeds that of R15,000. Ordinary maintenance, fire prevention and conservation activities and related expenditure shall not be subject to this condition
- (4) The Directors may from time to time, hire out the existing Conservation Centres to persons they approve and for the use in fulfilling the conservation objectives of the Company, at a fair fee and within the terms of hire as they may determine.

## **8 General Provisions**

### **8.1 Accounts**

- (1) The Company's Board must keep accurate and complete accounting records required or prescribed by the Act.
- (2) The Company's Board shall appoint an auditor to audit the annual financial statements of the Company as a voluntary audit unless an audit is required according to the public interest score set out in the Companies Act, 2008, as amended.
- (3) The accounting records must be kept at the registered office of the Company or (subject to the provisions of section 5 of the Act) at such other location within the Republic as the Board think fit and shall at all times be accessible and open to inspection by the Board. Except as provided by the Act or the authority of the Board, no Member (other than a Member who happens to be a Director) has any rights to inspect any accounting record or document of the Company.
- (4) The Board must, in accordance with sections 30 and 31 of the Act, cause to be prepared and laid before the Company at its annual general meeting those annual financial statements and reports and group annual financial statements and reports, if any.

- (5) Subject to the provisions of the Act, a copy of the annual financial statements and reports referred to in clause 8.1 (4) must be made available upon request, at the registered office of the company to each Member. A Member may give the Company an address for the purposes of receiving electronic communication, in which case a copy of such documents may be delivered electronically to that Member at that address. This clause 8.1 (5) does not require the Company to send or deliver a copy of such documents to any person who is not entitled to receive notice of general meetings of the Company or whose address the Company is not aware of.

## **8.2 Conversion of the Company to a profit company, disposal of assets, mergers and amalgamations**

- (1) The Company may not amalgamate or merge with, or convert to, a profit company, or dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- (2) Any proposal to dispose of all or the greater part of the Company's assets or undertaking or to amalgamate or merge with another non-profit company must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Act, respectively.
- (3) Sections 115 and 116 of the Act, read with the changes required by the context, apply with respect to the approval of a proposal contemplated in clause (2) above.

## **8.3 Winding-Up**

- (1) Upon the winding-up or dissolution of the Company, 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 if the Company after its obligations and liabilities have been satisfied.
- (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 which have similar objects to the Company's main objects.
- (3) The Company's main objects may be determined in terms of the Company's Memorandum of Incorporation or by its Members, or Directors immediately before the time of its dissolution; or by the court, if the Memorandum of Incorporation, or the Members or Directors fail to make such a determination.

## **8.4 Other Professional Officers**

Save as specifically provided otherwise in this Memorandum of Incorporation, the Board shall at all times have the rights to engage on behalf of the Company, the



services of accountants, auditors, attorneys, advocates, property managers, architects, engineers, any other professional person or firm and / or any other employee/s whatsoever, for any reason thought necessary by the Board and on such terms as the Board shall decide.

## **8.5 Service of Notices**

- (1) Service of any notice which is not process of the court shall be in writing and shall be given or served by the Company upon any Member, either electronically, provided the Member has supplied the company with an email address for the service of such notices, or by post in a prepaid registered letter, properly addressed to the Member at the Members registered postal address.
- (2) Service of any process of the court shall be served upon any Member according to the prevailing rules of the presiding court, at the address of the Residential Erf owned by him.
- (3) No Member shall be entitled to have a notice served on him at any address not within the Republic, other than an email address, but any Member may require the Company, by written notice, to record an address within the Republic which shall be deemed to be his address for the purpose of the service of notices.
- (4) Any notice given by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- (5) Any notice given by electronic communication will be deemed to have been served within 24 hours after transmission.
- (6) The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice, shall not invalidate the proceedings of that meeting.

## **8.6 Breach**

- (1) Should any Member:
  - (a) Fail to pay on due date any amount due by that Member in term of this Memorandum of Incorporation or any regulation made by the Company and remain in default for more than seven days after being notified in writing to do so by the Board; or
  - (b) Commit any other breach of the provisions of this Memorandum of Incorporation or any regulation made by the Company and fail to commence remedying that breach within a period of ten days after the receipt of written notice to that effect by the Board and complete the remedying of such breach within a reasonable time;

then and in either such event, the Board shall be entitled on behalf of the Company, without prejudice to any other rights or remedies which the Board or the Company or any other Member may have in law, including the right to claim damages:

- (i) to institute legal proceedings on behalf of the Company against such Member for payment of such overdue amount or for performance of his obligations in terms of this Memorandum of Incorporation or any regulation made by the Company, as the case may be; or
  - (c) in the case of clause (b), to remedy such breach and immediately recover the total costs incurred by the Board or the Company in so doing from such Member.
- (2) Should the Board institute any legal proceedings against any Member pursuant to a breach by that Member of this Memorandum of Incorporation or any regulation made by the Company, then without prejudice to any other rights which the Board or the Company or any other Member may have in law, the Board shall be entitled to recover from such Member all legal costs incurred by the Board or the Company, including attorney/client charges reckoned on the non-litigious tariff recommended by the Law Society of the Cape of Good Hope (or its successors), tracing fees and collection commission.
- (3) Without prejudice to all or any of the rights granted to the Board under this Memorandum of Incorporation, should any Member fail to pay any amount due by that Member on due date, then such Member shall pay interest thereon at two percent above the publicly quoted prime rate of interest charged by the Company's bankers from time to time calculated from 1 calendar month after the due date of payment until the actual date of payment of such amount.

#### **8.7 Subdivision**

The number of Unit Erven on the Estate shall be limited to 220 Unit Erven.

#### **8.8 Design Manual**

The Design Manual shall detail the design criteria and specifications for all buildings to be erected at Grotto Bay.

This manual shall be maintained by the Directors who are empowered to amend same by a simple majority vote at a Directors meeting, subject to the approval of such amendment by the Members. The amendment shall be carried by a simple majority of votes in favour and this may be done by a vote of hands or a written ballot at a members' meeting or by way of a round robin electronic and / or mail vote.

This manual shall be kept at the registered office of the Company.