

MEMORANDUM OF INCORPORATION

of

WOODHILL HOMEOWNERS ASSOCIATION NPC

Registration Number: 1998/009813/08

(which is referred to in the rest of this Memorandum of Incorporation as "the company")

A) OBJECTS AND POWERS OF THE COMPANY:-

The company is a Non-Profit company with members and has all of the legal powers and capacity of an individual. Its powers and capacity and objects shall include, but will not be limited to the following: -

1. Capacity and Objects

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

2. Powers

The company shall also have the powers, to: -

- 2.1. Manage, control, and administer, on behalf of its members, the Common Property which may include, and where required and necessary, all electric, water, reticulation services, sewerage systems, storm water systems, roads, telecommunication and intercom systems and security within the Township; and
- 2.2. formulate rules and by-laws for the control of buildings, walling, fencing, exterior, lighting, signage, landscaping and to ensure compliance of such rules and by-laws by the members;
- 2.3. monitor compliance by the members of the Township Establishment Conditions, building restrictions and requirements and, where necessary, to notify the Local Authority with a view to enforcement of such conditions, restrictions or requirements;
- 2.4. formulate and implement rules relating to security, landscaping, vegetation, parking, road use, signage and advertising, exterior finishes of buildings, fencing or walling;
- 2.5. make and enforce rules concerning design, landscaping, ecological planning and any building activities;
- 2.6. ensure that members maintain their units in a clean and tidy condition;

- 2.7. consent to sub-division or re-zoning of any unit and to impose such conditions relating to any landscaping and aesthetic appearance. as they may deem fit;
- 2.8. control access to and from the Township;
- 2.9. collect Levies and contributions towards funds of the company for the attainment of the objects of the company, to promote and maintain the business or enterprise of the company; and
- 2.10. create Rules of Conduct concerning the rights and obligations of members and the use of Common Property and units within the Township and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation, are enforced equally upon all members and are adhered to for the benefit of the members as a whole and subject to such restrictions and/or conditions, restrictions and/or powers as may be imposed by the members upon the directors, in general meeting, on the basis that all members shall have equal rights and obligations;

B) DEFINITIONS:-

In this Memorandum of Incorporation: -

- a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
- c) the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them: -
 - i. “the Act” or “the Companies Act” : Means the Companies Act, 71 of 2008 and all regulations there under and/or any Opinions, Practice Notes and/or Non-Binding Opinions in terms of the Act issued by the Companies and Intellectual Property Commission;
 - ii. “auditors” : Means the company’s appointed Auditors from time to time;
 - iii. “board” : Means the board of directors of the company from time to time;
 - iv. “business day” : A business day is calculated by: -
 - a. excluding the day on which the first such event occurs;

- b. including the day on or by which the second event so occurs; and
 - c. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively;

- v. “chairman” : Means the chairman of the board of Directors, elected in accordance with this Memorandum of Incorporation or if that expressions are used with reference to a general meeting or meeting of the directors, at which that person is not present or does not act as chairman, the person acting as chairman in accordance with the provisions of this Memorandum of Incorporation;

- vi. “common property” : Refers to the Common Property Areas in the Township, including all the infrastructure, amenities, and equipment of any nature, developed and/or installed on the Common Property Areas and within servitude areas registered in favour of the company, that are owned by the company and for which the company bears the responsibility to maintain, such as, amongst others, the streets, streetscapes, pavements, fencing, security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, storm water reticulation and any equipment or amenities used ancillary to such common Property Areas, including gardens and buildings;

- vii. “common property areas” : Means those areas transferred to or registered in the name of the company and located in the Township or those areas with the Township, including the units;

- viii. “company” : Means the Woodhill Homeowners’ Association (NPC). Registration Number: 1998/009813/08;

- ix. “directors” : Means the directors of the company who shall, for the purposes of the Act, be the directors of the company appointed or elected in accordance with the provisions of this Memorandum of Incorporation;

- x. “delivered” or “sent” : Means delivery by mail and/or telefax and/or e-mail to the address or telefax number or e-mail address of the member as in the Register of Members in terms of s 24(4) of the Act;

- xi. “general meeting”/
“members’ meeting” : Means a general meeting of the company and unless the context indicates otherwise, will include the annual general meeting of the company;

- xii. “guilty of” or any words to that effect in the Memorandum of Incorporation or the Rules : Means a finding and/or determination as in terms of paragraphs 1.2.5 and/or 1.2.7 of the rules, as the case may be;

- xiii. “levy”/ “levies” : Means contributions levied in terms of this Memorandum of Incorporation upon members for the purpose of meeting all the expenses which the company has incurred or which the directors reasonable anticipate the company will incur in the attainment of its objects and the pursuit of its business (“normal levies”), any increase in such normal levies and special levies as provided for in article 1.5(6) of the Memorandum of Incorporation;

- xiv. “managing agent” : Means any person of body or an estate agent as defined in the Estate Agents’ Act, Act 112 of 1976, appointed by the company as an independent contractor from time to time;

- xv. “member / members” : Means any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a unit in the Township and/or any person who has successfully applied for membership of the company and whose name are entered

in the register of members in terms of s 24(4) of the Act and will include, mutatis mutandis for purposes of this Memorandum of Incorporation, a natural person contemplated in article 1.5 (2.3) and for purposes of voting at meeting of the company of otherwise, “member” will include a person or persons representing that member by proxy in terms of the Act and this Memorandum of Incorporation;

- xvi. “resident(s)” : Means a person/entity in occupation of a unit on a temporary or permanent basis by agreement with and/or consent from the member of a relevant unit or through his affiliation or association with such member;
- xvii. “resolution” : Means, in the context of a general meeting or a members’ meeting, a resolution taken at a properly constituted meeting of the company for that purpose and such a resolution cannot be taken by means of section 60 of the Companies Act by informal means;
- xviii. “section/s” : Means a particular section or sections of the Companies Act 71 of 2008;
- xix. “Rules” : Means rules (including the existing rules as in 1.2 (6) made in accordance with section 15(3) of the Companies Act;
- xx. “Township” : Means the property comprising the Woodhill Estate;
- xxi. “unit” : Means an erf or any subdivision thereof in the Township or a unit established in terms of the Sectional Titles Act, Act 95 of 1986, within the Township;
- xxii. “vice-chairman” : Means the vice-chairman of the board of directors;
- xxiii. “writing”, “in writing” : Means all modes of representing or reproducing words in visible form and also, a data message accessible in a manner usable for subsequent use.

C) COMPANY ADMINISTRATION: -

Article 1 - Incorporation and Nature of the company

1.1 Incorporation

- 1) The company is incorporated as a non-profit company, as defined in the Companies Act.
- 2) The company is incorporated in accordance with, and governed by: -
 - a) the unalterable provisions of the Companies Act that are applicable to Non-Profit companies;
 - b) the alterable provisions of the Companies Act that are applicable to Non-Profit companies, subject to any limitation, extension, variation, or substitution set out in this Memorandum; and
 - c) the provisions of this Memorandum of Incorporation.

1.2 Objects and Powers of the company

- 1) The Objects of the company are as set out on in Part A 1 and, except to the extent necessarily implied by the those objects and by Part A 2, 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) The company is not subject to any provision contemplated in section 15 (2)(b) or (c).
- 3) Upon dissolution of the company, its net assets must be distributed in the manner determined in accordance with Item 1 (4)(b) of Schedule 1 of the Companies Act, which holds that: -
 - a) the net value of the company must be distributed to one or more non-profit Companies, external non-profit companies carrying on activities within the Republic, voluntary associations, or non-profit trusts - having objects similar to the company's main object; and
 - b) as determined: -
 - i. by majority resolution of the members, immediately before the time of dissolution or, failing such determination;
 - ii. by the Court.

1.3 Memorandum of Incorporation and Company Rules: -

- 1) This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in sections 16,17 or 152(6)(b), subject to the requirement that any alternation of the Memorandum of Incorporation, made in terms of section (17(1), shall be published to the members of the company by delivering a copy of the altered Memorandum of Incorporation to each member by ordinary mail and/or telefax and/or e-mail.

- 2) The company's board of directors may, in terms of section 15(2) and (3) of the Act propose Rules, subject to approval by the members provided for in article 1.3(3), necessary or incidental to the management of the company and to attain the objects of the company as set out in A above, with regards to the following aspects: -
- a) Preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of fences and other improvements to a unit, whether upon or within the boundaries of any unit, which may affect the aesthetical appearance and which includes additions and improvements such as satellite and/or radio antennae dishes and/or -receivers, air-conditioning units and/or solar heating systems and panels;
 - b) The security, vegetation, parking, signage and advertising, exterior finishes of buildings or walling and fences, streetscapes and the maintenance of any unit and any improvements thereon;
 - c) The right to prohibit, restrict or control the keeping of any animal/bird/reptile which they may regard as dangerous or like to cause a nuisance and/or disturbance to the residents or the flora and fauna in the Township;
 - d) The placing or affixing of ornamentation or embellishments to the outside of the buildings or on a portion within the Township, including the power to remove, or order the removal or to procure an order for removal of any such objects;
 - e) The conduct of any person or persons within the Township for the preservation of peace and tranquility and the prevention of nuisance of any nature to any member resident or to prevent any harm to the environment;
 - f) Furtherance and promotion of any of the objects of the company and/or for the better management of the affairs of the company and/or for the advancement of the interests of members of the company;
 - g) The right to control reasonable access to the Township and to any Portion to protect the security of the Township. the members and residents and all users thereof;
 - h) The control of any visitors, contractors and laborers and restriction of their access and activities on the Township;
 - i) The enforcement of any of the Rules through a system of fines and penalties.

- 3) Rules proposed by the board must be approved by the members of the company by ordinary resolution at a general meeting and will become effective and enforceable on the date of such approval, or a later date provided for in the resolution approving the Rules.
- 4) The board must publish any Rules made by delivering a copy of those rules to each member by ordinary mail and/or telefax and/or e-mail. The rules are available for inspection at the office of the company at all times within business hours and a copy will be made available against payment of the reasonable fee as determined by the board of directors from time to time.
- 5) The company may itself, through the members in a general meeting, make any rules which the directors may propose in terms of article 1 .3 (2) and may likewise vary or modify any rules made by it or the directors and approved by members of the Company from time to time.
- 6) Save to the extent that the existing rules as set out in Schedule 1 hereto were amended. the rules made in terms of this Memorandum of Incorporation with regards to conduct of members or any other matter, in force on the date before this Memorandum of Incorporation is accepted by the members, will remain of force and effect as if they were issued h terms of this article 1.3.
- 7) Arbitration: -
 - a) In the event of a dispute between the company and a member or between members arising out of or in connection with or related to provisions of this Memorandum of Incorporation, the Act or the rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions; provided that any dispute concerning the payment of monies due to the company; shall be excluded from arbitration.
 - b) If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the board and the managing agent, if any, and should the dispute or complaint not be resolved within 10 (ten) business days of such notice, either of the parties may demand that he dispute or complaint be referred to arbitration.
 - c) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
 - d) If the parties cannot agree as to the person of the arbitrator to be appointed in terms of article 1 .3(4)(c) within 5 (five) business days after the arbitration has been demanded, the auditors of the company shall, upon written application, in writing, appoint an arbitrator within 5 (five) business days after they have been required to make the appointment.

- e) The arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 5 (five) business days after demand for security or payment was made, the other party shall be entitled to abandon arbitration proceedings.
- f) The intention being that the arbitration shall be concluded within 30 (thirty) business days after an arbitrator has been appointed or security for costs has been furnished.
- g) The arbitrator shall make his/her award within 5 (five) business days from the date of the completion of the arbitration and shall, in making his/her award, have regard to the principles laid down in terms of the Memorandum of Incorporation and the rules there under. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he/she may determine and as he/she in his/her discretion may deem appropriate, having regard to the outcome of the arbitration.
- h) In making an award of costs, it shall be competent for the arbitrator to award costs against the company on the basis that the member in whose favour the award was made, shall be excluded from contributing to such costs through his general levy and/or any special levy contributions.
- i) The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to, or affected by, the arbitration.
- j) The provisions of the Arbitration Act. No. 42 of 1965 shall be applicable.
- k) Notwithstanding that the Arbitration Act, No. 42 of 1965 makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the company and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event, not later than 7 (seven) business days prior to the arbitration hearing.

1.4 Optional provisions of Companies Act do not apply

- 1) The company elects, if it is not required by the Companies Act to have its annual financial statements audited, to, in terms of section 34(2) of the Act, to appoint an auditor, but will an audit committee or a company secretary.
- 2) In terms of section 91 (6) of the Act the provisions of section 89 of the Act applies, with the necessary alterations, to the resignation or removal of an auditor, provided that removal of the auditor will only be effected by an ordinary resolution of the company taken at a meeting of the members.

1.5 1) Membership of the company

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

2) Qualification for membership of the company

Membership of the company shall notwithstanding the provisions of article 1.5(3), be limited to: -

- 2.1) Any person (natural person or a juristic entity) who, at in corporation or thereafter, is reflected, in terms of the deeds Registries Act, No 47 of 1937, in the records of the Deeds Office concerned, as the registered owner of an unit in the Township and who will be bound by the provisions of the Companies Act, this Memorandum of Incorporation and any rules made and incorporated hereunder; provided that such a person will be obliged to become a member the company and an offer to purchase a unit in the Township will be deemed to be an application to become a member of the company in terms of article 1.5 (3).
- 2.2) Where any unit (s) in the Township is/are owned by more than one person, all the registered owners of that unit(s) shall together, subject to article 1.5 (2.3) be deemed to be one member of the company and have the rights and obligations of one member of the company; provided however that all co-owners of a unit(s) shall be jointly and severally liable for the due performance of any obligations towards the company.
- 2.3) If the registered owner contemplated in this article 1.5 (2) is not a natural person, it will be obliged prior to transfer to nominate a natural person to represent it and to notify the company of the full names, street address, postal address and email address of the said representative, failing which the company may choose the identity of the representative from amongst the directors, members, trustees, partners or other office bearers and/or members of the owner. Such a member agrees that such a natural person will be deemed to be the duly appointed agent (agent to provide written proof to the WHOA of his/her appointment) of that member for all purposes and also for purposes of this Memorandum of Incorporation and rules until substituted by any other natural person by way of written notification to the company.

3) Application for membership of the company

3. 1) Subject to the provisions of article 1.5(2), application for membership of the company shall be made to the board in writing.
- 3.2) When application is made for membership of the company by a person, such person shall, in addition to the provisions of the Companies Act, declare himself bound by the terms and conditions of this Memorandum of Incorporation and any rules made there under and such person shall be deemed to have acquainted himself with the terms and conditions thereof.

4) Levies

All members shall be liable to payment of a levy or levies, as may be determined in terms of this Memorandum of Incorporation, as may be required for the fulfilment of the objectives of the company.

5) Rights and obligations of membership

5. 1) A member of the company shall remain a member thereof until he/she ceases to be the registered owner, as reflected in the relevant Deeds Office as an owner of a unit in the Township and a member shall therefore not be entitled to resign as a member of the company unless the person ceases to be a registered owner of a unit in the Township; provided that cessation of registered ownership will be deemed to be an irrevocable application for the cessation of membership and acceptance thereof by the directors in terms of the Memorandum of Incorporation. In addition to the provisions of article 6.11 below, cessation of membership does not affect any existing obligations or debt, or existing or pending actions for whatever reason, in respect of the particular member, whether in a personal or representative capacity.
- 5.2) The rights and obligations of a member shall not be transferable, and every member shall:
 - 5.2. 1) further, to the best of his ability, support the objects and interests of the company;
 - 5.2.2) observe all rules made by the company or the directors;
 - 5.2.3) pay all levies due by the member, to the company;
 - 5.2.4) comply with the Conditions of Establishment of the Township;
 - 5.2.5) abide by the Memorandum of Incorporation and adhere to the rules made in terms of the Memorandum of Incorporation from time to time, provided that nothing contained in this Memorandum of Incorporation of the company shall prevent a member from ceding his rights in terms of this Memorandum of Incorporation as security to the mortgagee of the member's unit;

- 5.3) No member shall let or otherwise part with occupation of his unit, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such unit, as a *stipulatio alteri* in favour of the company that such occupier shall be bound by all the terms and conditions of this Memorandum of Incorporation and any rules made there under, and such written agreement is lodged with the company prior to the proposed occupier taking occupation of the unit in question.
- 5.4) Every member shall, when he agrees to transfer ownership of his unit in the Township, set it as a condition of the agreement of sale and transfer, that the new owner shall apply for membership of the company and be accepted as member of the company as provided for in article 15 (3) and therefore become a member of this company, accepting his/her/its obligations towards the company as member.
- 5.5) No member shall be entitled to dispose of a unit in the Township to any other person without the written consent of the company first having been obtained by the authorised agent or the managing agent, which consent will not be withheld unless:
- 5.5.1) such member is in arrear with any levies, penalties, fines or interest or other payment due to the company in terms of the Memorandum of Incorporation or the rules or otherwise;
 - 5.5.2) such member is in breach with any of his obligations towards the company in terms of the Memorandum of Incorporation or the rules and has failed to remedy such breach after having been called upon by the company, in writing, to remedy such breach and remain in breach; mere failure to remedy breach cannot take away rights/privileges - as member has right to due process first.
 - 5.5.3) the prospective transferee has not applied for membership of the company, subject to article 15(3), where such application is required, or has not been accepted as member of the company.
- 5.6) No member shall be entitled to effect transfer of a unit in the Township to any other person until the company, under the hand of its authorised representative or the managing agent, has certified by way of a clearance certificate that such member as at date of transfer has complied with all his/her/its financial and other obligations towards the company.
- 5.7) The provisions of article 1 .5(5.5) and (5.6) shall apply *mutatis mutandis* to any alienation of an undivided share in a unit in the Township.

- 5.8) The directors of the company may impose an additional, reasonable fee upon the members of the company for the issuing of the Clearance Certificate as referred to in article 1 .5(5.6). The said fee will be determined by the directors or the managing agent from time to time and will be subject to ratification by the members in general meeting.

6) Levies and Annual Budget

- 6.1) The cost and expenses of the company shall be borne by the members and the directors may from time to time propose levies to be paid by members for the purpose of meeting all the expenses which the company has incurred or will incur, or which the directors reasonably anticipate the company will need to provide as reserves in pursuit of its objectives or in the pursuit of its business.

6.2) **Budget and Levy Approval Meeting:**

6.2.1) The company shall hold an Alternative Special General Meeting (ASGM) for the purpose of approving the annual budget and the annual levies payable.

6.2.2) The ASGM shall be held on a date separate from the Annual General Meeting (AGM).

6.2.3) The ASGM shall be convened by the Board of Directors, and notice thereof shall be given to members in accordance with the Companies Act 71 of 2008 and the MOI.

6.2.4) The notice of the ASGM shall include the proposed budget, the proposed levies, and any other relevant information.

Timing and Frequency of ASGM:

6.2.5) The ASGM shall be held annually, but not later than the start of the following financial year.

6.2.6) The Board of Directors may determine the date, time, and location of the ASGM.

Quorum and Voting:

6.2.7) The Quorum for the ASGM shall be in accordance with article 3.6 of the MOI.

6.2.8) Decisions at the ASGM shall be taken in accordance with articles 3.8 and 3.9 of the MOI.

- 6.3) The notice of the ASGM in 6.2 above will contain an estimate of the amount which will be required by the company to meet its expenses during that financial year and the new levy proposed for approval by the members.
- 6.4) The directors may propose the creating of a reserve/s from levies but the budget presented for approval by the members must indicate an amount to be collected through levies to be held as reserve/s in anticipation of future expenditure and the budget must indicate what the anticipated future expenditure will be.
- 6.5) The directors shall advise each member in writing as soon as practically possible after the ASGM of the amount of levies payable by such member for that next defined period.
- 6.6) The annual levy proposed to and approved at the ASGM shall be payable by the members of the company, provided that if the member of the company is a corporate entity or a trust, the natural person in article 1 .5 (2.3) above will be a co-principal debtor.
- 6.7) The annual levy proposed and approved at the ASGM shall be payable in equal monthly installments commencing on the first day of the first month of the following defined period and on the first day of each month thereafter up to and including the next approved levy increase date.
- 6.8) The directors may propose an increase in levies or special once-off levies to meet existing or future extraordinary expenses in pursuit of the objectives of the company; provided that the directors shall prepare a budget and proper motivation accompanied by a detailed feasibility study and the proposed date of implementation of the increase in levies or the special levy to be presented at the ASGM of the company for approval.
- 6.9) All levies become due, in terms of article 1 .5 (6)(6.7). on the first day of the first month of the following defined period and on the first day of each month thereafter up to and including the next approved levy increase and an increase in levies and special levies referred to in article 1 .5(6)(6.8) become due as provided for in the resolution approving those levies and all levies may be recovered by the company by action in any competent Court having jurisdiction, from the member(s) who were owner[s] of the unit(s) at the time when such resolution was passed.
- 6.10) The directors shall be empowered in addition to such other rights as the company may have in law against its members to determine the rate of interest from time to time chargeable upon arrear levies. Should the directors fail to make any determination of the interest rate, then and in that event, the prescribed rate of interest, as may be applicable from time to time in terms of the Prescribed Rate of Interest Act, Act No. 55 of 1975

shall be applicable. Interest shall be calculated monthly in arrears and compounded. Interest imposed by the directors shall be subject to review by the members in general meeting and shall not exceed any limitations set by legislation.

- 6.11) The obligation of a member to pay a levy and interest shall cease upon his ceasing to be a member without prejudice to the company's right to recover arrear levies and interest and penalties, fines and other amounts due to the company. No levies, interest, penalties, fines, or other amounts paid by a member shall under any circumstances be repayable by the company upon his ceasing to be a member. A member's successor in title to a unit shall be liable for payment of levies as from the date upon which he becomes the registered owner of the unit as reflected in the Deeds Registry.
- 6.12) No unit(s) registered in a member's name can be transferred without a Clearance Certificate as referred to in article 1 .5(5)(5.6) first being obtained from the company confirming that all levies, penalties, fines or other amounts due and interest have been paid up to and including date of registration of transfer thereof.
- 6.13) A member shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the company in obtaining the recovery of arrear levies, penalties, fines, interest or any other arrear amounts due and owing by such owner to the company or in enforcing compliance with the Act, the provisions of this Memorandum of Incorporation, or the rules.
- 6.14) The directors may from time to time determine a charge based on reasonable costs incurred by the company to be levied against members in arrears, as an administration charge payable to the company or to the managing agent.
- 6.15) All payments made by a member and received by the company, shall be allocated firstly towards interest, legal costs and thereafter towards capital. The board reserves the right to allocate payments as they deem fit in the absence of an express allocation by the member. In the absence of an express allocation by the board or the member, all payments will be allocated to the debt newest in time. Any payments in lieu of a debt that has been handed over to an attorney for collection will be deducted from the most recent debt, as well as the costs incurred to date of payment. All subsequent payments will be allocated to the older amounts outstanding, until the total amount outstanding has been recovered.
- 6.16) Should a member fail to effect payment of levies on due date, the full outstanding balance remaining unpaid for the financial year shall become due and payable without notice and/or demand but the board may at their sole election and discretion agree to a re-payment arrangement with the member concerned and subject to such conditions as the board may impose. The board, in managing the financial obligation and cash flow

requirements of the company, may at their sole election and discretion agree to reduce, vary or discount the full outstanding balance remaining unpaid by a member, subject to such conditions as the board may impose and subject further to the ratification by the members, with or without amendment at the next general meeting of the company following such determination.

Article 2 – Rights of Members

2.1 Members' right to Information

A member has the right to access to information as set out in section 26(1) of the Act.

2.2 Representation by concurrent proxies

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

2.3 Authority of proxy to delegate

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

2.4 Requirements to deliver proxy instrument to the company

The requirement that a member must deliver to the company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58(3)(c) of the Act is varied to the extent that a copy of the instrument appointing a proxy must be delivered to the company or to any other person acting on behalf of the company (including a board member or duly appointed managing agent) at any time before commencement of the proceedings or meeting at which the proxy exercises any rights of the member. The company retains the right to first ascertain the identity and the right to vote of the member who appointed the proxy.

2.5 Deliberative authority of proxy

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

2.6 Record date for exercise of member rights

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

2.7 **Rights of members**

Members shall have the rights prescribed by the Act. the Memorandum of Incorporation and any rules made there under; provided that a member/(s) shall not have the right to vote at any general meeting, or as contemplated in terms of- the provisions of section 60 of the Act. if: -

2.7.1) such member is in arrear with any Levies, service costs, contributions, penalties, fines, legal costs or interest or any other payment due to the company in terms of this Memorandum of Incorporation or the rules or otherwise;

2.7.2) such member is in breach with any of his obligations towards the company in terms of this Memorandum of Incorporation or the rules and has failed to remedy such breach after having been called upon by the company, in writing, to remedy such breach and he remains in breach - mere failure to remedy breach cannot take away rights - as member has right to due process before voting right is suspended.

2.8 **Proxy**

The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit: -

WOODHILL HOMEOWNERS' ASSOCIATION NPC
98/00981 3/08

I, of
(Address and stand/unit number)

being a member entitled to exercise any voting rights in
WOODHILL HOMEOWNERS' ASSOCIATION NPC

hereby appoint

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

as my proxy to vote for me and on my behalf at the annual general or general meeting of the company to be held on the day of and at any adjournment thereof as follows or on a resolution proposed in terms of section 60 of the Act (as the case may be)*: **In favour of Against Abstain**

Resolution to

Resolution to

Resolution to

(Indicate instruction to proxy by way of a cross in the space provided above.
The member must indicate the agenda point and/or the nature of the proposed resolution.)
Unless otherwise instructed, my proxy may vote as he/she thinks fit, also in respect of agenda points/proposed resolutions not expressly indicated by the member as above.

Signed this day of

This proxy is valid for one year from the date of signature below, or until exercised or until revoked in writing as hereunder by the authorised signatory.

Signature

Revocation: -

I, of
being a member entitled to exercise any voting rights in WOODHILL HOMEOWNERS' ASSOCIATION NPC hereby revoke the proxy given to

..... of
with effect fromor otherwise from the date of signature hereunder.

Signed this day of

Signature

Article 3 - Members' Meetings

3.1 Requirement to hold meetings

- 1) The company shall, within 6 (six) months after the end of each financial year, hold a general meeting in addition to any other general meetings during that year, and shall specify the meeting as such in the notices, in terms of article 3.4 below, calling such meeting;
- 2) The abovementioned general meeting shall be called the "annual general meeting" and all other general meetings shall be called "special general meetings".

3.2 Members' right to requisition a meeting

The right of members to requisition a meeting, as set out in section 61(3) of the Act, may be exercised by at least 10% of the voting rights entitled to be exercised in relation to the matters to be considered at the meeting despite the provisions of that section.

3.3 Location of members' meetings

The authority of the company's board of directors to determine the location of any members' meeting, and the authority of the company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act is limited or restricted to the extent that all members' meetings shall be convened to take place at a location, preferably within the Township or within close proximity thereof.

3.4 Notice of members meetings

The minimum number of days for the company to deliver a notice of a members meeting to the members, as required by section 62 of the Act is as provided for in section 62(1) of the Ac, being 15 (fifteen) business days.

3.5 Electronic participation in members' meetings

The authority of the company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 of the Act is not limited or restricted by this Memorandum of Incorporation; provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each- other without an intermediary, and to participate reasonably effectively at the meeting.

3.6 Quorum for Members' meetings

- 1) The quorum requirements for a members' meeting to begin, or for a matter to be considered are:
 - a) 80 (eighty) votes entitled to be exercised, present in person or by proxy, and
 - b) at least 3 (three) members being present.
- 2) The time periods allowed in section 64(4) and (5) of the Act apply to the company, subject to the following variations: -
 - a) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of article 3 (3.6)(1) above have not been satisfied, the meeting is postponed without motion, vote or further notice, for 1 (one) week;

- b) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of article 3 (3.6) (1) above, if applicable, for consideration of a particular matter to begin have not been satisfied: -
 - (i) if there is other business on the Agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
 - ii) if there is no other business on the Agenda of the meeting, the meeting is adjourned for 1 (one) week, without motion or vote.
 - c) The person intended to preside at a meeting that cannot begin due to the operation of article 3 (3.6)(1) above, where a quorum is not present, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub -section 64 (5) of the Act.
- 3) The authority of a meeting to continue to consider a matter after the quorum has been met, so long as at least 1 (one) member remains present, as set out in section 64(9) of the Act, is not limited or restricted by this Memorandum of Incorporation.

3.7 Adjournment of members' meetings

- 1) If a quorum has not been reached within 15 (fifteen) minutes after the appointed time for the meeting to begin or such extended period as the chairman directed, the chairman appointed for the meeting will be authorized to adjourn the meeting of the members for 1 (one) week.
- 2) The company is not required to give further notice of a meeting that is postponed or adjourned in terms of article 3 (3.7) (1) above, unless the location for the meeting is different from: -
 - (a) the location of the postponed or adjourned meeting; or
 - (b) a location announced at the time of adjournment, in the case of an adjourned meeting.
- 3) If, at the time appointed in terms of article 3 (3.7) for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of article 3 (3.6)(1) above, have not been satisfied, the members of the company present in person or by proxy will be deemed to constitute a quorum.
- 4) The maximum period allowable for an adjournment of a members' meeting is (sixty) business days after the date upon which the adjournment occurred.

3.8 Members' resolutions

- 1) For any ordinary resolution to be adopted at a members' meeting, it must be supported by at more than 50% of the member votes entitled to be exercised, present in person or by proxy, despite the provisions of section 65(7) of the Act.
- 2) For a special resolution to be adopted at a members' meeting, it must be supported by at least 75% of the votes entitled to be exercised, present in person or by proxy, as provided in section 65(7) of the Act.

- 3) A special resolution adopted at a members' meeting is not required for a matter to be determined by the company, except those matters set out in section 65(11) of the Act and the following matters: -
 - a) amend the company's Memorandum of Incorporation to the extent required by section 16 (1)(c) and section 36(2)(a) of the Act;
 - b) ratify a consolidated revision of a company's Memorandum of Incorporation, as contemplated in section 18 (1)(b) of the Act;
 - c) ratify actions by the company or directors in excess of their authority, as contemplated in section 20 (2) of the Act;
 - f) authorise the board to grant financial assistance in the circumstances contemplated in section 44 (3)(a)(ii) or 45 (3)(a)(ii) of the Act;
 - i) approve the voluntary winding up of the company, as contemplated in section 80 (1) of the Act;
 - j) approve the winding up of a company in the circumstances contemplated in section 81 (1) of the Act;
 - (l) approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Act; or
 - (m) revoke a resolution contemplated in section 164 (9)(c) of the Act.

3.9 **Votes of members**

At every general meeting: -

- 1) Every member, in person or by proxy and entitled to vote, shall have 1 (one) vote for each unit registered in his name;
- 2) If a unit is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote;
- 3) Save as expressly provided for, no person other than a member, duly registered and who shall have paid every levy or other sum due and payable to the company in respect of or arising out of his membership, 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;
- 4) At any general meeting, a resolution put to the vote of the meeting, shall be decided on a poll, unless a show of hands (before or in the declaration of the result of a poll) is demanded by the chairman or members referred to in section 63 (4)(2)(vi) of the Act and unless a show of hands is so demanded, a declaration by the chairman that a resolution has, on a poll, been carried or carried unanimously or by a particular majority or has been declined, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact. If a show of hands is demanded a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or has been declined, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or the proportion of the votes recorded in favour or against such resolution. The demand for a show of hands may be withdrawn.

- 5) A poll shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting. Two (2) members shall be elected to determine the result of the poll. In the case of an equality of votes, whether on a show of hands or on a poll, the resolution shall fail. In the case of equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 6) Every resolution and every amended resolution proposed for adoption by a general meeting, shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.
- 7) Unless any member present in person or by proxy at a general meeting shall, before closure of the meeting, have objected to any declaration made by the chairman of the meeting as to the result of any voting at the meeting, whether by a show of hands or by a poll, or validity of the procedure at such meeting, such declaration by the chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated. with or without record of the number of votes recorded in favour of or against such motion. shall be conclusive evidence of the votes so recorded.

Article 4 - Directors and Officers

4.1 Composition of the Board of Directors

- 1) The board of directors of the company comprises the elected directors. and their alternate directors each of whom is to: -
 - a) be elected in the following manner: -
 - i) There shall be a board of directors of the company which shall consist of not less than 3 (three) and not more than 10 (ten) directors;
 - ii) directors shall serve for a term of 1 (one) year or until the next members' Meeting, and shall be eligible for re-election;
 - iii) If a member's meeting for the election of directors is not convened before the expiry of the 1 (one) year term within which a director serves, then and in that event. such director (s) shall continue to hold office from the date of his/her/their appointment until the next annual general meeting following such appointment and at which meeting each director shall be deemed to have retired from office but will be eligible for re-election to the board of directors at such meeting;

- iv) Nominations for election of directors must be delivered to the company or to any other person acting on behalf of the company (including a board member or duly appointed managing agent) at any time before commencement of the proceedings or meeting at which the nomination is to be considered;
 - v) Upon any vacancy occurring in the board of directors prior to the next annual general meeting, the vacancy in question shall be filled by a person to be nominated by the chairman of the board of directors for the time being and in his absence or inability, the vice-chairman;
 - vi) Within 7 (seven) days of the holding of each annual general meeting, the board of directors shall meet and shall elect from their own numbers. the chairman and the vice-chairman, who shall hold their respective offices until the annual general meeting held next after their said appointments. provided that the office of the chairman or vice- chairman shall ipso facto be vacated by the director holding such office upon his ceasing to be a director for any reason.
- 2) The chairman of the board of directors for the time being, and in his absence or inability to act, the vice-chairman of the board of directors may, upon any vacancy occurring in the board of directors, appoint a director to fill such vacancy until election of board members at the next annual general meeting or special general meeting convened for this purpose and a director so appointed will have all the rights and duties as in terms of the Act and/or the Memorandum of Incorporation as if he/she was elected in terms of this Memorandum of Incorporation.
- 3) In addition to the elected directors the person who is appointed from time to time as the company's "Chief Executive Officer" (hereinafter the "CEO") must serve as ex officio director of the company, as contemplated in section 66(4) of the Act. The person holding that office or enjoying that status automatically becomes a director on assuming the designated position provided that he or she delivers his or her written consent referred to in section 66(7) of the Act and will by default cease to hold such office as director if he or she resigns or is removed for whatever reason from such office. Save for the aforestated limitation the powers and functions of the CEO are not limited as provided for in Section 66(5)(d) of the Act. Articles 4.1(4)(a) to (b), 4.1(5) do not apply to the ex officio appointment as provided for herein.
- 4) In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a director of the company, a person must satisfy the following additional eligibility requirements and qualifications: -
- a) be a paid-up member of the company at the time of appointment as director;

- b) may not be in breach of any of his/her obligations as a member of the company, as stipulated in the Memorandum of Incorporation or the rules; mere failure to remedy breach cannot take away rights - as member has right to due process before eligibility is suspended.
 - c) may not be disqualified from acting as director of the company in terms of the Companies Act.
- 5) Each appointed (not elected) director of the company serves for an indefinite term. until substituted by the person or entity that made the appointment or until the next annual general meeting following his appointment.
- 6) A director shall be deemed to have vacated his office as such when: -
- a) he/she resigns his office by notice in writing to the company;
 - b) he/she has been disqualified to act as a director in terms of the provisions of section 69 of the Act;
 - c) he/she has been discharged from office under circumstances in terms of section 71 of the Act;
 - d) he/she becomes of unsound mind;
 - e) he/she is absent from more than 2 (two) meetings of the directors without leave having been granted to him and if the board so resolve;
 - f) his/her removal has been approved by majority resolution of the members in general meeting.

4.2 **Authority of the Board of Directors**

(a) The authority of the company's board of directors to manage the business and affairs of the company is subject only to the qualifications as in section 66(1) of the Act.

(b) A single director, including the chairman or any director with a particular portfolio does not have the authority to act for and on behalf of the company, except in terms of express written board authority to do so. (Note: this is the standard common law position and is actually not necessary - but make it clear).

4.3 **Board of Directors' meetings**

- 1) The authority of the company's board of directors to consider a matter other than at a meeting, as set out in section 74 of the Act is not limited or restricted by this Memorandum of Incorporation and may instead be adopted by written consent of a majority of the directors given in person, or by electronic communication, provided that each director has received notice of the matter to be decided.
- 2) The right of the company's directors to requisition a meeting of the board, as set out in section 73(1) of the Act, may be exercised by at least 25% of the directors. despite the provisions of that section.

- 3) The authority of the company's board of directors to conduct a meeting entirely by electronic communication. or to provide for participation in a meeting by electronic communication, as set out in section 73(3) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 4) The authority of the company's board of directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 5) The authority of the company's board of directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 6) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such meeting, are as set out in section 73(5) of the Act (51% / a majority of the directors present and voting).
- 7) Each director has 1 (one) vote on a matter before the board.
- 8) A simple majority of the votes cast on a resolution is sufficient to approve a resolution of the board of directors.
- 9) A chairman: -
 - a) The directors will, at the first meeting after being appointed as such in terms of article 4.1 (1), elect a chairman from their number to hold office as such for 1 (one) year or until the next annual general meeting, where after the newly elected directors will elect a new chairman at their first meeting after the annual general meeting.
 - b) The chairman elected shall hold his office until the annual general meeting next after his appointment, provided that the office of chairman shall *ipso facto* be vacated by a director holding such office upon him ceasing to be a director for any reason. In the event of any vacancy of the aforesaid office occurring during the term for which the chairman is elected, the vice-chairman, if any, shall act as such and the board of directors shall immediately appoint one of their number as a replacement to the office of chairman or vice-chairman.
- 10) **Chairman to preside at meetings: -**

Except as otherwise provided, the chairman shall preside of al meetings of the board of directors and at all general meetings of members and in the event of him not being present within 5 (five) minutes of the scheduled time for the commencement of the meeting or in the event of his inability or unwillingness to act as chairman. the vice-chairman. if appointed shall preside at such meeting and failing him, a chairman shall be elected from the ranks of the members present, by the members present.

4.4 **Indemnification of Directors**

- 1) The authority of the company's board of directors to advance expenses to a director, or indemnify a director, in respect of the defense of legal proceedings, as set out in section 78(3) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 2) The authority of the company's board of directors to indemnify a director in respect of liability, as set out in section 78(5) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 3) The authority of the company's board of directors to purchase insurance to protect the company, or a director, as set out in section 78(6) of the Act is not limited or restricted by this Memorandum of Incorporation.

4.5 **Officers and Committees**

- 1) The board of directors may appoint any officers considers necessary to better achieve the objects of the company.
- 2) The authority of the company's board of directors to appoint committees of directors, and to delegate to any such committee any of the authority of the board as set out in section 72(1) of the Act, or to include in any such committee persons who are not directors, as set out in section 73(2)(a) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 3) The authority of a committee appointed by the company's board, as set out in section 72(2)(b) and (c) of the Act may be restricted or limited by the board when the committee is so established.

4.6 **Accounting records**

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

4.7 **Annual Financial Statements**

- 1) The directors shall from time to time, in accordance with sections 29 and 30 of the Act, cause to be prepared and laid before the company in general meeting, such annual financial statements as are referred to in those sections.
- 2) The annual financial statements of the company will be audited annually by the auditor.
- 3) A copy of any annual financial statements which are to be laid before the company in annual general meeting, in terms of section 30(3)(d) of the Act, shall be included in the notice of the annual general meeting, at which it is to be considered.