

GREENSTONE WILDLIFE ESTATE NPC

Registration Number: 2006/014416/08

MEMORANDUM OF INCORPORATION

REPUBLIC OF SOUTH AFRICA
Companies Act, 2008

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MEMORANDUM OF INCORPORATION

of

GREENSTONE WILDLIFE ESTATE NPC (Registration number: 2006/014416/08)

Which referred to in the rest of this Memorandum of incorporation as “the Company”

The Company is a Non-Profit Company with members, with the following main objective:

- To advance, promote and protect the communal interest, safety and welfare of the Members of the Company, including, but not limited to, maintaining the open spaces, controlling the aesthetic appearance of land, including landscaping, buildings and improvements on the property, controlling traffic, implementing security measures for the controlled access to the property and consequently to ensure safe, high quality lifestyle to owners and occupants by managing the appropriate development of residential erven and related facilities.

In this Memorandum of Incorporation –

- a. a reference to a section by number refers to the corresponding section of the Companies Act 71 of 2008;
- b. words that are defined in the Companies Act 71 of 2008 bear the same meaning in this Memorandum of Incorporation as in the Act.

INTERPRETATION

The headings contained in this Memorandum of Incorporation are intended for reference purposes only and shall not be taken into account in the interpretation thereof. In the interpretation of this Memorandum of Incorporation the words contained in the first column of the table set out below shall bear the meaning set out opposite each of them in the second column thereof, unless the context otherwise requires.

WORDS	MEANING
“The Act”	Shall mean the companies Act, 71 of 2008, including any amendment, consolidation or re-enactment thereof, including any Regulations promulgated thereunder;
“The Auditors”	Shall mean the Auditors of the Company from time to time;
“The Board of Directors”	Shall mean the Board of Directors appointed by the Members of the Company at an Annual General Meeting of the Company;
“The Company”	Shall mean the GREENSTONE WILDLIFE ESTATE NPC, with Registration Number: 2006/014416/08, duly registered and incorporated according to the Company Laws of the Republic of South Africa;
“The Chairman”	Shall mean the Chairman of the Board of Directors, as appointed by the Board of Directors from time to time;
“Common Land”	Shall mean the common land and/or general areas in the Estate, excluding that portion of the land owned by the Members of the Company;

“Deliver”	Means delivery of any notice, letter and/or any other document by hand, at the Member’s Stand;
“Developer”	Shall mean NEW LINE INVESTMENTS 144 PROPRIETARY LIMITED, with Registration Number: 2003/021279/07;
“Development Period”	Shall mean the period from establishment of the Company until all the Stands in the Estate have been sold, transferred and improved, alternatively, until the Developer notifies the Company in writing that the Development period has ceased, whichever is the earlier.
“Directors”	Means the Directors of the Company appointed by the Members, from time to time;
“Estate/Property”	Shall mean an area of approximately 273 hectares, located north east of Barberton on a portion of the farm Fairview 542 JU, portion 2 of the farm Bickenhall 346 JU and a portion of portion 14 of the farm Townlands 369 JU, Barberton comprising one hectare subdivisions of which improvements will be construed;
“Effective date”	Means the date upon which the Companies and Intellectual Property Commission issues a Registration Certificate or accept this Memorandum of Incorporation;
“In Writing”	Means written or reproduced by any substitute for writing or partly written or partly so reproduced and including printing, typewriting or lithography or any other mechanical process, or partly one or partly another as well as any form of electronic communication contemplated in the Electronic Communication and Transactions Act 25 of 2002;
“Improvements”	Means any dwelling and/or outbuildings erected on a Stand in accordance with the Architectural Guidelines established by the Company from time to time, with or without outbuildings;
“levies”	Means all contributions levied from time to time by the Directors upon Members for the purpose of meeting all the expenses which the Company has incurred or which the Directors reasonably anticipate the Company will incur in the attainment of its objectives and the pursuit of its business, and as more fully stipulated in Article 5.1 of the Memorandum of Incorporation;
“Manager”	The Directors may appoint a Manager to manage and deal with the affairs and daily proper running of the Estate in accordance with all the provisions of the MOI and Rules (if any) of the Company.
“Member”	Means a Member of the Company, which has specified rights in respect of the Company as set out in this Memorandum of Incorporation;
“Stand”	Means one hectare subdivision in the Estate to be owned by the Members respectively and on which improvements have been erected or will be erected;
“Vice Chairman”	Means the Vice Chairman of the Board of Directors, from time to time;

Unless the context otherwise requires –

- a. Words importing the singular, shall include the plural and vice versa;
- b. Words importing any one gender shall include the other genders;
- c. Words importing natural persons shall include juristic persons and corporate bodies.

Subject to the preceding paragraph, any words or expressions defined in the Act shall, unless the context otherwise requires, bear the same meaning in the Memorandum of Incorporation.

1. ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY

1.1 INCORPORATION

- 1.1.1 The Company was incorporated as a Non Profit Company in terms of Section 21 of the Companies Act 1973. This Memorandum of Incorporation was adopted by the Members of the Company by special resolution dated2014
- 1.1.2 The name of the Company is: GREENSTONE WILDLIFE ESTATE NPC.
- 1.1.3 The Company is incorporated in accordance with and governed by –
- 1.1.3.1 The applicable provisions of the Deeds Registries Act, Act 43 of 1937 and the Regulations issued in terms thereof;
- 1.1.3.2 The unalterable provisions of the Companies Act, Act 71 of 2008 that are applicable to non-profit Companies;
- 1.1.3.3 The alterable provisions of the Companies Act, Act 71 of 2008 that are applicable to non-profit Companies, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and
- 1.1.3.4 The provisions of this Memorandum of Incorporation.

1.2 OBJECTIVES AND POWERS OF THE COMPANY

- 1.2.1 The main objective of the Company is to own the Common Land, to carry on the business of promoting, advancing and protecting the interests, safety and welfare of the Members of the Company and to manage and control the Estate, including, without limitation, the control of the aesthetic communal and recreational interests of Members, and incidental matters on the estate, including in particular:-
- 1.2.1.1 To ensure that improvements are developed according to uniform aesthetic standards and that those standards are maintained thereafter;
- 1.2.1.2 To maintain and control any common areas including any recreational facilities;
- 1.2.1.3 To maintain the entrance to the Estate, the perimeter fence around the Estate and any common areas in the Estate including roads, bridges, causeways, drifts, any sports and/or recreational facilities, storm water facilities, all equipment relating to water reticulation, electricity and refuse removal;
- 1.2.1.4 To institute, control and pay for measures to ensure security;
- 1.2.1.5 To protect the use and enjoyment by Members of their improvements and the Estate;
- 1.2.1.6 To erect and maintain management infrastructure on the Estate;
- 1.2.1.7 To provide potable water and electricity for its Members;
- 1.2.1.8 To maintain the natural vegetation and biological diversity and to ensure the conservation of the Estate, its rich biodiversity, natural and historical treasures and the maintenance (or where required the restoration) of ecological functions and processes on the estate;
- 1.2.1.9 To create and maintain the common property as a natural wilderness.
- 1.2.2 The purposes and powers of the Company are not subject to the restrictions, limitations or qualifications contemplated in Section 19(1)(b)(ii). The Company has plenary powers to enable it to achieve its objects. The powers shall include, but not be limited to, the following:-

- 1.2.2.1 To raise money by entrance fee, subscriptions, levies and otherwise from Members of the Company and from any other sources, and to receive donations, subscriptions, aid and subsidies;
 - 1.2.2.2 To deal with immovable property in any way, including but not limited to, lease hire and exchange;
 - 1.2.2.3 To borrow such amount of money that may be approved by the Members and to secure the repayment of such money in such manner as the Company may approve;
 - 1.2.2.4 To erect, maintain, demolish, reconstruct or alter any buildings, structures and other amenities;
 - 1.2.2.5 To invest funds of the Company in any manner it deems fit and open and operate banking and savings accounts in its own name;
 - 1.2.2.6 To employ, discharge, pay and arrange the conditions of employment of staff for its activities;
 - 1.2.2.7 To institute, defend, settle, compromise or discontinue any proceedings in the name of or against the Company, its officers or employees, or otherwise concerning the affairs of the company;
 - 1.2.2.8 To insure the assets of the Company, excluding any improvements on stands;
 - 1.2.2.9 To do all such other things incidental or conducive to the attainment of the Company's purpose and objects;
 - 1.2.2.10 To employ and remunerate professional advisers and contractors.
- 1.2.3 The Company is not subject to any provisions contemplated in Section 15(2)(b) or (c).
- 1.2.4 The income and property of the Company must be applied solely for the promotion of its main object and no portion thereof shall be paid or transferred directly or indirectly by way of dividends, bonus payments or otherwise to the members of the Company provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any member thereof in return for any services actually rendered to the Company.
- 1.2.5 The Company may dissolve itself by a special resolution of its Members, at a Members meeting. Upon dissolution of the Company, its net assets must be distributed in accordance with Item 1(4)(b)(ii)(bb) of Schedule 1 of the Companies Act, 71 of 2008 as read with Section 10(1)(e) of the Income Tax Act 1962(as amended)

1.3 MEMORANDUM OF INCORPORATION AND COMPANY RULES

- 1.3.1 Subject to the approval of the Commissioner of S A Revenue Services this Memorandum of Incorporation of the Company may be altered or amended in the manner set out in Sections 16, 17 or 152(6)(b) of the Act, subject to the requirement that any alteration of the Memorandum of Incorporation or the Rules made in terms of Section 17(1), shall be published to the Members of the Company, by delivering a copy of the altered Memorandum of Incorporation or the Rules, to each Member by ordinary mail and/or telefax and/or e-mail.
- 1.3.2 The authority of the Company's Board of Directors to make rules relating to the governance of the Company as contemplated in Section 15(3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- 1.3.3 The Board must publish any Rules made in terms of Section 15(3) to (5) by delivering a copy of such rules to each Member by ordinary mail or by hand.
- 1.3.4 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of Section 17(1) by delivering a copy of such rules to each Member by ordinary mail or by hand.

1.4 MEMBERSHIP OF THE COMPANY

- 1.4.1 As contemplated in item 4(1) of Schedule 1 of the Companies Act, Act No.71 of 2008, 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 voted by the Members of the Company. Except that during the development period only the Developer shall have a number of votes equal to twice the number of stands registered in the name of the developer or capable of being registered, at the time of the meeting, in a Deeds office as the subject of a separate title deed provided however that this provision shall apply during the Development period only. i.e. all the stands that have not been sold and that is still in the name of the Developer and has never been registered previously.
- 1.4.2 Membership of the Company is limited to the Developer in its capacity as such (represented by one (1) or more nominees) and to any other person who is, in terms of the Deeds Registries Act, Act No. 43 of 1937, reflected as a registered owner of a Stand in the Estate.
- 1.4.3 Where any Stand is owned by more than one (1) person, all the registered owners of such stand shall together be deemed to be one Member and have the rights and obligations of one (1) Member, provided however that all co-owners shall jointly and severally be liable for the due performance of any obligation to the Company.
- 1.4.4 When a person becomes a registered owner of a Stand in the Estate, he shall *ipso facto* become a Member of the Company, and when he ceases to be the owner of a Stand or any interest therein, he shall *ipso facto* cease to be a Member of the Company.
- 1.4.5 No Member shall part with occupation of his Stand, whether temporarily or otherwise, unless he has agreed with the proposed occupier of such stand 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/or rules and regulations of the Estate.
- 1.4.6 No Member may rezone a Stand or in any way change the use for which the stand may be utilized whether by way of rezoning, change of land use rights or a consent use or otherwise, irrespective of whether such consent is granted by any lawful authority.
- 1.4.7 No Member may subdivide or consolidate a Stand, nor erect a second dwelling on their stand, irrespective of whether any lawful authority grants permission for such subdivision or consolidation or second dwelling.
- 1.4.8 A member who attempts to change or bring an application to any lawful authority for any change prohibited by clause 6 and 7 supra, shall be guilty of a contravention of this Memorandum of Incorporation.
- 1.4.9 Every member shall, when he agrees to transfer ownership of his stand, set it as a condition of the Agreement of Sale and Transfer, that the new owner shall *ipso facto* become a Member of the Company, accepting his/her/its obligations towards the Company as Member.
- 1.4.10 A registered owner of a Stand or a co-owner of a Stand may not, for as long as he is the registered owner of the stand, resign as a Member of the Company.
- 1.4.11 A registered owner of a Stand or a co-owner of a Stand shall not be entitled to dispose thereof to any other person without the written consent of the Company first having been obtained under the hand of his/her/its authorized agent or the managing agent, which consent will not be withheld unless:
- 1.4.11.1 Such member is in arrears with any levies, penalties, fines or interest or other payment due to the Company in terms of the Memorandum of Incorporation or the Rules or otherwise;
- 1.4.11.2 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;
- 1.4.11.3 The prospective Transferee has not agreed, in writing, to become a Member of the Company, where such application is required.

- 1.4.12 No registered owner of a Stand or co-owner of a Stand shall be entitled to pass transfer thereof to any other person until the Company, under the hand of its authorized representative, or a 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.
- 1.4.13 The rights and obligations of a Member shall not be transferable and every Member shall:
- 1.4.13.1 Further the objectives and interests of the Company, to the best of his ability;
 - 1.4.13.2 Observe all rules made by the Company or the Directors;
 - 1.4.13.3 Sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of any access stand or any other stand in the Estate and including the provision of security and management facilities;
 - 1.4.13.4 Provided that nothing contained in this Memorandum of Incorporation shall prevent a member from ceding his rights in terms of this Memorandum of Incorporation as security to the mortgagee of that Member's Stand.

2. ARTICLE 2 – RIGHTS AND OBLIGATIONS OF MEMBERSHIP

2.1 MEMBERS' AUTHORITY TO ACT

If, at any time, every member of the Company is also on the Company's board of Directors, as contemplated in Section 57(4), the authority of the members to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation.

2.2 REPRESENTATION BY CONCURRENT PROXIES

The right of a member of the Company to appoint persons concurrently as proxies, as set out in Section 58(3)(a) 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) is not limited or restricted by this Memorandum of Incorporation.

2.4 REQUIREMENT OF A PROXY INSTRUMENT.

A proxy must be delivered to the Chairman prior to the commencement of the meeting for such proxy to be able to exercise the member's rights at a members meeting.

No instrument appointing a proxy shall be valid after the expiration of 12 (TWELVE) months from the date of its execution.

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 of the member, as set out in Section 58(7) is prohibited.

2.6 RECORD DATE OF EXERCISE OF MEMBER RIGHTS

If, at any time, the company's Board of Directors fails to determine a record date, as contemplated in Section 59, the record date for the relevant matter is as determined in accordance with Section 59(3).

2.7 OBLIGATIONS OF MEMBERS

- 2.7.1 Provided a Member obtains written approval in accordance with this Memorandum of Incorporation, he shall be entitled to make any alterations or additions or improvements of whatsoever nature to the stand or stand improvements.
- 2.7.2 The Member shall be obliged to keep the stand together with its improvements in a clean, tidy and hygienic condition and a state of good repair.
- 2.7.3 The Member shall utilize this interest, and all facilities on the Estate in such a manner as will not cause damage or harm, subject always to this Memorandum of Incorporation and the Estate Rules in respect thereof.
- 2.7.4 If the Member damages any part of the Estate or amenities whether accidentally, negligently or willfully, the Member shall be liable for the cost of repairing the same.
- 2.7.5 If the Manager is dissatisfied with the conditions of the Stand, he may call upon the Member who is the owner of such stand, forthwith to remedy such defective condition. Should the Member fail to remedy the defect, the Company shall be entitled forthwith and without prejudice to any other right, which it may have, to put the same in good order at the expense of the Member. Any expenditure incurred is to be regarded as if it were part of that Member's levy and debt.
- 2.7.6 The Member shall not be entitled for any of the reasons aforesaid, or for any other reason whatsoever, to withhold any moneys due to the Company.
- 2.7.7 A Member shall not sell or otherwise agree to alienate any stand of which it is the registered owner, unless it is a condition of such agreement that:
- 2.7.7.1 The person to whom the land is to be sold or otherwise to be alienated ("The Transferee"), has bound himself, to the satisfaction of the Company, as a contract for the benefit of the Company, to become a Member of the Company upon transfer of such stand to him; so that:
- 2.7.7.2 The registration of transfer of the stand to the Transferee shall *ipso facto* constitute the introduction of the Transferee as a Member of the Company *mutatis mutandis*.

3. ARTICLE 3 – MEMBERS MEETINGS

3.1 REQUIREMENTS TO HOLD MEETINGS

- 3.1.1 In addition to those Member's meetings specifically required by the Companies Act, the Company also elects to hold an Annual General Meeting (hereinafter referred to as "an AGM") as contemplated in Section 61(7) of the Companies Act, once every calendar year, but no more than 15 months after the date of the previous annual general meeting.
- 3.1.2 The AGM as set out above, shall provide for at least the following business to be transacted:-
- 3.1.2.1 The presentation of the financial statements for the immediately preceding financial year of the Company;
- 3.1.2.2 Consideration of the Auditors report;
- 3.1.2.3 The presentation and consideration of the Chairman's report;
- 3.1.2.4 The election of Directors;

3.1.2.5 The confirmation of the external Auditor for the following financial year; and

3.1.2.6 Any matters raised by the Members at the meeting, including any resolutions proposed for adoption at such meeting and the voting upon such resolutions, with or without notice to the Company.

3.2 MEMBERS' RIGHT TO REQUISITION A MEETING

The right of members to requisition a meeting, as set out in Section 61(3), may be exercised by at least 25% (TWENTY FIVE PERCENT) of the voting members, as provided for in that section.

3.3 LOCATION OF MEMBER MEETINGS

The Authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in Section 61(9) is limited or restricted to the extent that members meetings shall only be held in the Republic of South Africa.

3.4 NOTICE OF MEMBERS MEETINGS

3.4.1 The minimum number of days for the Company to deliver a notice of a Members meeting to the members, as required by Section 62 is 21 (Twenty One) business days before the meeting is to begin.

3.4.2 The period of the notice shall be exclusive of the day on which it is served or deemed to be served.

3.4.3 The notice shall specify the place, date and time of the meeting and the nature of the business to be transacted thereat, and if applicable, the text of any proposed special resolution and a reasonably prominent statement that a Member is entitled to attend and vote at the meeting and is entitled to appoint a proxy to attend.

3.4.4 In the case of an AGM, the notice shall also include the financial statements of the Company, to be presented or a summarized form thereof and directions for obtaining a copy of the complete financial statements for the preceding financial year.

3.4.5 If there was a material defect in the giving of the notice of the meeting, that meeting may proceed, subject to subsection 62(5), only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to approve the ratification of the defective notice.

3.5 ELECTRONIC PARTICIPATION IN MEMBERS MEETINGS

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 63, is allowed by this Memorandum of Incorporation.

3.6 QUORUM FOR MEMBERS MEETINGS

3.6.1 The quorum requirement for a Members meeting to begin, or for a matter to be considered, are as set out in Section 64(1), subject to a minimum of 20% (TWENTY PERCENT) present in person or by proxy, in substitution of the 25% required by that section.

3.6.2 If within 30 (THIRTY) minutes, from the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time or at such other place as the Chairman of the meeting shall appoint. If at the adjourned meeting a quorum is not present at the time appointed for holding the meeting, the Members present shall be a quorum.

- 3.6.3 The authority of a meeting to continue to consider a matter, as set out in Section 64(9), is not limited or restricted by this Memorandum of Incorporation.

3.7 ADJOURNMENT OF MEMBERS MEETINGS

The maximum period allowable for an adjournment of a Members meeting is as set out in Section 64(12), without variation.

3.8 MEMBERS RESOLUTIONS

- 3.8.1 For an ordinary resolution to be adopted at a Members meeting, it must be supported by at least 61% (SIXTY ONE PERCENT) of the members who voted on the resolutions, as provided in Section 65(8).
- 3.8.2 For a special resolution to be adopted at a Members meeting, it must be supported by at least 80% (EIGHTY PERCENT) of the members who voted on the resolution, as provided in Section 65(10).
- 3.8.3 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).

3.9 VOTING BY MEMBERS

- 3.9.1 At every meeting, every Member (excluding the Developer), in person or by proxy and entitled to vote, shall have 1 vote for each Stand registered in its name.
- 3.9.2 If a Stand is registered in the name of more than one person, then all such co-owners shall jointly have 1 vote. Should such co-owners not be able to cast their one vote due to a difference in opinion between them, then the Chairperson shall, at his discretion, be allowed to disqualify any vote from such Stand.
- 3.9.3 The Developer shall have a number of votes equal to twice the number of stands registered in the name of the developer or capable of being registered, at the time of the meeting, in a Deeds office as the subject of a separate title deed provided however that this provision shall apply during the Development period only. i.e. all the stands that have not been sold and that is still in the name of the Developer and has never been registered previously.
- 3.9.4 Save as expressly provided for in this Memorandum of Incorporation, 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 present or to vote on any question, either personally or by proxy.
- 3.9.5 All resolutions put to a vote at a meeting shall be decided on a show of hands unless a poll is demanded by the Chairperson or the majority of the Members present at the meeting and entitled to vote and unless a poll is so demanded, a declaration by the Chairperson that a resolution has on the show of hands, been carried or carried unanimously or by a particular majority or not passed, 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 proportion of the votes recorded in favour or against such resolution.
- 3.9.6 If a poll is duly demanded it shall be taken in such manner as the Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. Scrutineers 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 Chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- 3.9.7 A Member(s) shall not have the right to vote at a meeting, or as contemplated in terms of the Provisions of Section 60 of the Act, if:

3.9.7.1 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.

3.9.7.2 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.

3.10 MEMBERS RIGHT TO INFORMATION

In addition to the rights to access information as set out in Section 26(1), a member of the Company has the further right to information, and also has the right to inspect the accounts and books of the Company.

Once every financial year, the accounts and books of the Company shall be examined and the correctness thereof ascertained by the Auditors.

4. ARTICLE 4 – DIRECTORS AND OFFICERS

4.1 COMPOSITION OF THE BOARD OF DIRECTORS

- 4.1.1 The Board of Directors of the Company shall consist of not less than 3 (THREE), but not more than 9 (NINE) Directors, each of whom is to be elected by the Members of the Company at the Company's AGM, and will serve for a term of 1 (ONE) year.
- 4.1.2 Each elected Director of the Company will serve for a period of 1 (ONE) year, as contemplated in Section 68(1), but will be eligible for re-election to the Board of Directors at the next AGM.
- 4.1.3 A Director shall be an individual, but need not himself be a Member of the company. A Director, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by the provisions of this Memorandum of Incorporation.
- 4.1.4 During the development period, at least 1 nominee of the Developer shall be a Director and any Director nominated by the Developer shall be entitled to have an alternate Director at the meeting and to act in the place of such nominee. The Developer shall on formation of the Company appoint the first Directors.
- 4.1.5 The Directors shall at the first Director's meeting after each AGM, appoint a Chairperson and Vice-Chairperson, who shall hold their respective offices until the next AGM, provided that the office of Chairperson or Vice-Chairperson shall *ipso facto* be vacated by a Director holding such office upon his ceasing to be a Director for any reason.
- 4.1.6 In the event of any vacancy occurring in either of the offices set out in clause 4 above, the Board of Directors shall immediately appoint one of their number as a replacement on such office.
- 4.1.7 Except as otherwise provided, the Chairperson shall preside at all meetings of the Directors and at all general meetings of Members and, in the event of him not being present within 15 (FIFTEEN) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson shall act in his stead or failing the Vice-Chairperson, a Chairman appointed by the meeting.
- 4.1.8 Upon any vacancy occurring in the Board of Directors prior to the next AGM the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors, provided however that, if the director who vacates his office as aforesaid was a nominee of the Developer, the Developer shall be entitled to nominate a Director in his stead.

- 4.1.9 In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director or a prescribed officer of the company, a person need not satisfy any further eligibility requirements or qualifications.

4.2 AUTHORITY OF THE BOARD OF DIRECTORS

- 4.2.1 The Authority of the Company's Board of Directors to manage and direct the business and affairs of the Company, as set out in Section 66(1), is not limited or restricted by this Memorandum of Incorporation.
- 4.2.2 The Directors shall further have the following specific powers:-
- 4.2.2.1 To require the submission for approval of such plans, drawings, specifications and other information as they may deem necessary to ensure compliance by Members with this Memorandum of Incorporation and the Estate rules made in terms hereof and in terms of any town planning scheme and land use rights;
- 4.2.2.2 To require that any works being constructed within the Estate shall be supervised to ensure that the provisions of this Memorandum of Incorporation and the Estate rules are complied with and that all work is performed in a proper and workmanlike manner;
- 4.2.2.3 To determine the storage areas to be used by members, their employees and contractors during building operations;
- 4.2.2.4 To determine the security facilities to be installed and the operations thereof for the protection of the improvements, the members and the Estate;
- 4.2.2.5 To make rules as provided for herein.
- 4.2.3 The Directors shall be entitled to recover all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Directors. Save as aforesaid, the Directors shall not be entitled to any remuneration for the performance of their duties in terms hereof.
- 4.2.4 The Directors shall be entitled to appoint committees consisting of such numbers of Members and/or outsiders, as they may deem fit and to delegate to such committees such of their functions, powers and duties as they may deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

4.3 BOARD OF DIRECTOR'S MEETINGS

- 4.3.1 The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provision of this Memorandum of Incorporation.
- 4.3.2 The authority of the Company's Board of Directors to consider a matter other than at a meeting, as set out in Section 74, is not limited or restricted by this Memorandum of Incorporation.
- 4.3.3 The right of the Company's Directors, to requisition a meeting of the Board, as set out in Section 73(1), may be exercised by at least 25% of the Directors, as provided in that section.
- 4.3.4 The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 73(3), is not limited or restricted by this Memorandum of Incorporation.
- 4.3.5 The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in Section 73(4), is not limited or restricted by this Memorandum of Incorporation.

- 4.3.6 The authority of the Company's Board of Directors to proceed with a meeting despite a failure of defect in giving notice of the meeting, as set out in Section 73(5), is not limited or restricted by this Memorandum of Incorporation.
- 4.3.7 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 a meeting, are as set out in Section 73(5), without variation, but for the requirement that during the development period, one or more nominees should be present to represent the votes of the Developer.
- 4.3.8 The Board shall cause minutes to be kept of every Directors meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the Chairman. All minutes of directors meetings, shall, after certification, be placed in a Director minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of Companies. The Directors minute book shall be open for inspection at all reasonable times by any Director, the auditors and the Members.

4.4 INDEMNIFICATION OF DIRECTORS

- 4.4.1 The authority of the Company's Board of Directors to advance expenses to indemnify a Director, servant, agent and/or employee of the Company, in respect of the defense of legal proceedings, as set out in Section 78(4), is not limited or restricted by this Memorandum of Incorporation.
- 4.4.2 The authority of the Company to indemnify a Director of the Company in respect of liability, as set out in Section 78(5), is not limited or restricted by this Memorandum of Incorporation.
- 4.4.3 The authority of the Company to purchase insurance to protect the Company, or a director, manager, company secretary or officer of the company as set out in Section 78(7), is not limited, restricted or extended by this Memorandum of Incorporation.

5. ARTICLE 5 – GENERAL PROVISIONS

5.1 LEVIES

- 5.1.1 The Directors may from time to time impose levies upon the Members, for the purpose of meeting all the expenses that the Company has incurred, or to which the Directors reasonably anticipate the Company will be put (including expenditure of a capital nature), in the attainment of its objectives or the pursuit of its business.
- 5.1.2 All the Members of the Company shall, whenever necessary, make contributions to such fund for the purposes of satisfying any claims against the Estate.
- 5.1.3 The Directors shall, not less than 90 (Ninety) days prior to the end of each financial year, or as soon thereafter as is reasonably possible, prepare and serve upon every Member at the address chosen by such Member, an estimate reasonable detail of the amount which shall be required by the Company to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 5.1.4 Each notice to each Member shall specify the contribution payable by that Member to such expenses.
- 5.1.5 Every such annual levy shall be payable in equal monthly installments, due in advance on the first day of each and every month of each financial year. Members to sign a debit order to facilitate such payment.
- 5.1.6 In the event of the Directors for any reason whatsoever failing to prepare and serve the estimate referred to in clause 5.1.2, timeously, every member shall until receipt of such

estimate continue to pay the Levy previously imposed, and shall after service pay such Levy specified in the notice referred to in clauses 5.1.3.

- 5.1.7 The Directors may from time to time impose special levies and/or supplement the Company's capital account for purposes of making capital improvements and/or alterations, including the purchase of additional game, upon the Members which are not included in any estimate, made in terms of clause 5.1.2 above and may in imposing such levies, determine the terms of payment thereof.
- 5.1.8 The Directors shall be empowered, in addition to such other rights as the Company may have in law as against its members, to determine the rate of interest from time to time chargeable upon arrear levies and administration fees in connection therewith, provided that such rate of interest shall not exceed the maximum prescribed interest rate laid down in terms of the National Credit Act, Act 34 of 2005 (as amended from time to time), as if the arrear levies were an incidental credit agreement (as defined in the National Credit Act).
- 5.1.9 Any amount due by a member by way of a Levy, interest or any other amounts owing by that member to the Company shall be a debt due by him to the company. The obligation of a member to pay levies 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/or any other amount owing by that member to the Company. No levies or interest 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 Stand shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Stand, to pay the levy and interest thereon attributable to that Stand.
- 5.1.10 In calculating the levy payable by any Member, the Directors shall as far as reasonably possible:-
- 5.1.10.1 Assign those costs arising directly out of the Stand itself to the Member owning such Stand;
- 5.1.10.2 Assign a proportion of those costs attributable generally to a particular number of improvements to the registered owners of such improvements;
- 5.1.10.3 Assign those costs relating to the common land and/or Estate generally to all the owners.
- 5.1.11 The costs assigned to Members in terms of clause 5.1.10 above, shall be done equally, provided however, that the Directors may in any case where they consider it equitable to do so, assign to any Member a greater or lesser share of the costs as may be reasonable in the circumstances.
- 5.1.12 The Developer shall, in respect of all registerable Stands upon which improvements have been constructed, be liable to pay levies on the same basis as other Members provided that the Directors shall be entitled to agree with the Developer to accept a capital sum, and/or transfer of land and/or the donation of movable goods *in lieu* of the payment of levies. The Developer shall not be liable for levy payments, in respect of unimproved Stands. i.e. stands which has never been registered previously.
- 5.1.13 Notwithstanding the above, the Developer shall be obliged to maintain the Estate in a reasonable condition until such time as there are sufficient Members to cover the monthly running costs by way of levies.
- 5.1.14 A Member shall not be entitled to withhold payment for any reason whatsoever of any levy or special levy or contribution due by him to the Company.
- 5.1.15 No levies, special levies or interest paid by a Member, shall under any circumstances be repayable by the Company to the Member upon him ceasing to be a Member of the Company.

5.2 RULES

- 5.2.1 Subject to any restriction imposed or direction given at a general meeting of the Company, the Directors may from time to time make rules with regard to:-
- 5.2.1.1 The standard and guidelines for the architectural design of all buildings and outbuildings, structures of any nature and all additions and alterations to any such buildings, outbuildings or structures erected or to be erected on the Estate, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the materials and colours used on such exterior to ensure an attractive aesthetically pleasing character to all the buildings in the Estate;
 - 5.2.1.2 The siting of all buildings, outbuildings, structures or any nature and of any additions and alterations thereto;
 - 5.2.1.3 The standards and guidelines for the design of all stand works, buildings, structures, installations, projections, parking areas on the Stands in the Estate, including arials, pergolas, side walls, swimming pools, tennis courts, awnings, Jacuzzis, carports, paved pathways, solar panels or any amenities or structures;
 - 5.2.1.4 The preservation of the environment including the right to control and to require the cultivation of trees and other vegetation and the right to control the design, erection, placement, materials and construction of fences and/or walls, whether upon or within the boundaries of any stand, including the right to prohibit fences and/or walls in any garden area or around any Stand;
 - 5.2.1.5 The placing or fixing of ornamentation or embellishments upon the outside of buildings including the power to remove any such objects;
 - 5.2.1.6 The conduct of any person, Member, their families, lessees, visitors, guests, occupants, contractors, employees and friends to ensure the prevention of any nuisance of whatever nature, the security and safety of the Estate and all persons thereon;
 - 5.2.1.7 The design dimensions, location and number of advertising and other signs on any stand in the Estate;
 - 5.2.1.8 The right to determine and control all security measures in the Estate;
 - 5.2.1.9 The right to determine access to and egress from the Estate and to and from the improvements or any other area within the Estate;
 - 5.2.1.10 For the furtherance and promotion of any of the objectives of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of the Members and/or residents in the Estate.
- 5.2.2 For the enforcement of any of the rules made by the Directors in terms hereof, the Directors may:-
- 5.2.2.1 Give notice to the Member concerned requiring him to remedy such breach within such reasonable period as the Directors may determine;
 - 5.2.2.2 Take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Company; and/or
 - 5.2.2.3 Impose a system of fines or other penalties; and/or
 - 5.2.2.4 Take such other action including a reference to Arbitration or proceedings in Court, as they may deem fit and defend any action taken by any Member or any other person in terms of arbitration or proceedings in Court.
- 5.2.3 The Directors may, in addition to the above, make rules regulating the general behaviour and conduct of the Members while on the Estate and rules to ensure the conservation of the Estate.

- 5.2.4 In the event of the Directors instituting any proceedings whether by Arbitration or in court against any Member or other person within the Estate for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the Member or other person concerned, calculated as between Attorney and own Client.
- 5.2.5 In the event of any breach of the rules or of this Memorandum of Incorporation by the Members or any of the Member's household or by his guests, tenants, employees, contractors or contractor's sub-contractors, invites, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they, in their sole and absolute discretion may deem fit.
- 5.2.6 In the event of any Member disputing the fact that he has committed a breach of any of the rules or of this Memorandum of Incorporation, such dispute shall be determined by Arbitration, as set out herein below.
- 5.2.7 Any fine imposed upon a Member shall be deemed to be a debt due by the Member to the Company and shall be recoverable at the option of the Directors by way of arbitration or by way of civil process.
- 5.2.8 Notwithstanding anything to the contrary herein contained, the Directors may in their sole and absolute discretion and in the name of the Company, enforce the provisions of any rules by way of Arbitration or by way of civil process in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
- 5.2.9 The Company may in general meeting itself make any rules which the Directors may make and may in general meeting vary or modify any rules made by it or by the Directors from time to time. The first rules applicable in terms hereof shall be recorded in Appendixes 1, 2 and 3 hereto, which comprises of:
- Appendix 1 – Management Regulations;
Appendix 2 – Building Procedures;
Appendix 3 – Architectural Guidelines

5.3 NOTICES

A notice may be served by the Company upon any Member at the address furnished by such Member in terms of the Deed of Sale Agreement pertaining to such Membership unless the Member have notified the Company, in writing of another address for service of notices. Any notice served by post shall be deemed to have been served on the 7th (SEVENTH) business day, but one following that on which the notice was posted.

5.4 MAINTENANCE

- 5.4.1 The Company shall at its own expense maintain the Common land, roads, fencing and any infrastructure owned by the Company, including the common facilities in a good, workable and clean condition.
- 5.4.2 Each Member shall maintain his stand improvements and the stand itself, at his own cost and expense.
- 5.4.3 The Company will endeavor to procure that all reasonable steps are taken to remedy any defect for which it is responsible, within a reasonable time.
- 5.4.4 The Company or its duly authorized agent, including Manager shall be permitted to enter the Stand or Stand improvements at all reasonable times in order to inspect the same.

5.5 INSURANCE

It is recorded that each Member is responsible for insuring his stand improvements. The Company shall be obliged to take out all reasonable insurance for the common facilities and also take out Public Liability insurance in an amount determined by the Directors from time to time.

5.6 LIABILITY AND RISK

- 5.6.1 Any property brought onto the Stand or into the Estate by any person, shall be at the sole risk of such person, and he shall have no claim whatsoever against the Company, Director, Servant, Agent or Employee of the Company for any loss or damage to such property, howsoever arising.
- 5.6.2 The Company, its Directors, Servants, Agent and/or Employees shall not be responsible for, and the Member hereby indemnifies the Company and its servants against any loss, damage or injury, which a Member or any person utilizing the interest of the Member, which the Member or such person may sustain on the Estate by reason of any act whatsoever or neglect on the part of the Company or its Servants, nor shall the Company or its Servants be responsible for, and the Member indemnifies the Company or its Servants, against any loss, damage or injury whatsoever which the Member or any such other person may sustain by reason of repairs, renovations and/or maintenance work not being effected timeously or at all.
- 5.6.3 The Member and/or anyone acting through or under him shall utilize the land and improvements and facilities at his sole risk and the Company or its servants shall not be liable for any damage or loss caused to him or any other person acting through him.

5.7 MANAGEMENT

- 5.7.1 The management, control and administration of the Estate, including the Stand and the utilization of the estate, shall be under the control of the Manager who is appointed by the Board of Directors in terms of an Employment Contract.
- 5.7.2 The Member undertakes to observe and comply with the lawful directives of the Manager at all times and a failure to observe such directives, shall constitute a breach of this Memorandum of Incorporation.

5.8 MERGER

The Company may merge with a body with similar objectives, by resolution of a Members' meeting, provided that the Memorandum of Incorporation and/or constitution of the merged entity contain provisions similar to the Company. In this event, the Company's net assets after discharge of its liabilities, together with its rights and obligations under this Memorandum of Incorporation and under the conditions of title of its improvements in the Estate, will vest in the merged entity. Such merger may not be with a profit Company.

5.9 RIGHT OF USE

- 5.9.1 The Member shall have the right to utilize the Stand and/or any improvements constructed thereon as well as a continuous right to traverse the common land as well as any property over which the Company has traversing rights.
- 5.9.2 The Member shall utilize his interest:-
- 5.9.2.1 Subject to the rights of the Company, in terms of this Memorandum of Incorporation; and
- 5.9.2.2 Subject to the Estate regulations as amended from time to time; and
- 5.9.2.3 Subject to any Agreement conferring such rights.
- 5.9.3 The Member shall be obliged to exercise his rights in terms hereof in accordance and with due regard to the nature of the scheme.

- 5.9.4 Not more than 10 (TEN) persons shall be entitled to participate in and enjoy the rights attaching to a Stand. If any one of the Members of a Stand is an Association, Company, Close Corporation, Legal Person, Trust, Partnership or any other similar body of persons whether incorporated or not, then each of the foregoing shall be entitled to nominate annually a person or persons who shall be entitled to enjoy the rights of a Member but in such a way as to ensure that there are never more than 10 (TEN) persons at any time in total entitled to the rights attributed to a particular Stand.
- 5.9.5 Notwithstanding the above, these restrictions shall not apply to direct Members of the same family.
- 5.9.6 The Board of Directors shall be entitled to consent to the consolidation of Stands and the *pro rata* increase in the number of members per stand as well as the restrictions on the number of beds, according to the number of stands thus consolidated, subject to such additional levies and or terms that it may impose and subject.
- 5.9.7 Members shall not be entitled to operate a property time-sharing scheme as defined in the Property time-sharing Act, 75 of 1983, or run any business or commercial establishment in respect of his Stand or the Stand improvements. Members are not permitted to occupy the Stand other than for residential purposes or for erecting the Stand improvements or utilizing the stand as a private holiday residence and as intended in these presents. The stand may not be occupied by way of any temporary structure including a tent, caravan and the like on a temporary *ad hoc* basis.
- 5.9.8 The Member shall not be entitled to the utilization of his interest if he is in arrears with the levy, or in breach of any of his obligations in terms of this Memorandum of Incorporation and/or the Estate Rules and Regulations.
- 5.9.9 The Member may permit or allow any other person to utilize his interest as a guest, provided that such guest uses the stand or Estate in strict conformity with this Memorandum of Incorporation and/or with the Rules and Regulations and any amendments thereto. Should the Member fail to observe the aforesaid, and without prejudice to any other rights that the Company may have, the Company shall be entitled to deny admission to the guest or require the said guest to vacate the stand forthwith.
- 5.9.10 The Member shall ensure that his invitees shall abide by the Rules and Regulations, pertaining to the Estate and accepts responsibility for any damage caused to the Estate.

5.10 BREACH

In the event that a Member breaches any provision of this Memorandum of Incorporation and/or the Rules and Regulations of the Estate, then without prejudice to any other remedies that the Company may have, the Company shall also be entitled to:-

- 5.10.1 Impose a fine on the Member in such an amount as the Directors, in their sole and absolute discretion, deem reasonable; and/or
- 5.10.2 Suspend the Member's right to utilize his interest; and
- 5.10.3 In the event that the Company suspends the Member's right to exercise his interest, the Company may lease the Member's interest upon such terms and conditions as it seems fit and apply such income in payment of any indebtedness of the Member to the Company;
- 5.10.4 The Company shall not be entitled to exercise its rights in terms hereof unless and until it shall have given the Member 14 (FOURTEEN) calendar days written notice to remedy the breach and in which notice the intended action to be taken by the Company in the event of the Member failing to remedy such breach and provided further that if a Member commits any breach more than 3 (THREE) times, no notice in terms hereof need be given by the Company;
- 5.10.5 Any Member whose rights are affected hereunder shall have the right to appeal to the Company in Members Meeting where a simple majority decision shall be final and binding.

5.11 ARBITRATION

- 5.11.1 Any breach by a Member of any provision of this Memorandum of Incorporation or the Rules and Regulations of the Estate and any dispute arising out of or in connection therewith, may in the discretion of the Directors, be referred to Arbitration.
- 5.11.2 Arbitration in terms hereof shall be governed by the Arbitration Act, 42 of 1965, as amended or any replacement Act, except to the extent set out herein.
- 5.11.3 If either the Directors or a Member requires any matter in terms hereof to be referred to Arbitration, that party shall notify the other party in writing identifying the claim or issue, and if the other party wishes to counterclaim that Party, he shall in turn, within 14 (FOURTEEN) business days, notify the first Party in writing identifying the counterclaim, failing which the counterclaim may not be made in the same proceedings except with the consent of the other Party. The notices shall furnish sufficient details to enable the recipient to comply with the obligations set out herein to produce at the preliminary conference all documents relating to the issue or claim or counterclaim, as the case may be.
- 5.11.4 The arbitration proceedings shall be deemed to have commenced as soon as the notice requiring the claim to be referred to Arbitration has been given.
- 5.11.5 If either Party intends to be legally represented in the Arbitration that Party shall immediately notify the other Party in writing of that intention.
- 5.11.6 The arbitration shall be held in summary manner as follows:-

The Arbitrator shall as soon as possible convene, on 14 (FOURTEEN) business days' written notice to the Parties, a preliminary conference at which:-

- 5.11.6.1 The Parties shall endeavor to limit the issues in dispute by defining as narrowly as practicable precisely what is in dispute;
- 5.11.6.2 A statement of the issues shall be drawn up by the Parties, provided that if they are unable to agree on the wording of the statement, the Arbitrator's decision shall be final and binding.
- 5.11.6.3 Each party shall produce and confirm orally on oath all documents in that party's possession or under that Party's control relating to the dispute other than privileged documents. Details of the documents in respect of which privilege is claimed and the grounds for claiming privilege shall be given and similarly confirmed on oath;
- 5.11.6.4 The date and venue of, and arrangements for recording the Arbitration shall be agreed or, failing agreement, shall be determined by the Arbitrator;
- 5.11.6.5 Consideration shall be given to whether any further procedural steps are desirable in the Arbitration proceedings, provided that further steps shall not be resorted to unless reasonably essential, if they will prolong the Arbitration, the Arbitrator's decision being final and binding; a Party may at any time on 10 (TEN) business days' written notice require the other party to furnish photocopies of any documents, other than privileged documents, in the possession or under control of that Party relating to the dispute or to state on oath that, that Party does not possess or control the documents, in which event that Party shall state on oath their whereabouts or that, that Party does not know their whereabouts;
- 5.11.7 The Arbitrator will be a practicing Advocate with not less than 5 (FIVE) years standing, or a retired judge, or an Attorney with not less than 10 (TEN) years standing, to be appointed by agreement between the Parties, failing which, by the Chairperson for the time being of the Johannesburg Bar Council.
- 5.11.8 The Arbitrator shall have the following powers and duties:-

- 5.11.8.1 The Arbitrator shall have full and unrestricted powers in relation to the Arbitration proceedings and the making of any award in the proceedings, including, without limitation, the powers set out in Section 21(1) of the Arbitration Act and the power to alter any time period (either before or after expiry of the period), to alter, add or to make any deletion from the procedure to be followed in Arbitration and to make any award in the absence of a Party who fails to take any step required of that Party (including the failure to pay any costs payable by that Party), provided that:
- 5.11.8.1.1 He shall at all times have regard to the intention of the Parties that disputes should be resolved in a summary manner with a minimum of delay;
- 5.11.8.1.2 He shall not make a final award in the absence of a Party without endeavoring to first satisfy himself that, that Party's omission is not due to excusable inadvertence or other justified cause, but he need not hear evidence before making his award.
- 5.11.8.2 The Arbitrator:-
- 5.11.8.2.1 Need not strictly observe the rules of evidence and may admit, and rely on such evidence as he may decide;
- 5.11.8.2.2 May take expert opinion on any matter;
- 5.11.8.2.3 May have regard to his personal knowledge of the facts, and any expert knowledge he may have, relating to the issues in dispute;
- 5.11.8.2.4 May investigate any matter, or cause it to be investigated, and for that purpose shall be entitled to access the Parties' stand and/or improvements and any other relevant premises in order to inspect any article or to examine and take copies of or extracts from the accounting and other records of the Parties; alternatively he may require that the article or record be delivered to any place reasonably required by him for this purpose.
- 5.11.8.3 Provided that he shall afford the Parties an opportunity of challenging the opinion taken by him or the knowledge he claims to have or the results of the investigation.
- 5.11.8.4 The Arbitrator may make such award or awards, whether interim, provisional or final, as he may consider appropriate, including without limitation *ex parte* awards, declaratory orders, interdicts and awards for specific performance, restitution, damages, penalties, interest and security for costs.
- 5.11.8.5 The Arbitrator shall give his reasons for his award, if so requested by either Party.
- 5.11.9 The award of the costs of the Arbitration shall be in the discretion of the Arbitrator, provided that:-
- 5.11.9.1 The Arbitrator may require advance deposit or security to his satisfaction to secure payment of his fees;
- 5.11.9.2 Pending the award of costs, the Parties shall pay the Arbitrator's fees and the costs of providing a venue for, and the recording of, the Arbitration, in equal shares;
- 5.11.9.3 If a Party fails to pay that Party's share of the costs, the other Party may make payment and immediately recover the amount paid from the first party or the Arbitrator may make his award in the absence of that Party as set out above;

- 5.11.9.4 The Parties intend that the substantially successful party should be awarded a full indemnity for all the costs reasonably incurred by that party and not merely the costs on the Supreme Court or any other scale;
- 5.11.9.5 If a Party unnecessarily puts the other party to the proof of a fact, or fails to disclose or produce any document required to be disclosed or produced, that portion of the costs which relates to the proof of that fact, or which arises from the failure to disclose or produce, should be awarded to the other party whether or not the other Party is substantially successful in Arbitration;
- 5.11.9.6 If the substantially successful party unnecessarily delays or prolongs the Arbitration, that party should be penalized by not being awarded part or all of the costs;
- 5.11.9.7 In the event of a dispute regarding the amount of any costs the Arbitrator shall determine the amount and his decision shall be final and binding.

5.12 MISCELLANEOUS PROVISIONS

- 5.12.1 Whenever the Directors consider that the appearance of any Stand or building owned by a Member is unsightly or injurious to the amenities of the surrounding area of the Estate generally, the Directors may serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the Member failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the Stand concerned and take such steps as may be necessary, and recover the cost thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Company.
- 5.12.2 The Directors shall be obliged in giving such notice to act reasonably.
- 5.12.3 In the event of any Member or any servant, agent or independent contractor of any Member causing any damage to any property owned or controlled by the Company or to the perimeter fence or security equipment or facilities, the Company shall repair such damage and the Member concerned shall be liable for the costs thereof.
- 5.12.4 The Members shall at all times observe all laws and by-laws, regulations, the conditions of establishment and any other provisions in force relating to the Stand or the use thereof. In the event of any Member failing to do so, such failure shall be deemed to be a breach of this Memorandum of Incorporation and the Directors shall be entitled to take such action as they may be empowered and as they may deem fit in terms hereof to remedy such breach or to prevent the continuation thereof. In the event of any town planning scheme laying down any conditions in relation to the matters dealt with herein which are more onerous than the conditions laid down herein, the provisions of such town planning scheme shall prevail.
- 5.12.5 Each Member shall comply fully with all security measures introduced by the Directors, from time to time.
- 5.12.6 Members are required to maintain their Stands, and in the event of such Member failing to do so, then the Company shall be entitled to take such action as may be necessary for the maintenance of such area and to charge the Member concerned.
- 5.12.7 No person shall commence with the construction of any building or structure on his Stand, or any additions or alterations thereto unless he has submitted to the Directors for examination and approval or refusal such plans for such building, structure, alteration or addition as are required in terms of the bylaws of the local authority having jurisdiction over the Estate, and any such additional plan or information relating to the proposed building, structure, alterations or additions as the Directors may require. The Directors shall have the power:-
 - 5.12.7.1 To charge a fee for the examination and approval or refusal of building plans;

- 5.12.7.2 In approving any plan, to lay down such reasonable conditions as they may deem fit;
- 5.12.7.3 To refuse approval of the plans should they, in their sole and absolute discretion, determine that such plans or the development proposals therein contained, are not in accordance with these presents.
- 5.12.8 No Member shall transfer his Stand, until the Board of Directors or their duly authorized representatives have certified that the Member has at date of transfer fulfilled all this financial obligations to the Company. No stand or any interest therein shall be alienated without the written consent of the Company. Such consent may not be withheld unless:-
 - 5.12.8.1 Such Member is indebted to the Company in any way in respect of levies or other amounts which the Company may in terms of these presents be entitled to claim from him;
 - 5.12.8.2 The proposed Transferee has not agreed to become a Member of the Company and be bound by the provisions of this Memorandum of Incorporation;
 - 5.12.8.3 Such Member remains in breach of any of the provisions of this Memorandum of Incorporation or of the Rules and Regulations of the Estate, after notice from the Directors requiring him to remedy such breach, has been duly served.
- 5.12.9 Where a Member is an Association, Company, Close Corporation or Trust then no transfer of the shares, member's interest or beneficiary's interest, as the case may be, may take place without the prior written consent of the Board of Directors. This consent will not be given unless and until the entity has furnished to the Board of Directors the full details of the proposed new members, shareholders, beneficiaries respectively as well as the date on which the shareholding, membership, beneficiary will change. Further, the written consent of the Board of Directors will not be given unless and until all monies owing by the particular entity has been paid. Until the consent of the Board of Directors has been given the selling shareholder, member or beneficiary (as the case may be), shall be liable personally as a co-principal debtor to the Company for all the outstanding obligations of the entity. Should the provisions of this sub-clause not be complied with the relevant members, shareholders or beneficiaries (as the case may be), shall be liable to the Company as co-principal debtors for all the unfulfilled obligations of the entity in terms of this Memorandum of Incorporation and the Rules and Regulations until the provisions of this sub-clause are complied with.
- 5.12.10 The Directors in issuing the certificate referred to in clause 5.12.8 above, shall be entitled to charge a reasonable fee to be determined by the Directors from time to time.
- 5.12.11 The Company may enter into Agreements with Members for the provision of amenities and services to the Members and to levy a reasonable charge in respect of the provisions thereof.
- 5.12.12 In the event of the Company electing to provide a security service and/or other services for Members in the Estate, all Members shall be obliged:-
 - 5.12.12.1 To permit the installation of any equipment on the improvements or in the buildings comprising the improvements for the purpose of such services as may be determined by the Company from time to time;
 - 5.12.12.2 To make payment of the charges raised by the Company in respect of such services.
- 5.12.13 No Member may operate any business or income generating activity from a Stand without the prior written consent of the directors, which consent shall be in the sole and absolute discretion of the Directors, irrespective of whether or not any lawful authority grants permission for such business activity provided that the Directors may not consent to any business activity listed in clause 5 above.
- 5.12.14 The provisions of these clauses shall be binding upon all Members and insofar as they may be applicable, to all persons occupying any Stand by, through or under any Member,

whatever the nature of such occupation. No Member shall let or otherwise part with occupation of his Stand without the prior written consent of the Company.

5.12.15 The Directors may delegate such of their powers to an Estate architect or other official as they may determine.

5.13 WINDING UP

If the Company shall be wound up, deregistered or dissolved, the assets of the Company remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objectives similar to its main objective, to be determined by the Members of the Company at or before the time of its dissolution or, failing such determination, by the Court.