

MEMORANDUM OF INCORPORATION

**REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 2008**

**DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)
REGISTRATION NUMBER: 1995/000684/08**

(As approved by Members with a Special Resolution passed during the 2020 AGM on 24 October 2020)

(hereinafter referred to in the rest of the Memorandum of Incorporation as "**the Company**")

SECTION 10 - SCHEDULE 1 COMPANY

DIRECTORS AND MEMBERS WITH VOTING RIGHTS

DEFINITIONS

In the Memorandum of Incorporation, the following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them below and related expressions shall bear corresponding meanings:

"Act" or "the Act" - the Companies Act, Act 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to the Act (Companies Regulation 2(h) 2011);

"Alternate Director" - a person elected or appointed to serve, as the occasion requires, as a member of the Board of the Company in substitution for a particular elected or appointed Director of that Company (section 1 of Act 71/2008);

"Audit" - has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005) but does not include an "independent review" of Annual Financial Statements, as contemplated in section 30(2)(b)(ii)(bb) (section 1 of Act 71/2008);

"Common Property" – means the under mentioned properties which are registered in the name of the Company:

- (a) Portion 58 of Erf 1278 in the Township of Waterkloof Extension 3, Province of Gauteng, in extent 10 278 m², held by the Company under Title Deed No. T32005/1995;
- (b) Portion 13 of Erf 738 in the Township of Waterkloof Ridge, Province of Gauteng, in extent 962 m², held by the Company under Title Deed No. T32005/1995;
- (c) Unit 3 in the Sectional Title Scheme SS Waterkloof Village, Scheme No. 243, held by the Company under Title Deed No. ST85430/1999;
- (d) Unit 2 in the Sectional Title Scheme SS Waterkloof Village, Scheme No. 243, held by the Company under Title Deed No. ST85430/1999;
- (e) Portion 12 (a portion of Portion 1) of Erf 738 in the Township of Waterkloof Ridge, Province of Gauteng, in extent 4 m², held by the Company under Title Deed No. T73583/1998;
- (f) Portion 4 of Erf 1970 in the Township of Waterkloof Ridge, Province of Gauteng, in extent 142 m², held by the Company under Title Deed No. T51258/2004,

and any other immovable properties which are purchased or sold by the Company for purposes of the Development or the extension of the Development Area, from time to time;

"Consideration" - anything of value given and accepted in exchange for any property, service, act, omission or forbearance or any other thing of value, including:

- (a) any money, property, negotiable instrument, investment credit facility, token or ticket;
- (b) any labour, barter or similar exchange of one thing for another; or
- (c) any other thing, undertaking, promise, agreement or assurance, irrespective of its apparent or intrinsic value, or whether it is transferred directly or indirectly (section 1 of Act 71/2008);

"Development" – means the residential complex known as Waterkloof Village which has been developed on the Development Area, currently comprising of the Erven, the Rental Properties, the Servitude Properties and the Common Property and all improvements of any nature thereof and situated thereon;

"Development Area" – means:

- (a) Erf 1278 of the Township Waterkloof Extension 3, Province of Gauteng;
- (b) Erf 738 of the Township Waterkloof Ridge, Province of Gauteng; and

(c) Erf 1970 of the Township Waterkloof Ridge, Province of Gauteng;

"Director" - a member of the Board as contemplated in section 66 or an alternate Director, from time to time, and includes any person occupying the position of a Director or alternate Director, by whatever name designated. Director includes alternate Director and a Prescribed Officer or a person who is a member of a Committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a member of the Company's Board (section 1 of Act 71/2008);

"Erven" – means the 67 (sixty seven) individual erven established on the Development Area, whether consolidated or comprising a sub-division, as improved with the inclusion of any outbuildings, and the Units in the Sectional Title Scheme commonly known as SS Waterkloof Village, Scheme No. 243, all of which Units are used for residential purposes;

"External Company" - a foreign Company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2) (section 1 of Act 71/2008);

"Financial assistance" - is not defined in the Act but includes lending money, guaranteeing a loan or other obligation, and securing any debt or obligation; but does not include: lending money in the ordinary course of business by the Company whose primary business is the lending of money; an accountable advance to meet legal expenses in relation to a matter concerning the Company; or anticipated expenses to be incurred by the person on behalf of the Company; or an amount to defray the person's expenses for removal at the Company's request in terms of section 45 of the Act;

"Financial Reporting Standards" - with respect to any particular Company's financial statements, means the standards applicable to that Company, as prescribed in terms of section 29(4) and (5) (section 1 of Act 1/2008);

"Financial statements" - includes: Annual Financial Statements and provisional Annual Financial Statements; interim or preliminary reports; group and consolidated financial statements in the case of a group of Companies; and financial information in a Circular, prospectus or provisional announcement of results, that an actual or prospective creditor or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on (section 1 of Act 71/2008);

"Financial year end" - is not defined in the Act but means the end of the accounting period covering 12 (twelve) consecutive months over which the Company determines earnings and profits. The financial year serves as a period of reference for the Company and does not necessarily correspond to the calendar year;

"IFRS" - means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body (Companies Regulation 26(1)(b) 2011);

"IFRS for SMEs" - means the International Financial Reporting Standards for Small and Medium Enterprises as issued from time to time by the International Accounting Standards Board or its successor body (Companies Regulation 26(1)(c) 2011);

"Incorporator" - when used with respect to the Company incorporated in terms of the Act, means a person who incorporated that Company, as contemplated in section 13; or with respect to a pre-existing Company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that Company (section 1(a)(b) of Act 71/2008);

"Independently" compiled and reported" - means that the Annual Financial Statements are prepared:

- (a) by an independent accounting professional;
- (b) on the basis of financial records provided by the Company; and
- (c) in accordance with any relevant financial reporting standards (Companies Regulation 26(1)(e)(i) to (iii) 2011);

"Independent" reviewer - means a person referred to in Companies Regulation 29(4) and who has been appointed to perform an independent review under this Regulation (Companies Regulation 29(1)(a) 2011);

"Member" – means a Member of the Company, as referred to more fully in Clause 2.1 of this Memorandum of Incorporation;

"Members' meeting" - with respect to any particular matter concerning the Company, means a meeting of those Members of the Company who are entitled to exercise voting rights in relation to that matter;

"Non-profit Company" - means a Company:

- (a) incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1, and
- (b) the income and property of which are not distributable to its Incorporators, Members, Directors, Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1.

"Ordinary Resolution" - a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8): at a Members' meeting; or by Members acting other than at a meeting, as contemplated in section 60 and in clause 2.4 of this Memorandum of Incorporation;

"Prescribed Officer" - a person who, within the Company, performs any function that has been designated by the Minister in terms of section 66(10) despite not being a Director of a particular Company. A person is a "prescribed officer" of the Company for all purposes of the Act if that person exercises general executive control over and management of the whole, or a significant portion, of the business and activities of the Company; or regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the Company (section 1 of Act 71/2008 as amended by section 1(1)(x) of Act 3/2011);

"Quorum" - is not defined in the Act but means the minimum number of Members of the Company, who are entitled to vote, that must be present to make a Members' Meeting valid;

"Rental Properties" – means the under mentioned immovable property rented by the Company from the various owners stipulated below:

- (a) Erf 1232 (previously a park) of the Township Waterkloof Extension 2, Registration Division JR, Province of Gauteng, in extent 1,8180 hectares, which Erf is rented from the City of Tshwane Metropolitan Municipality;
- (b) Erf 1279 (previously a park) of the Township Waterkloof Extension 3, Registration Division JR, Province of Gauteng, in extent 1,0934 hectares, which Erf is rented from the City of Tshwane Metropolitan Municipality;
- (c) Portion 21 of Erf 1230 of the Township Waterkloof Extension 2, Registration Division JR, Province of Gauteng, in extent 540 m², which portion is rented from the City of Tshwane Metropolitan Municipality; and
- (d) a portion of the remaining extent of Portion 4 of the Farm Waterkloof, No. 376, Registration Division JR, Province of Gauteng, which lease premises is rented from the Pretoria Country Club,

and any other immovable property rented from time to time for purposes of the Development;

"Restrictive conditions" - is not defined in the Act but means conditions that limit, restrict or qualify the purposes, powers or activities of the Company in terms of section 15(2), section 16 and section 19(1) of Act 71/2008;

"Ring-fenced provisions" - is not defined in the Act but mean provisions specified in the Company's Memorandum of Incorporation that limit, restrict or qualify the Company's powers, capacity, purposes or activities in some way, provided for in terms of sections 15(2)(b) and (c) of the Act. The Act ensures that the general public is alerted to a Company's restricted powers or capacity by requiring that such a Company's name be immediately followed by the expression '(RF)', an acronym for 'ring-fenced'. Specifically, section 11(3)(b) provides that, if a Company's Memorandum of Incorporation includes any provision contemplated in sections 15(2)(b) and (c) restricting or prohibiting the amendment of any particular provision of the Memorandum of Incorporation, its name must be immediately followed by the expression '(RF)'. There is a further requirement in section 13(3) which provides that, if a Company's Memorandum of Incorporation includes any provision contemplated in sections 15(2)(b) or (c), the Notice of Incorporation: Ring-fencing Provisions filed by the Company must include a prominent statement drawing attention to each such provision, and its location in the Memorandum of Incorporation;

"Section" or **"Sections"** - refers to a section or sections of the Companies Act, Act 71 of 2008, as amended;

"Servitude Properties" – means various servitudes over the under mentioned properties, which have been registered in favour of the Company:

- (a) a perpetual servitude of right of way with diagram number L.G. No. A. 7820/1993 over a park owned by the City of Tshwane Metropolitan Municipality, better known as the remaining extent of Erf 738, in the Township of Waterkloof Ridge, Registration Division JR, Province of Gauteng, in extent 1,1194 hectares; and
- (b) a perpetual servitude of right of way with diagram number L.G. No. A. 8444/1994 over a park owned by the City of Tshwane Metropolitan Municipality, better known as the remaining extent of Erf 738, in the Township of Waterkloof Ridge, Registration Division JR, Province of Gauteng, in extent 1 243 m²;

"Solvency and Liquidity Test" - has the meaning attributed thereto in section 4; being the test the Company satisfies if at a particular time, considering all reasonably foreseeable circumstances at that time:

- (a) the Company's assets, as fairly valued, equal or exceed its liabilities. It is the assets of the particular Company which must be valued (including any investment in subsidiaries). The Company must have a positive net asset value at a specific point in time. This is the solvency element of the test. It is also called the 'Balance Sheet Solvency' Test; and
- (b) it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 months after the date on which the test is considered or 12 months following the distribution. This is the liquidity element of the test. It is also called the 'Commercial Solvency Test' (section 1 of Act 71/2008);

"Special Resolution" - means in the case of the Company, a resolution adopted with the support of at least 75% (seventy five percent) of the voting rights of Members exercised on the resolution in terms of section 65(8) or a different percentage as contemplated in section 65(10) at a Members' Meeting, being any lower or higher percentage as provided for in section 65(9) read with section 65(10), provided that there must at all times be a margin of at least 10% between the Ordinary and Special Resolution; or by Members acting other than at a meeting, as contemplated in Section 60 and in clause 2.4 of this Memorandum of Incorporation;

"Units" means a section shown as such on an approved Sectional Plan in the Sectional Title Scheme known as SS Waterkloof Village, Scheme No. 243, as defined more fully in the Sectional Titles Act No. 95 of 1986, as amended;

"Voting rights" - with respect to any matter to be decided by the Company, means the rights of a Member to vote in connection with the matter.

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**MEMORANDUM OF INCORPORATION OF A HOME OWNERS ASSOCIATION NON-PROFIT
COMPANY (NPC) REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, ACT NO 71 OF 2008**

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) which is a Non-Profit Company, Registration Number 1995/000684/08, and which is hereinafter referred to as "the Company" in the rest of the Memorandum of Incorporation, has the prescribed minimum number of at least 3 Directors in terms of section 66(2)(b) and where the Incorporators may be its first Directors and its first Members.

If, before the general effective date, the Company had adopted any binding provisions, under whatever style or title, those provisions continue to have the same force and effect as of the general effective date, for a period of 2 (two) years or until changed by the Company; and after the 2 (two) year period, to the extent that they are consistent with the Act.

Every pre-existing Company incorporated in terms of section 21 of the previous Act is deemed to have amended its Memorandum of Incorporation as of the general effective date to expressly state that it is a Non-Profit Company, and to have changed its name in so far as required to comply with section 11(3) of Act 71 of 2008, by changing its name to end with the expression NPC.

In this Memorandum of Incorporation:

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, Act No 71 of 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act;
- (c) any reference to the Company is a reference to **THE WATERKLOOF VILLAGE HOME OWNERS ASSOCIATION (NPC)**;
- (d) the Schedules, Annexures and Forms attached to this Memorandum are part of the Memorandum of Incorporation.

At any time within 2 years immediately following the general effective date of the Act, the Non-Profit Company may file without change:

- (a) an amendment to its Memorandum of Incorporation to bring it in harmony with the Act, and
- (b) a notice of name change and a copy of a Special Board Resolution contemplated in section 16(i)(c)(i)(aa) of the Act to alter its name to meet the requirements of the Act. Item 4(1)(a) of Schedule 5.

Adoption of Memorandum of Incorporation

The former Memorandum of Association and Articles of Association adopted in terms of the repealed Companies Act, Act 61 of 1973, as amended, was repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation in accordance with the Companies Act, Act 71 of 2008, as amended, and adopted by Special Resolution of Members of the Company on 16 April 2013.

The Memorandum of Incorporation was signed by the Board of Directors of the Company in accordance with section 13(1) of the Companies Act, Act 71 of 2008, as amended, as evidenced by the following signatures of each Director or by proxy on their behalf in the Table of Signatories of Directors.

Default Memorandum of Incorporation not to apply

The standard form Memorandum of Incorporation for a Non-Profit Company referred to in Regulation 15(1)(a) shall not apply to the Company. The Memorandum of Incorporation is in a form unique to the Company as contemplated in section 13(1)(a)(ii).

Registered office and objects for which Company is established

The registered office of the Company shall be situated at:

WATERKLOOF VILLAGE, 279 SIDNEY AVENUE, WATERKLOOF, PRETORIA, GAUTENG, 0181

Objects of the Company

The Memorandum of Incorporation of the Company sets out at least one object of the Company and each object is either a public benefit object or an object relating to one or more cultural or social activities, or communal or group interests in terms of Item 1(1)(a) of Schedule 1 of the Act.

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) is deemed to be a Special Purpose Vehicle Company since it has the abbreviation "NPC" after its name and therefore does not need the abbreviation "RF" next to its name.

The primary object of the Company is:

To promote and protect the communal interests of the Members of the Company and to maintain high security, aesthetic and environmental standards in the Development (as defined in this Memorandum of Incorporation), and all ancillary objects, which are necessary to achieve these objects. It is recorded that the development of the whole Development is of a homogenous nature and that notwithstanding the fact that Members hold title to their Erven and/or Units individually, the Company, through its Board of Directors, shall have all the powers that are necessary to accomplish the fulfilment of all objectives of the Company, including, but not limited to the powers specifically contained in this Memorandum of Incorporation.

The ancillary objects of the Company are:

- (a) to act as a Homeowners Association;
- (b) to enter into agreements of servitude for the benefit of its Members or any adjacent property development;
- (c) to manage, oversee and control all security aspects of the Development;
- (d) to enter into agreements for the provision of any services comprising such utilities and amenities as may be provided by or on behalf of the Company to the registered owners of Erven, Units and residents within the Development with any competent authority or any other third party, *inter alia*, including the provision of access to the Development, water, electricity and sewerage services to the Company and where required to supply such services to the various Members of the Company;
- (e) to administer and enforce the Architectural and Development Guidelines adopted and amended by the Company from time to time, the Conduct Rules and House Rules of the Company, as amended from time to time;
- (f) to control the registration of transfer of Erven and Units in the Development and ensure compliance within the Development with all conditions imposed by the City of Tshwane Metropolitan Municipality and its successor in title from time to time;
- (g) in general, to do all such things, and perform all such acts, as may be necessary or expedient to ensure that the Development is developed and maintained in the interests of all Members thereby ensuring that the Development will be and remain one of premier status.

Without limiting the generality of the above mentioned ancillary objects of the Company, the Company shall have the following powers and functions:

- (a) the responsibility to maintain, repair, improve and keep in good order and condition the Common Property, the Rental Properties, the Servitude Properties and the responsibility for the payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the City of Tshwane Metropolitan Municipality and its successor in title from time to time or any other authority in respect of the Common Property, the Rental Properties and the Servitude Properties and/or for payment of the salaries and/or wages of the

employees of the Company and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Company, and the Company's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the main and ancillary objects of the Company or the pursuit of its business;

- (b) the right to impose levies upon the Members of the Company for the purpose of meeting all the expenses that the Company has incurred or which the Directors reasonably anticipate the Company will incur in the attainment of the objects of the Company or the pursuit of its business;
- (c) the obligation to ensure that all provisions of this Memorandum of Incorporation are complied with by all Members/parties bound thereby; and
- (d) the obligation to promote, advance and protect the Development and the interests of the Company and that of all of its Members.

ARTICLE 1 –INCORPORATION AND NATURE OF THE COMPANY

1.1. Incorporation

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is incorporated from 26th January 1995 as a Non- Profit Company, in terms of Schedule 1 and section 10 of the Companies Act, Act 71 of 2008 and section 122 of the Companies Amendment Act, Act 3 of 2011.
- (2) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is incorporated in accordance with and governed by the unalterable provisions of the Companies Act, 2008, meaning a provision of the Companies Act that does not expressly contemplate that its effect on any particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation or rules and the alterable provisions of the Companies Act, meaning a provision of the Companies Act in which it is expressly contemplated that its effect on a particular Company may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this Company's Memorandum of Incorporation, subject to the limitation, extensions, variations or substitutions set out in this Company's Memorandum of Incorporation, and the provisions of this Company's Memorandum of Incorporation, which forms the Constitution of the Company.
- (3) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall apply all of its assets and income, however derived, to advance its stated objects, as set out above in this Memorandum of Incorporation. The income and property of the Company shall not be distributable to its Incorporators, Members, Directors, Officers or persons related to any of them except to the extent permitted by Item 1(3) of Schedule 1.
- (4) The Memorandum of Incorporation does not limit or restrict the Company to acquire and hold securities issued by a profit Company or directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects. The Company may conduct any business, including a commercial venture, as long as the funds generated are applied to advance the Company's primary and ancillary objects.
- (5) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall not directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person, who is or was an Incorporator of the Company, or who is a Member or Director, or person appointing a Director, of the Company, except –
 - 5.1. as reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company, or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - 5.2. as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;
 - 5.3. as a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
 - 5.4. in respect of any legal obligation binding on the Company.
- (6) Incorporation as a Non-Profit Company in terms of this Act and compliance with the provisions of this Act does not necessarily qualify the Non-Profit Company for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act 58 of 1962), or any other legislation, except to the extent that any such legislation provides otherwise.

Section 10 of the Income Tax Act, 1962 (Act 58 of 1962) grants exemptions from income tax to public benefit organisations (PBOs) and in terms of section 30(3)(b) of the Income Tax Act, the Company meets stringent requirements for approval as a public benefit organisation, necessitating the amendment of the Company's Memorandum of Incorporation.

1.2 Powers of the Company

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is not subject to any restrictive conditions nor to any prohibitions regarding the amendment of this Memorandum of Incorporation other than those contained in the Act.

1.3 Memorandum of Incorporation and Company Rules

- (1) In terms of this Memorandum of Incorporation the Company is not limited from making, amending or appealing any Company Rules as contemplated in section 15(3) of the Act, and the Board's capacity to make such Rules is not hereby limited or restricted.
- (2) The Board shall publish these Company Rules in terms of section 15(3), (4) and (5) by delivering a copy of the Rules to each Director and Member by publishing a copy of those Rules in any manner required or permitted by the Company's Memorandum of Incorporation, or the Rules of the Company, and filing a copy of those Rules.
- (3) Any Rules proposed by the Board will take effect 10 (ten) business days after the filing of that Rule, or on the later date specified in the Rule. Any Rules proposed by the Board may not be filed if written objection by Members of 25% (twenty five percent) or more of the voting rights are received by the Board within 20 (twenty) business days after publication.

This provision shall have the effect of limiting the authority of the Board and may be omitted or adjusted. Any Rule that takes effect as contemplated in this sub-article shall remain binding on an interim basis until put to a vote at the next General Meeting of the Company and shall become permanently binding if ratified by an Ordinary Members Resolution. In the event that a Rule may not be filed, the Board shall promptly inform each Director and Member of this result by ordinary mail.

1.4 Solvency and Liquidity Test

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall satisfy the Solvency and Liquidity Test at a particular time if, considering all reasonably foreseeable financial circumstances of the Company at that time, the assets of the Company, as fairly valued, equal or exceed the liabilities of the Company, as fairly valued, and it appears that the Company will be able to pay its debts as they become due in the ordinary course of business for a period of 12 (twelve) months after the date on which the test is considered, or in the case of a distribution, 12 (twelve) months following that distribution.
- (2) In terms of the Memorandum of Incorporation, any financial information to be considered concerning the Company shall be based on accounting records that satisfy the requirements of Article: Transparency, Accountability and Integrity - Form and Standards, Article Transparency, Accountability and Integrity - Accounting Records of the Memorandum of Incorporation (section 28 of the Act) and financial statements that satisfy the requirements of Article: Transparency, Accountability and Integrity - Financial Statements of the Memorandum of Incorporation (section 29 of the Act).
- (3) The Board or any other person applying the Solvency and Liquidity Test to the Company shall consider a fair valuation of the Company's assets and liabilities, including a reasonably foreseeable contingent assets and liabilities, or may consider any other valuation of the Company's assets and liabilities that is reasonable in the circumstances.

1.5 Interpretation of the Memorandum of Incorporation, anti-avoidance, exemptions and substantial compliance

- (1) When, in the Memorandum of Incorporation, a particular number of 'business days' is provided for between the happening of one event and another, the number of days shall be calculated by excluding the day on which the first such event occurs, including the day on or by which the second event is to occur, and excluding any public holiday, Saturday or Sunday that falls on or between the days.
- (2) If there is an inconsistency between any provision of the Act and the Memorandum of Incorporation, and a provision of any other national legislation, the provisions of both Acts shall apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second, and to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second, any applicable provisions of the Auditing Profession Act, Labour Relations Act, 1995 (Act 66 of 1995), Promotion of Access to Information Act, 2000 (Act 2 of 2000), Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), Public Finance Management Act, 1999 (Act 1 of 1999), Securities Services Act, 2004 (Act 36 of 2004), or Banks Act, Local Government: Municipal Finance Management Act, 2009 (Act No 56 of 2003), or Section 8 of the National Payment System Act, 1998 (Act No 78 of 1998), shall prevail in the case of an inconsistency involving any of them, except to the extent provided otherwise in section 30(8) or section 49(4) of the Act, or the provisions of this Act prevail in any other case, except to the extent provided for in this clause of this sub- article of the Memorandum of Incorporation or section 118(4) of the Act, and if there is a conflict between a provision of Chapter 8 of the Act and a provision of the Public Service Act, 1994 (Proclamation No. 103 of 1994) the provisions of that Act prevail.
- (3) Any Director, or Member of the Company may apply to the Companies Tribunal for an administrative order exempting an agreement, transaction, arrangement, resolution or provision of the Company's Memorandum of Incorporation or Rules from any prohibition or requirement established by or in terms of an unalterable provision of this Act, other than a provision that falls within the jurisdiction of the Panel.
- (4) An unaltered electronically or mechanically generated reproduction of any document, may be substituted for the original for any purpose for which the original could be used in terms of the Memorandum of Incorporation, subject to that reproduction satisfying any applicable prescribed requirements as to the form or manner of reproduction, If a provision of the Memorandum of Incorporation requires a document to be signed or initialled by or on behalf of a person, that signing or initialising may be effected in any manner provided for in the Electronic Communications and Transactions Act, or by two or more persons, it shall be sufficient if all of those persons sign a single original of the document, in person or in the manner provided for in the Electronic Communications and Transactions Act, or each of those persons signs a separate duplicate original of the document, in person or in the Electronic Communications and Transactions Act, and in such case, the several signed duplicate originals, when combined, constitute the entire document.

1.6 Members Agreement and Company Rules

- (1) Subject to the Board having the authority to make Company Rules, a rule in terms of clause 1 of this sub-article of the Memorandum of Incorporation shall be consistent with the Act and the Company Memorandum of Incorporation, and any such rule that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency, shall take effect on a date that is the later of 10 (ten) business days after the rule is filed in terms of clause 1 of this sub-article of the Memorandum of Incorporation, or the date, if any, specified in the rule, and shall be binding on an interim basis from the time it takes effect until it is put to a vote at the next General Members' meeting of the Company, and on a permanent basis only if it has been ratified by an Ordinary Resolution of Members at the said meeting.
- (2) Within 10 (ten) business days after any rules of the Company have been put to a

ratification, the Company shall file a Notice in Form CoR 16,2 indicating whether the rules have been ratified or rejected, If a rule that has been filed in terms clause 1 of this sub-article of the Memorandum of Incorporation is subsequently ratified in terms of this sub-article of the Memorandum of Incorporation, the Company shall file a notice of ratification within 5 (five) business days in the prescribed manner and form, or not ratified when put to a vote, the Company shall file a notice of non- ratification within 5 (five) business days after the vote, in the prescribed manner and form, and the Company's Board is prohibited by the Memorandum of Incorporation from making a substantially similar rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Ordinary Resolution of the Members, Any failure to ratify the rules of the Company shall not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided in clause 2 of this sub-article of the Memorandum of Incorporation.

- (3) Within 10 (ten) business days after any of the rules of the Company have been amended, altered or repealed the Company shall file a Notice on Form CoR 16.1 indicating the extent and effect of the change.
- (4) The Company's Memorandum of Incorporation, and any rules of the Company, are binding between the Company and each Member, between or among the Members of the Company, and between the Company and each Director of the Company, or any other person serving the Company as a Member of a committee of the Board, in the exercise of their respective functions within the Company.
- (5) The Memorandum of Incorporation does not limit or restrict the Members of the Company entering into any agreement with one another concerning any matter relating to the Company, but any such agreement shall be consistent with the Act and the Company's Memorandum of Incorporation, and any provision of such an agreement that is inconsistent with the Act or the Company's Memorandum of Incorporation shall be void to the extent of the inconsistency.

1.7 Amending Memorandum of Incorporation

- (1) the Company's Memorandum of Incorporation may be amended subject to Article Incorporation- Powers of the Company:
 - (1.1) in compliance with a Court Order in the following manner: an amendment to a Company's Memorandum of Incorporation required by any Court Order must be effected by a resolution of the Company's Board and does not require a Special Resolution as set out in this clause; or
 - (1.2) at any other time if a Special Resolution to amend it:
 - (1.2.1) is proposed by the Board of the Company or Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a Resolution; and is adopted at a Members' meeting or in accordance with section 60; and
 - (1.2.2) any resolution for the amendment of the Memorandum of Incorporation, must be approved by the Commissioner of the South African Revenue Service in terms of the Income Tax Act.

If the Board, or any person authorised by the Board to do so, proposes to alter any of the provisions of this Memorandum of Incorporation to correct any patent errors in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum of Incorporation, by publishing and filing a notice of alteration in terms of the Board's statutory power to do so in section 17(1), then as a restrictive condition, contemplated by section 15(2)(b), the Board shall first cause that proposed alteration to be approved by Special Resolution of the Ordinary Members in terms of clause 1 of Article: Incorporation- Amendments and clauses 9 and 10 of Article Members Rights and Meetings Members Resolutions of this Memorandum of Incorporation (section

65(12) of the Act).

The notice convening the Ordinary Members' meeting for this purpose shall be accompanied by:

- (1.3) a written confirmation by the Board that each proposed alteration to the Memorandum of Incorporation in the draft notice of alteration constitutes only a correction in terms of section 17 of a specific patent error in spelling, punctuation, reference, grammar or similar defect on the face of the Memorandum of Incorporation; and
- (1.4) a written explanation by the Board, explaining the reason for the effects of each of the specific alterations to the Memorandum of incorporation.

A Notice of any such alteration must be sent to each Director and Member by ordinary mail at least 10 (ten) business days prior to the filing of the Notice of alteration with the Commission. This will allow the Directors and Members to approach the Tribunal in terms of section 17(2), only on the grounds if an alteration exceeds the authority to correct a patent error or defect.

- (2) Within 10 (ten) business days after an amendment to the Company's Memorandum of Incorporation has been effected in any manner contemplated in this sub-article of the Memorandum of Incorporation, the Company shall file a Notice of Amendment in Form CoR 15.2, together with the relevant documents required by this sub-article of the Memorandum of Incorporation, and the fee set out in Table CR 2B.
- (3) The Memorandum of Incorporation does not contain any provision, the amendment of which is either subject to requirements for its amendment in addition to those set out in section 16 of the Act or that is prohibited from being amended, as contemplated in section 15(2)(b) or (c) of the Act.

1.8 Alterations, translations and consolidations of Memorandum of Incorporation

- (1) In the event that the Company has filed its Memorandum of Incorporation and wishes to file one or more translations of it, it may file it in any official language or languages of the Republic.

A translation of the Company's Memorandum of Incorporation shall be accompanied by a sworn statement by the person who made the translation, stating that it is a true, accurate and complete translation of the Memorandum of Incorporation.

A filed translation of the Company's Memorandum of Incorporation shall be accompanied by Form CoR 15.4, which shall include the sworn statement required by section 17(4), together with the fee set out in Table CR 1.

- (2) At any time after the Company has filed its Memorandum of Incorporation, and subsequently filed one or more alterations or amendments to it, the Company may file a consolidated revision of its Memorandum of Incorporation, as so altered or amended, or the Commission may require the Company to file a consolidated revision of its Memorandum of Incorporation, as so altered or amended.

A consolidated revision of the Company's Memorandum of Incorporation shall be accompanied by Form CoR 15.5, which must include a sworn statement, or a statement by an attorney or notary, as required by this sub-article of the Memorandum of Incorporation, together with the fee set out in Table CR 1.

A notice by the Commission requiring a Company to file a consolidated revision of its Memorandum of Incorporation must be in Form CoR 15.6.

A consolidated revision of the Company's Memorandum of Incorporation shall be accompanied by a sworn statement by a Director of the Company, or a statement by

an attorney or notary public, stating that the consolidated revision is a true, accurate and complete representation of the Company's Memorandum of Incorporation, as altered and amended up to the date of the statement.

1.9 Authenticity of versions of Memorandum of Incorporation

- (1) The Memorandum of Incorporation of the Company as altered or amended, prevails in any case of a conflict between it and a translation filed and a consolidated revision filed, unless the consolidated revision has subsequently been ratified by a Special Resolution at a general Members' Meeting of the Company.

The latest version of the Company's Memorandum of Incorporation that has been endorsed by the Commission in terms of this sub-article prevails in the case of any conflict between it and any other purported version of the Company's Memorandum of Incorporation.

- (2) In regards to the Memorandum of Incorporation of the Company and authentication of documents, any Director or the Company Secretary (if applicable) or any person appointed by the Directors for the purpose shall have power to authenticate:
 - (2.1) any document affecting the constitution of the Company;
 - (2.2) any resolution passed at the General Meeting or at a meeting of the Directors or at a meeting of any committee; and
 - (2.3) any book, record, document or account relating to the business of the Company, and to certify copies thereof or extracts therefrom as true copies or true extracts.

Where any book, record, document or account is elsewhere than at the registered office, the local Manager or officer of the Company having the custody of it shall be deemed to be a person appointed by the Directors for the purpose of this sub-article.

A document purporting to be a copy of any such resolution, or an extract from the minutes of any such meeting, which is certified, shall be conclusive evidence in favour of all persons dealing with the Company that such resolution has been duly passed or, as the case may be, that any minute so extracted is a true and accurate record of proceedings at a duly constituted meeting.

1.10 Legal status of the Company

- (1) From the date and time that the incorporation of the Company is registered, as stated in its registration certificate, the Company is a juristic person, which exists continuously until its name is removed from the Company's register in accordance with this Act, has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power, or having any such capacity, or the Company's Memorandum of Incorporation provides otherwise, is constituted in accordance with the unalterable provisions of this Act, the alterable provisions of the Act, subject to any negation, restriction, limitation, qualification, extension or other alteration that is contemplated in an alterable provision, and has been noted in the Company's Memorandum of Incorporation, and any further provisions of the Company as set out in the Company's Memorandum of Incorporation.
- (2) In terms of the Memorandum of Incorporation, no persons shall solely by reason of being an Incorporator, Member or Director of the Company, be liable for any liabilities and obligations of the Company.
- (3) Incorporation as a Non-Profit Company in terms of the Act, or registration as an external Non-Profit Company in terms of the Act, and compliance by either with the provisions of the Act does not necessarily qualify the Non-Profit Company, or external Non-Profit Company, for any particular status, category, classification or treatment in terms of the Income Tax Act, 1962 (Act 58 of 1962), or any other legislation, except to

the extent that any such legislation provides otherwise.

1.11 Validity of the Company's Actions

- (1) The Company's Memorandum of Incorporation limits, restricts, qualifies the purposes, powers or activities of the Company, or limits the authority of the Directors to perform an act on behalf of the Company.
- (2) A Members Resolution may ratify any action by the Company or the Directors, that is inconsistent with any such limit, restriction or qualification but such an action may not be ratified if it is in contravention of the Memorandum of Incorporation.
- (3) No action of the Company is void by reason only that, the action was prohibited by that limitation, restriction or qualification, or as a consequence of that limitation, restriction or qualification, the Directors had no authority to authorise the action by the Company, and in any legal proceeding, other than proceedings between the Company and its Members and its Directors or its Members and Directors of the Company, no person may rely on such limitation, restriction or qualification to assert that an action contemplated in this clause of the Memorandum of Association is void.

ARTICLE 2 - MEMBERS' RIGHTS AND MEETINGS

2.1 Interpretation and Application of the Memorandum of Incorporation

- (1) Membership of the Company shall be limited to any party who is in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act) reflected in the records of the Deeds Registry concerned as the registered owner of an Erf.
- (2) A person shall become a Member of the Company upon transfer of an Erf into his name, and such membership shall *ipso facto* terminate when a Member ceases to be the owner of an Erf unless such Member owns any other Erf/Erven.
- (3) As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members who are all in a single class, being voting Members, each of whom has an equal vote in any matter to be decided by Members of the Company.
- (4) Each voting Member of the Company has at least one vote.
- (5) The Memorandum of Incorporation does not limit or restrict the Company to allow for Membership to be held by juristic persons, including any profit Companies.
- (6) The Memorandum of Incorporation does not restrict or regulate, or provide for any restriction or regulation of, that Membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution.
- (7) In relation to the Company, and for purposes of this Memorandum of Incorporation, no person other than a Member or proxies in terms of Article: Members' Rights and Meetings - Members' Right to be represented by Proxy, shall be entitled to attend, speak and vote at a meeting of Members.
- (8) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall maintain a Member's register.
- (9) The fact that a person ceases to be a Member as a result of the transfer of an Erf to another person, shall not release such Member from any liability to the Company in respect of any debt of any amount howsoever arising, the cause of which arose prior to the transfer of such Erf nor otherwise relieve such erstwhile Member from any other obligations owed to the Company during the period of his membership.
- (10) Where an Erf is owned by more than 1 (one) person all the registered owners of that Erf shall together be deemed to be collectively one Member of the Company and have the rights and obligations of one Member of the Company; provided however that all co-owners of any Erf shall be jointly and severally liable for the due performance of any obligation to the Company.
- (11) Where an Erf is owned by more than one person, such co-registered owners shall designate one of them to represent the others as Member. A power of attorney shall be provided to the Company evidencing such authority, without derogating from the rights of such Member to provide a separate authority (proxy) for purposes of any Members' meeting.
- (12) Where a Member is a legal entity (company, close corporation, trust or other entity, whether incorporated or unincorporated) such Member shall designate a person to represent it with respect to the Company. A power of attorney shall be provided by the legal entity to the Company evidencing the authority of the person, without derogating from the rights of such Member to provide a separate authority (proxy) for purposes of any Members' meeting.
- (13) Where a Member is a legal entity (company, close corporation, trust or other entity, whether incorporated or unincorporated), the shareholders, directors, trustees and/or members of such legal entity shall be personally liable, jointly and severally with such Member, for the due performance by the Member of all its obligations in terms of this

Memorandum of Incorporation and the Rules provided for in clauses 3.19 and 3.20 of this Memorandum of Incorporation.

- (14) A registered owner of an Erf may not resign as a Member of the Company.
- (15) The Company shall maintain at its registered office, alternatively at the office of management, a register of Members of the Company as provided in item 1(9) of Schedule 1 to the Act.
- (16) The register of Members shall be open to inspection on reasonable notice during normal business hours of the Company.
- (17) Each Member shall be required to provide the Company with written details of his/her service address, it being competent for any Member to alter any such service address by written notice to the Company at its registered office or care of management, provided however that any physical address and/or postal address for delivery purposes shall be in the Republic of South Africa.
- (18) For purposes of legal action, the physical address of an Erf of a Member shall be the *domicilium citandi et executandi* of the Member. If a Member wishes to change such *domicilium* address he must give written notice to that effect to the Company. If the said *domicilium* of the Member is changed to an address which is not in Pretoria, the Member agrees to the jurisdiction of the Magistrates Court of Pretoria.
- (19) The *domicilium citandi et executandi* for any tenant / occupier of an Erf for purposes of legal action is the physical address of that Erf.
- (20) No Member shall let or otherwise part with occupation of his Erf, whether temporarily or otherwise, unless such proposed tenant / occupier of the Erf has agreed in writing to be bound by and observe the terms and conditions of this Memorandum of Incorporation and the Rules provided for in clauses 3.19 and 3.20 of this Memorandum of Incorporation, such obligations to comprise a *stipulatio alteri* (benefit in favour of third party) in favour of the Company, without derogating from the liability and responsibility of the Member for the acts and omissions of such proposed tenant / occupier as referred to in subclause 2.1(19) above.
- (21) The owner of an Erf may not subdivide an Erf, erect a second dwelling on the same Erf, rezone an Erf or in any way change the use for which an Erf has been zoned, whether by way of rezoning or a consent use or otherwise, without the explicit prior written approval of the Company.
- (22) No business or any part thereof shall be conducted from an Erf without the prior written consent of the Company and provided further that all conditions of the relevant town planning scheme and/or title deed of the Erf in question have been complied with.
- (23) The right and obligation of a Member shall not be capable of being ceded and/or assigned, in whole or in part nor otherwise be transferable.
- (24) In the event of any sale of an Erf, the Member shall procure that the following conditions of title are inserted into the deed of sale and title deed in terms of which any purchaser takes title to the relevant Erf:
 - “(a) (i) Die eienaar en sy Opvolgers in Titel is verplig om lid te wees van die Waterkloof Village Huiseienaarsvereniging (Ingelyf in terme van Artikel 21 van die Maatskappye Wet 1973) Nr 95/000684/08 onderhewig aan die Akte van Oprigting (Memorandum of Incorporation) en die reëls wat van tyd tot tyd in terme van klousules 3.19 en 3.20 van die Akte van Oprigting, afgekondig word.
 - (ii) Die eienaar en sy opvolgers in titel sal nie geregtig wees om enigsins die eiendom te vervreem of oor te dra of op enige wyse met die eiendom te handel

of om enige opsie of reg rakende die eiendom te verkoop, te skenk of te verleen sonder die vooraf verkree skriftelike toestemming van die Waterkloof Village Huiseienaarsvereniging nie, welke toestemming nie onredelik weerhou sal word nie.

(b) (i) Die eienaar en sy opvolgers in titel is geregtig op 'n ewigdurende Reg van Weg oor die geheel van Gedeelte 13 en oor die geheel van Erf 738 Waterkloofrif en van Gedeelte 58 van Erf 1278 Waterkloofrif Uitbreiding 3; en

(ii) Die eienaar en sy opvolgers in titel is geregtig op 'n serwitut vir privaat en/of ingenieursdienste oor die geheel van Gedeelte 13 van Erf 738 Waterkloofrif en oor die geheel van Gedeelte 58 van Erf 1278 Waterkloofrif Uitbreiding 3,

Soos meer volledig sal blyk uit Notariele Akte K2222/95S geregistreer op 24 April 1995.”

(25) Before any Erf registered in the name of a Member can be transferred to a third party purchaser, the Directors shall be obliged to prescribe that a Member who has sold such Erf shall pay the Company an amount equal to a prescribed percentage of the total gross selling price of such Erf (net of VAT, if applicable), to cover administrative expenses of the Company in respect of the transfer in question. The said payment shall be deemed to be a special administrative levy which is levied on such selling Member and the said amount shall be paid to the Company prior to or on the transfer date of such Erf in the name of the new Member.

2.2 Members' right to be represented by proxy

(1) At any time, a Member may appoint any individual, including an individual who is not a Member of the Company, as a proxy to participate in, and speak and vote at, a meeting of that class of Member, on behalf of the Member or give or withhold written consent on behalf of the Member to a decision to be taken by that class or by round-robin resolution, provided that the Member may not appoint more than one proxy to exercise voting rights on behalf of that Member.

The Memorandum of Incorporation hereby limits and restricts the appointment of proxies to the appointment of one proxy per voting Member in terms of section 58(3)(a).

The Member of an instrument of proxy or general Power of Attorney, given by a Member, shall be entitled to vote if duly authorised under that instrument or power to attend and take part in any meeting or proceeding of the Company, whether or not he is himself a Member in the Company.

Any Member may at any time appoint any natural person, including a natural person who is not a Member, as a proxy to participate in, and speak and vote at a Members' meeting on behalf of that Member, or give or withhold written consent on behalf of that Member to a decision in terms of section 60 of the Act.

(2) A proxy appointment shall be in writing, dated and signed by the Member and remains valid for 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration unless it is revoked or expires earlier as contemplated in the Act.

The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in writing, or making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Member entitled to vote chooses to act directly and in person in the exercise of any rights as a Member entitled to vote.

- (3) The authority of a Member's proxy to delegate the proxy's powers to another person, and to decide without direction from the Member whether to exercise or abstain from exercising any voting right of the Member, is not limited or restricted by this Memorandum of Incorporation, subject only to any restriction set out in the instrument appointing the proxy.
- (4) In terms of the Act and this Memorandum of Incorporation if a proxy is received duly signed but with no indication as to how the person named therein should vote on any issue, the proxy may vote or abstain from voting as he sees fit unless the proxy indicates otherwise.

Unless the instrument appointing a proxy provides otherwise, a Member's proxy may 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, and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

- (5) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall not require that the proxy appointment be made irrevocable.
- (6) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall be entitled to disregard a proxy form or instrument appointing a proxy, and to disregard the vote of any proxy or purported proxy, if:
 - (6.1) the proxy form or instrument of proxy does not comply with the requisite formalities, or with the requirements as to content, as prescribed in section 58 of the Act or is inconsistent with or contravenes this Memorandum of Incorporation; or
 - (6.2) the authority of the proxy has been revoked by the Member (if applicable, through its authorised representative through its legal representative terms of section 58(4)(b) and (c).
- (7) Any person who is a proxy or purported proxy specified in a proxy form or instrument appointing a proxy which may be disregarded, or the voting of whom may be disregarded, shall not be entitled to attend, participate in, or speak or vote at the meeting of Members in question or by way of round-robin resolution in terms of section 60 of the Act, and shall forthwith remove himself from the meeting in question at the request of the chairman of the meeting.

2.3 Record date for determining Members' rights

- (1) The Board of the Company shall set a record date for the purpose of determining which Members are entitled to receive notice of a Members' meeting, participate in and vote at a Members' meeting, decide any matter by written consent or electronic communication, exercise pre-emptive rights, or be allotted or exercise other rights.
- (2) A record date determined by the Board may in terms of section 59(1) set the applicable record dates for the purposes of determining Member rights, in accordance with and as contemplated by section 59, including for purposes of determining that Members who are registered on a particular record date shall be entitled to:
 - (2.1) receive the notice of Members' meeting (section 59(1)(a)); or
 - (2.2) participate in and vote at a Members' meeting (section 59(1)(b)); or
 - (2.3) decide any matter by round-robin resolution (section 59(1)(c));

Each applicable record date determined by the Board:

- (2.4) shall not be earlier than the date on which the record date is determined by

- the Board, i.e. shall not be a "retrospective" record date (section 59(2)(a)(i);
- (2.5) shall not be more than 10 (ten) business days before the date on which the event or action for which the date is being set, is scheduled to occur (section 59(2)(a)(ii);
- (2.6) must be published to every Member in terms of section 59(2)(b).
- (3) For the sake of clarity, in relation to each Members' meeting, and having regard to the possible sequence of events or actions, separate record dates shall be determined, and published by the Board, to determine which Members shall be entitled to:
- (3.1) receive the notice of Members' meeting;
- (3.2) attend and vote at that Members' meeting, as it may be adjourned or postponed, receive notice of any adjourned or postponed Members' meeting, if notice is required or given; and
- (3.3) attend and vote at the resumption of the adjourned meeting or the commencement of the postponed meeting.

2.4 Members acting other than at a meeting

- (1) A resolution that could be voted on at a Members' meeting, other than in respect of the election of Directors, may instead be submitted by the Board for consideration to the Members entitled to exercise voting rights in relation to the resolution and voted on in writing by Members entitled to exercise voting rights in relation to the resolution within 20 (twenty) business days after the resolution was submitted to them.
- (2) A resolution will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution at a properly constituted Members' meeting and if adopted, shall have the same *effect* as if it had been approved by voting at a meeting.
- (3) An election of a Director that could be conducted at a Members' meeting may instead be conducted by written polling of all of the Members entitled to exercise voting rights in relation to the election of that Director.
- (4) In addition to a resolution passed in terms of this clause, a resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened Members' meeting.

Within 10 (ten) business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

2.5 Members' meetings

- (1) In terms of the Memorandum of Incorporation, the Board of the Company or a Member may call a Member's Meeting at any time.
- (2) Notice of Members' meetings shall be sent to each Member entitled to vote at such meeting and who has elected to receive such notice.
- (3) **DIE WATERKLOOF VILLAGE HUISEIENAARSVRENING (NPC)** shall hold a Members' meeting or put the proposed resolution to Members entitled to vote:
- (3.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members entitled to vote for decision;

- (3.2) whenever the number of Directors fall below the minimum number prescribed in the Act and the Company is required to fill a vacancy on the Board;
 - (3.3) except at any time when there is only one Member or when a resolution may be passed otherwise than at a meeting of Members, the Company shall hold a Members' meeting;
 - (3.4) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
 - (3.5) whenever required in terms of the Act to fill a vacancy on the Board;
 - (3.6) when demanded by Members;
 - (3.7) when required by any other provision of this Memorandum of Incorporation.
- (4) This Memorandum of Incorporation does not provide a different period of notice of Members' meetings to the period prescribed by the Act and this does not prejudice the Company rights to call a meeting on less notice pursuant to section 62(2A) of the Act.
- (5) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING** (NPC) shall, as determined by the Board either hold a Members' meeting in order to consider one or more resolutions, or as regards such resolution(s) that could be voted on at a Members' meeting, other than an Annual General Meeting, instead require them to be dealt with by round robin resolution of Members entitled to vote. Within 10 (ten) business days after the Members entitled to vote by round robin resolution, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the round robin resolution.
- (6) The Board or any Director of the Company authorised by the Board to do so may call a meeting of Members at any time and must do so if and when required by the Companies Act or this Memorandum of Incorporation to do so. The Board must call a meeting of Members demanded by Members in terms of section 61(3). If there are no Directors or all of the Directors of the Company are incapacitated, the Company hereby authorises any Member of the Company to call a Members' meeting for purposes of and in the circumstances contemplated in section 61(11).
- (7) The Board of the Company or any Member or any other person specified in the Company's Memorandum of Incorporation or Company Rules, shall call a Members' meeting if one or more written and signed demands for such a meeting are delivered to the Company and each such demand describes the specific purpose for which the meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting, in aggregate, demands for substantially the same purpose are made and signed by the Members, as of the earliest time specified in any of those demands, and the right of Members to requisition a meeting as set out in section 61(3) may be exercised by the Members of a lower percentage of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, despite the provision of section 61(3).
- (8) At any time before the start of a Members' meeting a Member who submitted a demand for that meeting may withdraw that demand and the Company shall cancel the meeting if, as a result of one or more demands being withdrawn, the voting rights of any remaining Members continue to demand the meeting, in aggregate, fall below the minimum percentage of voting rights required to call a meeting.
- (9) The authority of either the Board or Members to determine the location of any Members; meeting, and to hold any such meeting in the Republic of South Africa, or in

any foreign country, is not limited or restricted by this Memorandum of Incorporation.

- (10) With respect to the location(s) and venue(s) of a Members' meeting, the Board may determine that a meeting will take place at several locations and venues and may determine such arrangements as it in its sole discretion appropriate and practical in any circumstances to address the location and venue where the Chairman of the meeting will preside ("the main meeting place") the numbers of persons attending at any particular location or venue, the safety of persons attending at any particular location or venue, the facilitators of attendance of persons at any particular location or venue, the entitlement of persons to attend at any particular location or venue, and the electronic participation of persons in the meeting, and may from time to time vary any such arrangements. A Member who in person or as represented attends a Members' meeting physically at any of the various locations and venues for a meeting shall be deemed to be present at the meeting in question, and counted towards the quorum, while so attending.
- (11) In regards to Members' meetings the Board may convene a Members' meeting whenever it thinks fit. If, at any time, there are insufficient Members within the Republic of South Africa capable of acting to form a quorum, any Director or any Member of the Company may convene a Members' meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board.
- (12) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is not required to hold any Members' meetings other than those specifically required by the Act.
- (13) The Chairman of the Board or in his absence, the lead independent non-executive Director, shall preside as Chairman at every Members' meeting. If there is no such Chairman, or if at any Members' meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the Members' meeting or is unwilling to act as Chairman, the Members entitled to vote which are present shall select a Director present at the Members' meeting, or if no Director be present at the Members' meeting, or if all the Directors present decline to take the chair, the Members entitled to vote shall select one of their number which is present to be Chairman of the Members' meeting.
- (14) Notwithstanding anything to the contrary contained in the Act or this Memorandum of Incorporation, all Members' meetings that are called for may be held in person.
- (15) Any failure to hold a meeting does not affect the existence of the Company, or the validity of any action by the Company.
- (16) Each Director of the Company shall be present for the entire duration of each Members' meeting, unless a Member or his representative or proxy requests one or more or all the Directors to withdraw and leave the meeting or any part of the meeting in which event, such Director(s) as have been requested to leave, shall leave the meeting for the period as requested.

2.6 Notices

- (1) Each Member (or the agent) shall notify the Company in writing of an electronic mail address, a fax number, and a physical or postal address, each of which shall be deemed to be the Members' registered address within the meaning of the Memorandum of Incorporation, and if the Member has not notified the Company of at least one of the above, the Member shall be deemed to have waived his right to be served from any notice of the Company.

2.7 Notice of Members' meetings

- (1) In terms of the Act and the Memorandum of Incorporation a notice of a meeting of any class of Members must be delivered contemporaneously to each Member registered as such as of the applicable record date for delivery of that notice, determined in terms of the record date, read with section 59(1lea) of the Act, of the class of Member

entitled to vote on any of the resolutions to be considered at the meeting, and to the Auditors for the time being of the Company in terms of section 93(1)(c)(ii) of the Act; and if expressly required in terms of an instrument appointing a proxy which has been delivered to the Company, to the proxy or proxies of a Member (section 58(6) of the Act), in form and content as prescribed in section 62(3), at least 15(fifteen) business days before the date on which the meeting is to begin. Any failure to comply with this clause shall not affect the validity of the General Meeting.

- (2) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING** (NPC) may call a meeting with less notice than required by this Memorandum of Incorporation, but such a meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to waive the required minimum notice of the meeting.
- (3) A notice of a Members' meeting shall be in writing in plain language and shall include:
 - (3.1) the date, time and place for the meeting, and the record date for the meeting;
 - (3.2) the general purpose of the meeting, and any specific purpose if applicable:
 - (3.2.1) a summarised form of the financial statements to be presented and directions for obtaining a copy of the complete financial statements for the preceding financial year;
 - (3.2.2) a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that Resolution to be adopted;
 - (3.3) a reasonably prominent statement that:
 - (3.3.1) a Member entitled to attend and vote at the Members' meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' Meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by round-robin resolution of the relevant Members entitled to vote;
 - (3.3.2) a proxy need not be a Member entitled to vote; and
 - (3.3.3) participants in a Members' Meeting are required to furnish satisfactory identification in terms of section 63(1) of the Companies Act in order to reasonably satisfy the person presiding at the Members' Meeting.
- (4) The notice of a meeting or of an adjourned meeting:
 - (4.1) must inform Members of the availability of participation in the meeting and of participation in any postponement or adjournment of the meeting, by electronic communication and must provide the necessary information to enable Members or their proxy or proxies to access the available medium or means of electronic communication for the meeting and for any postponement or adjournment thereof in terms of section 63(3)(a) of the Act;
 - (4.2) should, for the sake of clarity, specify the record date determining which Members are entitled to receive the notice of the meeting (section 59(1)(a) and 59(2)(b) of the Act);
 - (4.3) must comply with the requirements set out in section 62(3) as to formalities and content, including specifying the record date for determining which

Members are entitled to attend, participate in and vote at the meeting (section 59(1)(b) and 59(3)(b) of the Act);

- (4.4) must specify whether any proposed resolution is to be voted on by polling; and
- (4.5) should, for the sake of clarity, specify the applicable record dates which would be applicable in terms of section 59(1)(a) and (b) of the Act should the meeting be postponed or adjourned.

2.8 Conduct of meetings

- (1) In terms of the Act and this Memorandum of Incorporation, a person wishing to attend or speak at or participate in or vote at a Members' meeting as a Member personally or as a proxy for a Member, or as the legal representative of a Member, or as the Auditors or representative of the Auditors, must for purposes of identification present reasonably satisfactory identification and evidence of their authority or entitlement to represent the Member in question or to attend the meeting, to the Chairman of the meeting 30 (thirty) minutes before the appointed time for that meeting to begin or, if the meeting is adjourned, 30 (thirty) minutes before the appointed time for that adjourned meeting to resume, as the case may be, stipulated in the notice of the meeting or adjourned meeting in question.

If applicable, the auditors for the time being of the Company shall be entitled to attend any Members' meeting and be heard on any part of the business of the meeting that concerns the Auditor's duties or functions.

- (2) In terms of the Act and the Memorandum of Incorporation the Company has the authority to conduct a Members' Meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, is not limited or restricted by the Memorandum of Incorporation.

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) entitles a Members' meeting to be conducted entirely by electronic communication; or one or more Members, or proxies for Members, to participate by electronic communication in all or part of a Members' Meeting that is being held in person, as long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting.

Every meeting of Members must be reasonably accessible within or outside the Republic of South Africa for electronic participation by Members, irrespective of the physical location of the meeting.

Members (or if applicable their representatives or proxies) may participate in all or part of a meeting (including the meeting as adjourned) which they are entitled to attend, by electronic communication, at their own expense.

The electronic communication employed by the Company must ordinarily enable all participants in the meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.

A resolution adopted by Members, some or all of whom were connected electronically, where:

- (2.1) Members connected electronically remained connected for the duration of that part of the meeting during which the resolution was discussed; and
- (2.2) the subject matter of the resolution has been discussed; and
- (2.3) the Chairman of the meeting or any other person present in person or

electronically at the meeting certifies in writing that the aforementioned requirements have been met;

shall be deemed to have been passed on the date on which the resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the Members were connected and participated electronically, the Company shall:

- (2.4) deliver to each Member a copy of the resolution proposed, accompanied by a statement describing the results of the vote, consent process or election, as the case may be; and
- (2.5) insert a copy of the said resolution and statement in the minute book of the Company.

A Member who in person or as represented participates in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

- (3) In the event that the Company provides for participation in a meeting by electronic communication, as set out in clause 2 of this sub-article, the notice of that meeting shall inform Members of the availability of that form of participation and provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication, and access to the medium or means of electronic communication is at the expense of the Members or proxy.

2.9 Meeting Quorum and Postponement

- (1) In terms of the Act, this Memorandum of Incorporation specifies that at least 25% (twenty five percent) of all the voting rights that are entitled to be exercised in respect of:
 - (1.1) at least one matter to be decided at any Members' meeting must be present for that meeting to begin; and
 - (1.2) a matter to be decided at any Members' meeting for that matter to begin to be considered at that meeting, provided that three Members entitled to attend and vote are present at the time of the meeting.

After a quorum has been established for a Members' meeting, or for a matter to be considered at a Members' meeting, the Members' meeting may continue, or the matter may be considered, so long as all the Members' for such quorum are present at the Members' meeting.

The quorum shall be sufficient persons present at the Members' meeting to exercise, in aggregate, at least 25% (twenty five per cent) of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the Members' meeting but if the Company has more than 2 (two) Members entitled to vote, the Members' meeting may not begin unless in addition at least 3 (three) Members entitled to vote are present.

2.10 Adjournment of Members' meetings.

- (1) In terms of the Act and the Memorandum of Incorporation an adjournment of a meeting, or of consideration of a matter being debated at the meeting shall be either to a fixed time and place, or until further notice, as agreed at the meeting and requires that a further notice be given to Members only if the meeting determined that the adjournment was until further notice.

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) shall not be

required to give further notice of a meeting that is postponed or adjourned unless:

- (1.1) the location for the meeting is different from:
 - (1.1.1) the location of the postponed or adjourned meeting (section 64(7)(a) of the Act); or
 - (1.1.2) the location announced at the time of adjournment, in the case of an adjourned meeting (section 64(7)(b) of the Act); or
- (1.2) it is necessary to inform registered Members of the availability of participation in the postponed or adjourned meeting by electronic means; or
- (1.3) the meeting has been adjourned "until further notice" in terms of this Article of the Memorandum of Incorporation.

If the location of the meeting is different from the location of the adjourned meeting, the Company shall publish a notice in the newspaper circulating in the province, where the head office of the Company is situated stating the date, time and place to which the set has been adjourned.

- (2) In terms of the Act and this Memorandum of Incorporation subject to any requirements of the Memorandum of Incorporation, the quorum at any adjourned meeting shall be the Members present thereat personally or by proxy, who may transact the business for which the meeting was called.

If at any adjourned meeting a quorum is not present within 30 (thirty) minutes from the appointed time for such meeting to commence, the Members who are present or represented by proxy and entitled to vote shall constitute a quorum and may proceed to transact the business of the meeting.

- (3) No business shall be transacted at any adjourned Members' meeting of the Company other than business left unfinished at the meeting from which the adjournment took place.
- (4) After a quorum has been established for a meeting or for a matter to be considered at a meeting, the meeting may continue or the matter may be considered, so long as at least one registered Member with voting rights entitled to be exercised at the meeting, or on that matter, is present or presented at the meeting.

2.11 Votes of Members

- (1) In terms of the Act and the Memorandum of Incorporation subject to any special rights or restrictions as to voting by or in accordance with the Memorandum of Incorporation, at a meeting of the Company:
 - (1.1) every person present, either personally or by proxy, and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise;
 - (1.2) on a poll any person who is present at the meeting, whether as a Member or as a proxy for a Member, has the number of votes determined in accordance with voting rights held by that Member; and
 - (1.3) voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Members if a demand is made for such a vote by:
 - (1.3.1) at least 5 (five) persons having the right vote on that matter, either as Members or as proxies representing Members; or

- (1.3.2) a Member who is, or Members who together are, entitled, as Members or proxies representing Members, exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or the Chairman of the meeting.

At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of this clause, and unless a poll is so 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 defeated, 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 of or against such Resolution. The demand for a poll may be withdrawn.

If a poll is duly demanded, it shall be taken in such a manner as the Chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Member is entitled.

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

A poll demanded on the election of a Chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the Chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

- (2) The passing of an Ordinary Resolution is to be subject to the approval of more than 50% (50.1% or more) of the vote cast by all Members present in person or represented by proxy, at the General Meeting convened to approve such Resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (3) The passing of a Special Resolution is to be subject to the approval of at least 75% (seventy five per cent) of the votes cast by all Members present in person, or represented by proxy, at the General Meeting or the Annual General Meeting convened to approve such resolution and shall be subject to a minimum notice period of 10 (ten) business days.
- (4) A special resolution shall be required to:
- (4.1) ratify a consolidated revision of a Company's Memorandum of Incorporation as contemplated in section 18(1)(b) of the Act;
- (4.2) ratify actions by the Company or Directors in excess of their authority in terms of in clause 1 of Article: Incorporation - Validity of Company's Actions and clause 12 of Article: Members' Rights and Meetings - General Meeting of this Memorandum of Incorporation (section 20(2) of the Act);
- (4.3) approve the voluntary winding up of the Company in clause 1 of Article: Winding-up - Voluntary Winding-up of Solvent Company of this Memorandum of Incorporation (section 80(1) of the Act);
- (4.4) approve the winding up of a Company in clause 1 of Article: Winding-up - Winding-up of Solvent Company by Court Order of this Memorandum of Incorporation (section 81(1) of the Act);

- (4.5) approve an application to transfer the registration of the Company to a foreign jurisdiction in clause 1 of Article: Winding-up - Dissolution of Company of this Memorandum of Incorporation (section 82(5) of the Act);
- (4.6) approve any proposed fundamental transaction to the extent required by Part A of Chapter 5 or 30;
- (4.7) revoke a resolution in clause 9 of Article: Remedies and Enforcements - Dissenting Members' Appraisal Rights of this Memorandum of Incorporation (section 164(9)(c) of the Act);
- (4.8) a Special Resolution adopted at a Members' Meeting is required in terms of this Memorandum of Incorporation, in addition to the matters set out above in terms of section 65(11), for:
 - (4.8.1.) dis-applying pre-emptive rights that would otherwise apply.
- (5) 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), or elsewhere in either the Act or the Memorandum of Incorporation.
- (6) In terms of this Act and the Memorandum of Incorporation Round Robin Resolutions of Members entitled to vote, will be passed if signed by Members entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted Members' meeting.

If a Member entitled to vote is a Body Corporate, represented, at any Members' meeting shall have only 1 (one) vote, A proxy shall only 1 (one) vote on a show of hands.

Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Company shall:

- (6.1) deliver to each Member a copy of the resolution proposed, accompanied, by a statement describing the results of the vote, consent process or election, as the case may be, (section 60(4)); and
- (6.2) insert a copy of the resolution and statement referred to in the minute book of the Company.

Every resolution of Members is either:

- (6.3) an ordinary resolution in terms of the Companies Act ([section 65(1)]); or
- (6.4) a special resolution in terms of the Companies Act, as required in terms of the Companies act or as required in terms of this Memorandum of Incorporation (section 65(1) read with section 65(9), (11) and (12)); or
- (6.5) the Board may propose any resolution to be considered by Members and may determine whether that resolution will be considered and voted on at a meeting of Members or by Round Robin Resolution ([Section 65(2)]).

Any 2 (two) or more Members may by notice to the Board require the Board to propose a resolution concerning a matter in respect of which such Members are each entitled to exercise voting rights, and when proposing the resolution may require to Board to determine that the resolution be submitted to Members for consideration at a meeting of Members called, or at the next scheduled Members' meeting, or by round-robin resolution. (Section 65(3)).

Any resolution proposed must comply with the requirements as to form and content,

and supporting information or explanatory material, specified in [section 65(4)].

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) is not obliged to file with the Commission any Members' resolution (including any special resolution), except if required to do so in terms of the Companies Act or this Memorandum of Incorporation and the Board may decide whether the Company is obliged to file with the Commission any Members Resolution.

2.12 General Meetings

- (1) Except at any time when there is only one Member or when a Resolution may be passed, otherwise, than at a meeting of Members, the Company shall hold a Members' meeting:
 - (1.1) at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision;
 - (1.2) whenever required in terms of the Act to fill a vacancy on the Board;
 - (1.3) when demanded by Members; or
 - (1.4) when required by any other provision of this Memorandum of Incorporation.
- (2) In the event that the Company elects to hold a Members' meeting, the business of the Members' Meeting shall be to receive and consider the following:
 - (2.1) the presentation of the Directors' report;
 - (2.2) the election of Directors to the extent required by section 66(4)(b) of the Act or the Memorandum of Incorporation;
 - (2.3) the presentation of a summarised form of Audited Annual Financial Statements, for the immediate preceding financial year of the Company and directions for obtaining a copy of the complete Financial Statements for the preceding financial year of the Company, if so required by the Act or the Memorandum of Incorporation, *if* applicable for the Company;
 - (2.4) the presentation of the Audit Committee report if so required by the Act or the Memorandum of Incorporation, if applicable for the Company;
 - (2.5) the appointment of an auditors for the ensuing financial year *if* so required by the Act or the Memorandum of Incorporation, if applicable for the Company;
 - (2.6) the appointment of an Audit Committee for the ensuing financial year *if* so required by the Act or the Memorandum of Incorporation, if applicable for the Company;
 - (2.7) the appointment of a Social and Ethics Committee for the ensuing financial year if so required by the Act or the Memorandum of Incorporation, *if* applicable for the Company;
 - (2.8) the presentation of the Social and Ethics Committee report, if so required by the Act or the Memorandum of Incorporation, if applicable for the Company;
 - (2.9) the election of other officers of the Company in the place of those retiring by rotation or otherwise;
 - (2.10) any other matter or business determined by the Board, over and above the noting of contributions and/or levies for the financial year in question as decided by the Board subsequent to the approval of the annual budget referred to in sub-article 3.18 of this Memorandum of Incorporation;

- (2.11) any matters raised by the Members, with or without advance notice to the Company;
- (2.12) any other business which ought to be transacted at an Annual General Meeting, and any business which is brought under consideration by the reports of the Board laid before such meeting;
- (2.13) all other business transacted at the Annual General Meeting and all business transacted at any other Members' meeting shall be deemed special; and/or
- (2.14) a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting;
- (2.15) a notice of the percentage of voting rights that will be required for that resolution to be adopted;
- (2.16) a reasonably prominent statement that:
 - (2.16.1) a Member entitled to attend and vote at the Members' meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Members' meeting in the place of the Member entitled to vote or given or withhold written consent on behalf of the Member entitled to vote to a decision by round robin resolution of the relevant Members entitled to vote,
 - (2.16.2) a proxy need not be a Member entitled to vote, and
 - (2.16.3) participants in a Members' meeting are required to furnish satisfactory identification in terms of section 63(1) of the Act in order to reasonably satisfy the person presiding at the Members' meeting.
- (3) At least 10 (ten) business days before the date of the Members' Meeting, a copy of the Annual Financial Statements of the Company shall be delivered to all Members, save for any Member who waives his right to receive such statements.

2.13. Termination of Membership

- (1) The membership of a Member shall terminate if:
 - (1.1) the Member resigns by giving 30 (thirty) days written notice the Company;
 - (1.2) the Member, being a natural person, dies or his estate is surrendered or sequestered in terms of the Insolvency Act 1936 as amended;
 - (1.3) the Board of Directors may consider termination of a Membership, if proven that such Member's continuous behaviour is regarded as being damaged to the Company's image and reputation;
 - (1.4) the Member fails to pay the Membership subscription fee on or before the date on which it is due, provided that the Board may in its discretion reinstate any Member who makes payment of arrear Membership subscription fee within a period of 3 (three) months after the date on which it is due;
 - (1.5) in case of a Member being a Company or Close Corporation, it is finally wound up or deregistered in terms of the Companies, or Close Corporations legislation in place from time to time.

ARTICLE 3 - BOARD, DIRECTORS AND PRESCRIBED OFFICERS

3.1. First Director or Directors

- (1) Each Incorporator of the Company is a first Director of the Company and serves until sufficient other Directors to satisfy the minimum requirements of this Memorandum of Incorporation, have been first elected in accordance with the Company's Memorandum of Incorporation.
- (2) In the event of the number of Incorporators of the Company together with any ex officio Directors, or Directors to be elected in terms of clause 1 of this sub-article is fewer than the minimum number of Directors required for the Company in terms of the Act, or the Company's Memorandum of Incorporation, the Board shall call a Members' meeting within 40 (forty) business days after incorporation of the Company for the purpose of electing sufficient Directors to fill all vacancies on the Board at the time of the election.
- (3) The Board must comprise in the case of this NPC Company at least 3 (three) Directors in terms of section 66(2)(a) of the Act.
- (4) This Memorandum of Incorporation provides for the Company to have Directors and voting Members and since the Directors are to be elected by the voting Members, the Memorandum of Incorporation provides for the retiring by rotation and the election of at least one-third (or the nearest whole number to one third) of the Directors (excluding those who were co-opted or appointed to fill a casual vacancy during the year) each year at the AGM, on condition that such retiring Directors shall be eligible for re-election. Those retiring by rotation shall be those longest in office since their last appointment, and if their appointments are of equal duration, those to retire shall, unless they otherwise agree among themselves, be determined by lot or as otherwise determined by the Directors.
- (5) A Director shall be a natural person, hold suitable expertise as required for his designated portfolio, shall reside and be domiciled in the Development on a full time basis and shall be a Member of the Company or a duly authorised legally recognised spouse of such Member or the duly authorised representative of a Member of the Company where such Member is not a natural person.
- (6) Subject at all times to the stipulations in clause 4 of this sub-article, no Director shall be appointed for life or for an indefinite period and each Director, except an ex-officio Director, shall continue to hold office as such from the date of his election until the end of the third AGM following such election (until required to retire by rotation in terms of clause 4 of this sub-clause), at which meeting and subject to the hereinafter set out provisions, such Director shall be deemed to have retired from office as such, but will be eligible for re-election to the Board of Directors. In the case of an ex-officio Director, such Director shall continue to hold office as such from the date of his co-option until the first AGM following such appointment, at which meeting, and subject to the hereinafter set out provisions, such Director shall be deemed to have retired from office as such, but will be eligible for re-election to the Board of Directors.
- (7) Subject at all times to the stipulations in clause 4 of this sub-article, the principle as enunciated in clause 6 of this sub-article, whereby elected Directors shall hold office as such for the period as stated in clause 6 of this sub-article, has the effect that there shall be no obligation on any Director to stand down until his term of office, as stated in clause 6 of this sub-article, has expired. This does not derogate from the right of any Director to resign, at any time, or to stand down at the AGM following upon the AGM at which he was elected.
- (8) No person, other than the Director retiring at the meeting (and who is willing to continue to act), shall, unless recommended by the Directors for election, be eligible for election to the office of Director at any Members' meeting unless, before the start of the meeting, there shall have been given to the Board of the Company notice, in writing, by some Member ("**the Proposer**") duly qualified to be present and vote at the meeting for which such notice is given of the intention of the Proposer to propose such

person for the election as a Director. Any such notice shall be signed by the Proposer and shall furthermore contain the full personal and contact details of the Proposer. The Proposer shall also provide the full personal details, full contact details, qualifications and work experience of the person so proposed for appointment as a Director and such notice of proposal shall also be signed by the person so proposed, indicating his willingness to be elected as a Director of the Company. In the event that an insufficient number of nominations are received from Members to fill all vacancies on the Board, the Board shall be entitled to nominate more candidates at the meeting where the election of Directors is to take place.

3.2 Election of Directors

- (1) The Memorandum of Incorporation provides for:
 - (1.1) the election of executive and non-executive Directors by the Board or the election each year of at least one-third of those elected Directors by voting Members;
 - (1.2) a person to be an ex officio Director of the Company as a consequence of that person holding some other office title, designation or similar status;
 - (1.3) the election of one or more persons as alternate Directors of the Company.
- (2) A person becomes entitled to serve as a Director of this Company when that person:
 - (2.1) has been elected in accordance with Item 5 of Schedule 1, or holds and office, title, designation or similar status, entitling that person to be an ex officio Director of the Company; and
 - (2.2) has delivered to the Company a written consent to serve as its Director.
- (3) Any particular Director may be elected to more than one committee of the Company and when calculating the minimum number of Directors required for this Company, being not less than 3 (three) Directors, a Director who has been elected to more than one committee must be counted only once.
- (4) A person contemplated in clause 1 of this sub-article who holds office or acts in the capacity of an ex officio Director of a company has all the:
 - (4.1) powers and functions of any other Director of the Company, except to the extent that the Company's Memorandum of Incorporation restricts the powers and functions or duties if an ex officio Director, and
 - (4.2) duties, and is subject to all of the liabilities, of any other Director of the Company.
- (5) Directors of the Company shall be elected and appointed by the Members entitled to vote at each AGM, subject to the provisions of the Companies Act and this Memorandum of Incorporation. In particular in any election of Directors by Members, the election is to be conducted by Members entitled to vote, as follows:
 - (5.1) Where there are fewer candidates than there are vacancies, and there is no opposition to their appointment, the nominees will be declared duly elected and separate Ordinary Resolutions will be passed to this effect;
 - (5.2) Where there are more candidates than there are vacancies, the Chairperson of the Board of Directors shall direct that a ballot be taken to determine those who have the greatest support, whereupon those with the most votes, in respect of the available vacancies shall, by separate Ordinary Resolutions, be declared duly elected;

- (5.3) Should there be a tied vote in those candidates who have gained the most support, making it impossible to determine the clear popular choices, the ballot will be repeated, but eliminating those candidates who fell outside the popular choice in the first ballot; and
- (5.4) Each Member will be entitled to exercise his voting rights once for each vacancy, except in a run-off second ballot, where the Members are entitled to a second opportunity to vote.
- (6) The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on a temporary basis until the vacancy has been filled by election in terms of this Memorandum of Incorporation. During that period, any person so appointed has all the powers, functions and duties and is subject to all of the liabilities of any other Director of the Company.
- (7) A person elected or appointed as an alternate for a Director acts for all intents and purposes in the place of, and not for or as a representative of, the Director for whom he is an alternate, and shall be treated as a Director of the Company while he acts in the place of the Director for whom he is an alternate.

While acting in the place of the Director for whom he is an alternate, the alternate Director may generally exercise all the rights of that Director and shall, in all aspects, be subject to the terms and conditions existing with reference to the appointment, rights and duties as Director and the holding of office of that Director, and shall not have any claim of any nature whatsoever against the Company for any remuneration with respect to his services as a Director or his appointment as an alternate.

A person may be elected or appointed as an alternate for one or more Directors.

- (8) An alternate shall only be entitled to vote at any meeting if the Director for whom he is an alternate is not present at that meeting, provided that the alternate may also attend a meeting at which the Director for whom he is an alternate is present if the other Directors present at the meeting, resolve that he may attend, provided further, that in the circumstances when the Director for whom he is an alternate, is present, then the alternate shall not be counted towards a quorum and shall recuse himself from the meeting if requested by any Director to do so.

Any person attending a meeting of Directors as an alternate for one or more Directors in the absence of such Director(s) shall only have one vote and shall not be entitled to more than one vote at any such meeting.

An alternate shall only be entitled to sign a round robin resolution if the Director for whom he is an alternate is then absent from the Republic of South Africa or is out of reach of communication or is incapacitated.

The appointment of an alternate shall cease, and he shall vacate his office as an alternate, if:

- (8.1) the alternate was appointed by the Board and the Board gives notice to that alternate terminating his appointment;
- (8.2) the person (for whom another person has been elected or appointed as an alternate) ceases to be a Director of the Company or ceases to be entitled to serve as a Director, for any reason; or
- (8.3) an event occurs or circumstances arise, in relation to an alternate, which if he were a full Director would cause him to cease to be entitled to serve as a Director in terms of the Companies Act or this Memorandum of Incorporation.

3.3 Governance of the Board

- (1) In terms of the Act and this Memorandum of Incorporation the business and affairs of the Company shall be managed by or under the direction of its Board, which has the authority to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1) of the Act, except to the extent that the Act or this Memorandum of Incorporation provides otherwise. The Directors may from time to time, at their discretion, raise or borrow or secure the payment of any sum or sums of money for the purposes of the Company.
- (2) The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation including the right of sub-delegation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any Company, the Members, Directors, Nominees or Managers of any Company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such Power of Attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.

3.4 Vacancies on Board

- (1) In terms of this Memorandum of Incorporation, a person shall cease to be a Director and a vacancy arises on the Board of the Company:
 - (1.1) when the person's term of office as Director expires, or
 - (1.2) in any case, if the person:
 - (1.2.1) resigns or dies;
 - (1.2.2) in the case of an ex officio Director, ceases to hold the office, title, designation or similar status that entitled the person to be an ex officio Director;
 - (1.2.3) becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time subject to section 71(3);
 - (1.2.4) is declared delinquent by a court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company in terms of section 162;
 - (1.2.5) becomes ineligible or disqualified in terms of section 69 subject to section 71(3); or
 - (1.2.6) is removed:
 - (1.2.6.1) by resolution of the members in terms of section 71(1);
 - (1.2.6.2) by resolution of the Board in terms of section 71(3); or

(1.2.6.3) by order of the court in terms of section 71(5) or (6).

- (2) If a vacancy arises on the Board, the Board may in terms of section 68(3) elect a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director of the Company on temporary basis until the earlier of the vacancy being filled by election by the Ordinary Members in terms of section 68(2) or the conclusion of the next General Meeting of the Company after the temporary filling.

If a vacancy arises on the Board and as a result thereof, the Company does not have the minimum number of Directors required by the Act or the Memorandum of incorporation, the Board shall within the period of 3 (three) months from the date such a vacancy arose, continue to function in terms of section 66(11) and shall fill the vacancy on a temporary basis as provided for above or convene a General Meeting or propose a Round-Robin Resolution for the purposes of the Ordinary Members conducting an election to fill such vacancy in terms of section 68(2).

After the expiry of the 3 (three) month period, the remaining Directors on the Board shall only be permitted to act for the purposes of filling the vacancy or calling a General Meeting of Ordinary Members or proposing a round-robin resolution for purposes of an election in terms of section 68(2).

If at any time the number of Directors falls below the number required as a quorum the continuing Directors may act for the purpose of appointing sufficient Directors to constitute a quorum or for convening a General Meeting but for no other purpose.

- (3) If a person has ceased to be a Director of the Company and a vacancy on the Board has arisen, such vacancy must be filled as provided for in section 70(3), subject to section 70(4) as follows:

(3.1) the Company is not required to hold a General Meeting, the vacancy must be filled within six (6) months after the vacancy arose:

(3.1.1) at a Members' meeting called for the purpose of electing the Director, or

(3.1.2) by a poll of the persons entitled to exercise voting rights in an election of the Director in terms of section 60(3).

3.5 Removal of Directors

- (1) In terms of section 71(1) a Director elected by Ordinary Members may be removed by an Ordinary Resolution adopted at an Ordinary Members' Meeting entitled to exercise voting rights in the election of that Director, despite anything to the contrary in the Memorandum of Incorporation, or any agreement between the Company and that Director, or between any Members and that Director as follows:

(1.1) before the Members of a Company consider the above resolution:

(1.1.1) the Director concerned must be given notice of the meeting and the resolution. The notice must be equivalent to that which a Member is entitled to receive, irrespective of whether or not the Director is a Member of the Company; and

(1.1.2) the Director must be afforded a reasonable opportunity to make a presentation to the meeting either in person or through a representative before the resolution is put to a vote.

- (2) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING(NPC)** shall have at least 3 (three) Directors, and if a Member or a Director contends that a person should be removed as a Director of the Company by the Board on any of the following grounds set out in section 71(3) of the Act, if such Director:

- (2.1) has become:
 - (2.1.1) ineligible or disqualified in terms of section 69; or
 - (2.1.2) incapacitated to the extent that the Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time;
- (2.2) or has neglected or been derelict in the performance of the functions of a Director,

that Member or Director shall first submit to the Board each of its contentions and the specific grounds of each such allegation and shall submit to the Board all evidence available on which the Member or Director relies for making the contention and allegation. On receipt thereof the Board must study such submission, investigate the allegation and determine the matter by Resolution in accordance with and subject to the procedures and its power to do so as set out in section 71(3) to (10).

- (3) The Memorandum of Incorporation prohibits the removal of a Director by round-robin resolution of Members in terms of section 60 or Directors acting other than at a meeting in terms of section 74 where a decision may be adopted by written consent of the majority of Directors, given either in person or by electronic communication, since the Director concerned must be afforded a reasonable opportunity to make a presentation at a Board meeting, in person or through a representative, before the resolution to remove him is put to a vote.
- (4) Director shall be entitled to resign as Director on 30 (thirty) days' written notice to the Company or on such shorter notice as the Board may determine.

3.6 Board Committees

- (1) In terms of the Act and the Memorandum of Incorporation, the Memorandum of Incorporation does not limit, restrict or qualify the authority of the Board to appoint any number of committees of Directors; or to delegate to any such committee any of the authority of the Board.

Except to the extent that the Board or a Member Resolution establishing a committee provides otherwise, the Members of the committee:

- (1.1) may include persons who are not Directors of the Company but any such persons must not be ineligible or disqualified to be a Director in terms of section 69 of the Act;
 - (1.2) may consult with or receive advice from any person;
 - (1.3) may be remunerated for their services as such; and
 - (1.4) provided that the Committee is duly constituted, have the full authority of the Board in respect of any matter referred to it.
- (2) The Members of each Board committee shall hold and conduct their meetings in accordance with the provisions of the board and Board Committees Charter and the Rules of the Company governing the holding and conduct of such meeting, which provisions are binding on each board committee member in terms of section 15(6)(c)(ii). Any board committee formed shall conform to any regulations that may from time to time imposed upon it by the Board, provided that the meetings and proceedings of any Board committee consisting of two or more members shall be governed by the provisions contained in this Memorandum of Incorporation regulating the meetings and proceedings of the Board, so far as the same are applicable thereto, and are not superseded by any regulation made by the Board.

- (3) If the Company has in any 2 (two) of the previous 5 (five) years, scored above 500 (five hundred) points in terms of its Public Interest Score, the Company shall appoint a Social and Ethics Committee, unless it is a subsidiary of another Company that has a Social and Ethics Committee and the Social and Ethics Committee of that other Company will perform the functions required by this regulation on behalf of that subsidiary Company; or it has been exempted by the Tribunal.
- (4) If and for as long as it is required to do so in terms of the Act or the Regulations and unless the Company is exempted from doing so by the Tribunal, in terms of section 72(5) of the Act, the Board may appoint a Social and Ethics Committee having the powers and functions prescribed in terms of section 72(4) of the Act and Regulation 43(2), which committee shall comprise not less than 3 (three) Directors or Prescribed Officers of the Company, at least 1 (one) of whom must be a Director who is not involved in the day to day management of the Company's business, and must not have been so involved within the previous 3 (three) financial years. (Regulations 43(2) and (4). The Social and Ethics Committee is governed by, and is subject to the terms and conditions of, the Board and Board Committees Charter read with the Act and the Regulations.
- (5) If a Company exists on the effective date and is required to have a Social and Ethics Committee, it shall appoint the first Members of the Committee within 12 (twelve) months after the effective date, or the determination by the Tribunal of the Company's application.
- (6) In the event the Company has a Social and Ethics Committee, the said committee is entitled to:
 - (6.1) require from any Director or Prescribed Officer of the Company any information or explanation necessary for the performance of the Committee's functions;
 - (6.2) request from any employee of the Company any information or explanation necessary for the performance of the Committee's functions;
 - (6.3) attend any Members' meeting;
 - (6.4) receive all notices of and other communications relating to any Members' Meeting; and
 - (6.5) be heard at any Members' Meeting on any part of the business of the meeting that concerns the Committee's functions.

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) shall pay all the expenses reasonably incurred by its Social and Ethics Committee including, if the Social and Ethics Committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the Social and Ethics Committee in the performance of its functions.

- (7) The Board shall have the power to appoint, and at its discretion to remove or suspend, a local Board committee or Board committees in any foreign country whatsoever and to fix and vary their remuneration; to establish and keep registered offices and branch registers in any foreign country whatsoever and to close same at its discretion; and to appoint and remove agents who represent the Company for such purposes as the Board may determine. The Board shall have the power to, at any time and from time to time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes of this item with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board in terms of the Act and this Memorandum of Incorporation) for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment, may if

the Board thinks fit, be made in favour of the members of any foreign committee established as aforesaid, or in favour of any company, or of the members, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such Power of Attorney may contain provisions for the protection or convenience of persons dealing with such attorneys as the Board thinks fit. Any such delegates as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

3.7 Board Meetings

- (1) A Director authorised by the Board of the Company may call a meeting of the Board at any time, and shall call such a meeting if required to do so by at least 25% (twenty five percent) of the Directors where the Board has 12 (twelve) Members or more, or 2 (two) Directors in any other case.
- (2) The Director(s) of the Company convening a Board meeting may determine the location of the meeting, including the location of a meeting which has been adjourned, provided that the location shall be registered office of the Company or a suitable venue within a 20 (twenty) km radius of the registered office of the Company or a suitable venue in the Republic of South Africa which is reasonably accessible to each Director.
- (3) In terms of the Act and the Memorandum of Incorporation, the authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by the Memorandum of Incorporation.

The electronic communication facility employed by the Company must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

A resolution adopted by Directors, some or all of whom were connected electronically, where:

- (3.1) Directors connected electronically remained connected for the duration of that part of the meeting when the resolution was discussed;
- (3.2) the subject matter of the resolution has been discussed; and
- (3.3) the Chairman of the meeting or any other Director present in person or electronically certifies in writing that the aforementioned requirements have been met,

shall be deemed to have been passed on the date on which the resolution was adopted.

Within 10 (ten) business days after the adoption or failing of a resolution at a meeting or where some or all of the Directors were connected and participated electronically in terms of this clause the Company shall:

- (3.4) deliver to each Director of the Company a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and
- (3.5) insert a copy of the resolution proposed and statement in the minute book of the Company.

Director who participated in a meeting at any time electronically in terms of this article shall be deemed to be present at the meeting in question, and counted towards a quorum, while so participating.

The Board determines the manner, form and time of providing notice of its meetings as

set out in section 73(4) and is not limited or restricted by the Memorandum of Incorporation. The Directors may meet together for the dispatch of business, adjourn or otherwise regulate their meetings as they see fit, subject to the provisions of the Act and the Memorandum of Incorporation.

In terms of item 11(2) of Schedule 5, a notice given by any person to another person in terms of any provision of the previous Act, shall be considered as notice given in terms of any comparable provision of the Act, as from the date that the notice was given under the previous Act.

- (4) If all of the directors of the Company acknowledge actual receipt of the notice; are present at a meeting; or waive notice of the meeting, the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- (5) In terms of the Act and the Memorandum of Incorporation minutes of Board and Board Committee meetings must include all resolutions adopted by the Board or Board Committees, as the case may be, and must include all declarations of personal financial interests given by notice or made by a Director in terms of section 75.
- (6) Each resolution adopted by the Board must be dated and sequentially numbered and are effective as of the date of the resolution, unless the resolution states otherwise.
- (7) Signature of the minutes or of a resolution by the chair of the meeting (or by the chair of the next meeting) is evidence of the proceedings of that meeting, or adoption of the resolution, as the case may be.

An extract from such minutes or extract from any resolution in writing, if signed by any Director or the Company Secretary, shall be evidence of the matters stated in such minutes or extract.

3.8 Board Quorum

- (1) A Board meeting may not begin unless the majority of the Directors are present in terms of section 73(5)(b).

A matter to be decided at the Board meeting may not begin to be considered unless the majority of the Directors are present.

For purposes of counting a quorum at any time, a Director or his alternate who is personally present at the meeting, or who participates in person electronically in terms of Article: Board, Directors and Prescribed Officers - Board Meetings at that time, shall be counted towards a quorum at that time.

A person whose election as Director including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not be counted towards any quorum of Directors.

3.9 Board Resolutions

- (1) The Board may propose any resolution to be considered by Members and may determine whether that resolution will be considered and voted on at a meeting of Members or by round-robin resolution.
- (2) Each Director has 1 (one) vote on a matter before the Board in terms of section 73(5)(c) except that:
 - (2.1) a Director whose ineligibility to serve as a Director has been determined in terms of the Memorandum of Incorporation, shall not have a vote in respect of that matter in terms of section 71(3);
 - (2.2) a Director who has been suspended in terms of section 70(2) shall not have

a vote on any matter before the Board;

- (2.3) a Director who has a personal financial interest in respect of a matter to be considered by the Board or who knows that a related person has a personal financial interest in the matter in terms of section 75(4) or 75(5), shall not have a vote in respect of that matter in terms of section 77(5)(f)(ii).

A majority of the votes of the Directors present and entitled to exercise and exercising their vote on a matter is sufficient to approve a Board Resolution, provided that there is at least a quorum of Directors present and so exercising their votes on a matter.

An abstention from voting shall not be counted as an exercise of a vote, and shall in terms of section 73(5)(d) be disregarded for purposes of calculating whether or not a majority has been obtained.

If a resolution of the Directors has failed because of a tie contemplated in this clause, the Board or any Director of the Company or any registered Member may refer the matter to the Ordinary Members for the Ordinary Members to resolve and facilitate the breaking of any deadlock at Director level, failure of which by the Ordinary Members and/or Directors shall not constitute grounds for the winding-up of the Company except in terms of section 81(1)(d), subject to section 81(2).

The vote of any person whose election as a Director, including as an alternate Director is a nullity in terms of section 66(6), or who ceases to be a Director in terms of section 70, shall not with effect from the time that vote is cast be counted towards any vote of Directors.

A Director unable to attend a Board or Board Committee Meeting may, notwithstanding that this Director has an alternate, authorise any other Director to vote for him at that meeting, and in the event that the Director so authorised shall have a vote for each Director by whom he is so authorised in addition to his own vote. If both the Directors so authorised and an alternate of the Director who granted the authority, are present at the meeting, the alternate shall not be entitled to vote in the place of the absent Director. Authority in terms of this clause must be in writing and must be handed to the person presiding at the meeting at which it is to be used.

- (3) A resolution that could be voted on at a Board meeting other than a Board Resolution that the Company voluntarily begin business rescue proceedings and place the Company under supervision in terms of section 129(1), may instead of being voted on at a meeting be:
- (3.1) submitted by the Directors proposing the resolution for consideration to each Director in terms of section 74(1); and
- (3.2) voted on in writing by Directors entitled to exercise voting rights on that matter within 10 (ten) business days after the resolution was submitted to them.

A resolution will have been adopted as a Board Resolution if it has been supported in writing by the requisite majority of the Directors in person or their alternates who are entitled to exercise voting rights on the resolution proposed, and, if so adopted, such a resolution will have the same effect as if it had been adopted at a quorate Board meeting.

A round-robin resolution of Directors shall be deemed to have been passed on the date specified in the resolution as the effective date of the resolution provided that the effective date is not a date earlier than the date the resolution was submitted to Directors for their consideration and, if deemed fit, adoption or, failing any such effective date being specified in the resolution, shall be deemed to have been passed on the date on which the resolution was approved in writing by the last of the Directors

or their alternates entitled to do so voting in favour of the resolution or if that, or any other written approval is undated, the date on which such written approval was communicated to the Company within the 10 (ten) business days, which votes in favour of the resolution in aggregate are sufficient for the resolution to have been passed.

Within 10 (ten) business days after the adoption or failing of a round-robin resolution, the Company shall:

- (3.3) deliver to each Director a copy of the resolution proposed, accompanied by a statement describing the results of the vote; and
- (3.4) insert a copy of the resolution and statement in the minute book of the Company.

3.10 Directors acting other than at Meeting

- (1) A decision that could be voted on at a meeting of the Board of the Company 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) A decision made in the manner in terms of this Article is of the same effect as if it had been approved by voting at a meeting.

3.11 Register of Directors

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** must establish and maintain a record of its directors, including all the details about each director (including that director's email address) required in terms of and for the period stipulated in the Act and the Companies Regulations in a register of directors in terms of section 24(3)(b), section 24(5) and regulation 23.
- (2) For purposes of the Act and in relation to the register of directors required to be kept by the Company in terms of section 24(3)(b), a director is defined in section 1 to mean:
 - (2.1) a member of the Board, being a person previously appointed in terms of the Companies Act 1973 or elected as a director of the Company in terms of the Act;
 - (2.2) an alternate director for a member of the Board;
 - (2.3) any person, if any, occupying the position of director or alternate director but by whatever name designated,

And accordingly, the prescribed details of each such person is required to be included by the Company in the register of directors of the Company.

3.12 Directors' Remuneration

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a member or director, or person appointing a director, of the Company, except-
 - (1.1) as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Company; or payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
 - (1.2) as a payment of an amount due and payable by the Company in terms of a bona fide agreement between the Company and that person or another;

- (1.3) as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the company; or
- (1.4) in respect of any legal obligation binding on the Company.

3.13 Financial Assistance

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is prohibited from providing a loan to, securing a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the Company or of a related or inter-related company, or to a person related to any such director.
- (2) The Memorandum of Incorporation does not limit, restrict or qualify the said financial assistance, loan or securing a debt or obligation if it is in the ordinary course of the Company's business and for fair value; constitutes an accountable advance to meet legal expenses in relation to a matter concerning the Company or anticipated expenses to be incurred by the person on behalf of the Company, is to defray the person's expenses for removal at the Company's request; or is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

3.14 Directors' personal financial interests

- (1) At any time, a Director shall disclose any personal financial interest in advance, by delivering to the Board, or Members a notice in writing setting out the nature and extent of that interest, to be used generally until changed or withdrawn by further written notice from that Director.
- (2) The Director:
 - (2.1) shall disclose the interest and its general nature before the matter is considered at the meeting;
 - (2.2) shall disclose to the meeting any material information relating to the matter, and known to the Director;
 - (2.3) shall disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
 - (2.4) if present at the meeting, shall leave the meeting immediately after making any disclosure;
 - (2.5) not take part in the consideration of the matter;
 - (2.6) while absent from the meeting is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting, and is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - (2.7) shall not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

3.15 Standards of Directors' conduct

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company.
- (2) A Director of the Company shall not use the position of Director, or any information obtained while acting in the capacity of a Director to gain an advantage for the Director

or for another person other than the Company or a wholly-owned subsidiary of the Company or to knowingly cause harm to the Company or a subsidiary of the Company and communicate to the Board at the earliest practicable opportunity any information that comes to the Director's attention, unless the Director reasonably believes that the information is immaterial to the Company or generally available to the public, or known to the other Directors; or is bound not to disclose that information by a legal or ethical obligation of confidentiality.

- (3) A Director of the Company shall exercise the powers and perform the functions of Director in good faith and for a proper purpose, in the best interests of the Company and with the degree of care, skill and diligence that may reasonably be expected of a person, carrying out the same functions in relation to the Company as those carried out by that Director, and having the general knowledge, skill and experience of that Director.
- (4) In respect of any particular matter arising in the exercise of the powers or the performance of the functions of Director in terms of in the best interest of the Company and with the necessary degree of care, skill and diligence of that Director,
 - (4.1) the Director shall take reasonably diligent steps to become informed about the matter;
 - (4.2) the Director has no material personal financial interest in the subject matter of the decision, and has no reasonable basis to know that any related person has a personal financial interest in the matter; or
 - (4.3) the Director shall disclose any personal financial interest in advance to either the Board, with regard to that matter, and the Director has a rational basis for believing and shall believe, that the decision was in the best interests of the Company and is entitled to rely on:
 - (4.3.1) the performance by one or more employees of the Company whom the Director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;
 - (4.3.2) legal counsel, accountants or other professional persons retained by the Company, the Board or a committee as to matters involving skills or expertise that the Director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

3.16 Liability of Directors and Prescribed Officers

- (1) In this clause, Director includes alternate Director and a Prescribed Officer or a person who is a Member of a committee of a Board of the Company or of the Audit Committee of the Company, if applicable, irrespective of whether or not the person is also a Member of the Company.
- (2) A Director of the Company shall be held liable for breach of a fiduciary duty, for any loss, damages or costs sustained by the Company as a consequence of any breach by the Director of a duty in relation to:
 - (2.1) a Director's personal financial interests in terms of section 75 of the Act;
 - (2.2) the use of the position of Director, or any information obtained to gain an advantage or to knowingly cause harm to the Company in terms of section 76(2)(a) of the Act;
 - (2.3) communicate to the Board of the Company any material information to the Company in terms of section 76(2)(b) of the Act;

- (2.4) perform the functions of Director in good faith and for a proper purpose in terms of section 76(3)(a) of the Act;
- (2.5) perform the functions of Director in the best interests of the Company in terms of clause section 76(3)(b) of the Act.
- (3) A Director of the Company shall be held liable in relation to delict for any loss, damages or costs sustained by the Company as a consequence of any breach by the Director of:
 - (3.1) exercising the powers or performing the functions of Director with the degree of care, skill and diligence expected of that Director, carrying out the same functions in relation to the Company as those carried out by that Director and having the general knowledge, skill and experience of that Director in terms of Article: Board and Prescribed Officers - Standards of Conduct of this Memorandum of Incorporation (section 76(3)(c) of the Act);
 - (3.2) any provision of the Act;
 - (3.3) any provision of the Company's Memorandum of incorporation.
- (4) A Director of the Company shall be held liable for any loss, damages or costs sustained by the Company as a direct or indirect consequence of the Director having:
 - (4.1) acted in the name of the Company, signed anything on behalf of the Company or purported to bind the Company or authorise the taking of any action by or on behalf of the Company, despite knowing that the Director lacked the authority to do so in terms of section 77(3)(a);
 - (4.2) acquiesced in the carrying on of the Company business despite knowing that it was being conducted recklessly with gross negligence and with intent in terms of section 77(3)(b);
 - (4.3) been a party to an act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Member of the Company or had another fraudulent purpose in terms of section 77(3)(c);
 - (4.4) signed, consented to, or authorised, the publication of:
 - (4.4.1) any financial statements that were false or misleading in a material respect in terms of section 77(3)(d)(i); or
 - (4.4.2) a prospectus or a written statement that contained an 'untrue statement' or a statement to the effect that a person had consented to be a Director of the Company when no such consent had been given, despite knowing that the statement was false, misleading or untrue in terms of section 77(3)(d)(ii).
- (5) The liability of a person in terms of this clause is joint and several with any other person who shall be held liable for the same act, and any person who would be so liable is jointly and severally liable with all other such persons to pay the costs of all parties in a court unless the proceedings are abandoned, or exculpate that person, and to restore to the Company any amount improperly paid by the Company as a consequence of the impugned act, and not recoverable in terms of the Act.
- (6) Proceedings to recover any loss, damages or costs for which a person is or may be held liable shall not be commenced more than 3 (three) years after the act or omission that gave rise to that liability in any proceedings against a Director, other than for willful misconduct or willful breach of trust, the Court may relieve the Director, either wholly or

partly, from any liability.

- (7) In terms of the Memorandum of Incorporation during a search, any Director, Prescribed Officer, Member, or employee of the Company may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information. If the Company or person in control of an article or document refuses to give that article or document to the person conducting the search, the person conducting the search may request the Registrar or Sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

3.17 Indemnification and Directors' Insurance

- (1) In terms of the Act and the Memorandum of Incorporation the authority of the Company to purchase market related insurance to protect the Company or a Director, as contemplated in section 78(7) in the Act, is not limited, restricted or extended by the Memorandum of Incorporation, giving authority to the Company to purchase insurance to protect a Director against any liability or expenses for which the Company is permitted to indemnify a Director or the Company against any contingency including, but not limited, to any expenses that the Company is permitted to advance or for which the Company is permitted to indemnify a Director.
- (2) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING(NPC)** may purchase insurance to protect the Company or a Director as set out in section 78(7) of the Act, and the power of the Company in this regard is not limited, restricted or extended by the Memorandum of Incorporation.
- (3) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING(NPC)** shall be entitled to claim restitution from a Director of the Company or of a related Company for any money paid directly or indirectly by the Company to or on behalf of that Director, in any manner inconsistent with this clause of the Memorandum of Incorporation.

3.18 Obligations of Directors in respect of finances and levies

- (1) The Directors shall establish and maintain a levy fund for the purposes of meeting all expenses of the Company in respect of:
 - (1.1) the control, management and administration of the Development;
 - (1.2) in general, the attainment of the primary and ancillary objects of the Company as described in this Memorandum of Association;
 - (1.3) the maintenance of the Common Property, the Rental properties and the Servitude Properties and the costs of services such as security, security systems, electricity, water, optical fibre and sewerage consumed or used on the Common Property, the Rental Properties and the Servitude Properties;
 - (1.4) the supply of any services rendered by the Company;
 - (1.5) the payment of all expenses necessary or reasonably incurred in connection with the management of the Company;
 - (1.6) the costs of the provision of security, security services and security systems to the Development; and
 - (1.7) in general the cost of fulfilling any of the obligations of the Company.
- (2) The Directors shall not later than 21 (twenty-one) days prior to the last day of the financial year of the Company have prepared a budget in respect of the levies, special levies and/or additional contributions payable during the new financial year of the Company, indicating in detail the estimated amounts which shall be required by the Company to meet its necessary and other reasonably foreseeable expenses during

the new financial year (including a reasonable provision in respect of reserve funds catering for annual and otherwise non-recurring costs (including without limitation a reasonable provision for future maintenance, repairs and replacements of capital equipment, services and facilities in the Development)) which budget shall further specify, separately, the estimated deficit, if any, carried forward from the current financial year of the Company.

- (3) . The levies payable by the Members will be determined and approved by the Directors a minimum of 15 (fifteen) days prior to the last day of the financial year of the Company for presentation and the noting of the contents of such approved budget at its next annual general meeting of Members.
- (4) The approved budget shall be available for collection at the offices of the Estate Manager of the Company 14 (fourteen) days prior to the last day of the financial year of the Company.
- (5) The Directors shall be entitled to determine, in accordance with the criteria hereinafter referred to, a differentiated and/or weighted levy with respect to any Erven or Units.
- (6) The Directors shall advise each Member, in writing, prior to the last day of the financial year of the Company , of the levies, special levies and/or additional contributions payable by such Member for the new financial year.
- (7) The approved budget shall be tabled at the next Annual General Meeting for noting by the Members, in the form as presented.
- (8) The Directors shall, in their administration of the Company, save in the case of urgent expenditure occasioned by maintenance necessity, *vis maior*, *casus fortuitus* or acts of God, not exceed the total budget as approved by the Board, nor increase the levies or impose any additional levies and/or raise any special levies (with respect to any unforeseen and/or extraordinary expenditure, special projects or otherwise) unless a due motivation accompanied by a feasibility study has been made available to Members and such additional levies and/or special levies, as the case may be, have been approved by the Members at the next Annual General Meeting or extraordinary General Meeting of the Members of the Company.
- (9) Pending the approval of the additional levies and/or special levies referred to in clause (8) of this sub-article, as the case may be), the Directors shall be entitled to calculate the financial needs of the Company and to in the interim increase the levies payable prior to the Annual General Meeting or extraordinary General Meeting of Members of the Company, and Members shall be obliged to pay such estimated increased levies (on a monthly basis, as is hereinafter indicated) until such increased levies have been ratified by Members at the next Annual General Meeting or extraordinary General Meeting of the members of the Company.
- (10) With effect from the date on which the interim increased levies as calculated by the Directors on the basis stipulated in clause (9) of this sub-article above have been ratified by the Members at an Annual General Meeting or extraordinary General Meeting of the Members, Members shall be obliged:
 - (10.1) to pay the newly imposed levies with effect from the date stipulated in a written notice which shall be delivered to the Members by the Directors, consequent upon the approval of the budget; and
 - (10.2) within 30 (thirty) days of receipt of such written notice, to pay any deficit (comprising the difference between the levies paid from the commencement of the (new) financial year and the newly imposed levies to the date on which such newly imposed levies become payable), to the Company.
- (11) The annual levies shall be payable in equal monthly instalments, due in advance on

the first day of each and every month.

- (12) Additional levies and special levies imposed upon Members shall, unless otherwise stipulated by the Directors, similarly be payable in monthly instalments over the period indicated by the Company in its written notice delivered to Members.
- (13) Members shall be liable for and shall pay interest on any debt due and payable to the Company (including but not limited to any arrear levies of whatsoever nature), such interest to be calculated monthly in advance at the prime overdraft rate levied by the Company's banker's per month from the due date, to the date of actual payment, both days included.
- (14) The levies (and any other debt) shall be payable to the Company free of exchange, deduction or commission into such bank account as indicated in writing by the Directors from time to time.
- (15) The obligation of a Member to pay levies and/or special levies and/or additional contributions shall only terminate upon his ceasing to be a Member, without prejudice to the Company's rights to recover any debt.
- (16) No levies and/or special levies and/or additional contributions (or other debt) paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member.
- (17) A Member's successor in title (to a Unit or Erf) shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Unit or Erf to him, to pay the levies and/or special levies and/or additional contributions attributable to that Unit or Erf with effect from the date of transfer.
- (18) In circumstances where a Member has sold or otherwise disposed of a Unit or Erf he shall be obligated to inform the Directors in writing of the impending transfer and shall furthermore similarly confirm the date on which such transfer is registered in the name of the Member's successor in title in order to enable the Directors (and management) to determine the date of responsibility for the payment of levies and/or special levies and/or additional contributions and any other amounts comprising of a debt.
- (19) No Member shall be entitled to transfer a Unit or Erf without a Clearance Certificate first having been obtained from the Directors on behalf of the Company, confirming that all levies and/or special levies and/or additional contributions (including any other amounts comprising of a debt) have been paid up to and including the end of the month during which such contemplated registration of transfer of such Unit or Erf will take place.
- (20) The Directors shall be entitled to levy an administration fee in respect of the issue of each such Clearance Certificate and similarly in respect of any extended Clearance Certificate.
- (21) The principles applicable in terms of the Sectional Titles Act, No. 95 of 1986, as amended from time to time, with regard to the issue of a Clearance Certificate shall apply mutatis mutandis to any Clearance Certificate required to be obtained in respect of the transfer of any Unit in the Development.
- (22) In keeping with the principles referred to above, the amount of any debt shall enjoy the preference accorded any similar debt due to the body corporate in terms of the Sectional Titles Act, No. 95 of 1986, in conformity with the provisions of the Insolvency Act, No. 24 of 1936, as amended, and as otherwise apply in law.
- (23) The Company shall be entitled to require a Member to sign a debit order authority to allow the Company or its authorised agent to collect levies and/or special levies and/or additional contributions directly from an operating bank account.

- (24) If any Member fails to make payment on due date of levies and/or special levies and/or additional contributions and/or other amounts payable by such member, including interest, the Company may give notice to such Member requiring him to remedy such failure within such period as the Company may determine and should he fail timeously to make such payments, the Company may institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and client together with collection commission and any other expenses and charges incurred by the Company in recovering such amounts.
- (25) Having regard to the nature, extent of occupation, type of Unit or Erf, use of the Unit or Erf, the size /composition of the Erf and further taking into account such other relevant criteria as the Directors shall in their discretion determine, the Directors are entitled to differentiate with regard to the levy and/or special levy and/or additional contribution responsibility attaching to any Unit or Erf and/or to weight the levies and/or special levies and/or additional contributions payable in respect of any Unit or Erf. In effecting a determination, the Directors shall take into account and apply, to the extent deemed relevant, the following principles and prescriptions:
- (25.1) the allocation of costs directly attributable to a Unit or Erf, to the Member (as owner of such Unit or Erf) and which directly attributable costs shall include, but not be limited to, any municipal and/or other Council service charges and other expenses, and which such directly attributable expenditure shall be payable by the affected Member in addition to the levies and/or special levies and/or additional contributions;
- (25.2) assign a proportion of the costs relating to the Development generally to all Units and Erven equitably; and
- (25.3) take into account and effect a weighting and/or differentiation where a Unit or Erf is occupied by more than one household/family (and if necessary, to impose additional levies and/or special levies and/or additional contributions with respect thereto).

3.19 Directors' obligations to maintain, enforce and amend the Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping:

- (1) The Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping of the Company constitute an integral part of this Memorandum of Incorporation. It is recorded that the Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping of the Company contain the procedures, requirements and guidelines to be adhered to by every Member who wishes to effect construction, improvements or alterations to or undertake any renovation of any Erf or Unit or any building or structure erected on or to be erected on any Erf and/or Unit in the Development. The Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping of the Company that will be in force and effect are those published by the Directors from time to time and as may be amended from time to time by the Directors.
- (2) Any amendment, addition or deletion by the Directors to the Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping, shall require the approval of Members at the next Annual General Meeting. In the period, however, between two Annual General Meetings, the Directors shall be entitled to amend, delete or substitute any such Rules and Guidelines or prescribed fees levyable in terms of same if it is reasonably necessary to do so. The Directors must submit all such amendments, deletions or substitutions to the immediately following Annual General Meeting for ratification.
- (3) All improvements shall be of sound construction and shall comply with the provisions of the Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping

of the Company.

3.20 Directors' obligations to maintain, enforce and amend Development Rules:

- (1) In order to promote and implement the primary and ancillary objects of the Company, and to ensure the beneficial management and conduct of the business of the Company and to further advance the interests of Members, the Directors shall formulate and enforce rules (and protocols) collectively known as and referred to in this Memorandum of Incorporation as "House Rules" and " Village Conduct Rules".
- (2) The House Rules and Village Conduct Rules, including any amendment, addition or deletion thereto, shall require the approval of Members at an Annual General Meeting. In the period between two Annual General Meetings, the Directors shall be entitled to amend, delete or substitute any rule if it is reasonably necessary to do so. The Directors must submit all such amendments, deletions or substitutions to the immediately following Annual General Meeting for ratification.
- (3) The provisions of this section of the Memorandum of Incorporation shall continue to apply in circumstances where the affected Member ceases to be a Member at any time after receipt of a written notice of demand from the Directors.
- (4) Nothing to the contrary herein contained excepted, should a Member fail to remedy a breach of the Memorandum of Incorporation and/or the House Rules and/or the Village Conduct Rules and/or the Rules and Guidelines for Home Maintenance, Redevelopment and Landscaping of the Company despite written notice, it shall be competent for the Company to take such steps as are deemed necessary to remedy such breach (and where relevant, prevent any further recurrence) and to recover all reasonable costs incurred in connection therewith from the affected Member on an attorney and client scale which shall include collection commission and tracing fees (and which amounts shall comprise of a debt).
- (5) The Member remains responsible and liable for any breaches committed by a family member, employee, agent, contractor, sub-contractor, tenant, visitor or guest (including any customer, client or patient) whilst in or about the Development.
- (6) The Directors shall ensure that management delivers or otherwise publicizes the House Rules and Village Conduct Rules in a manner, which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of House Rules and Village Conduct Rules.
- (7) Any fines levied against the Members shall be payable together with the levies due at the commencement of the month following upon the month during which such fine was imposed.
- (8) The body corporate of the Units shall not make any management or conduct rule applicable to the Waterkloof Village sectional title scheme, which is in conflict with any of the House Rules or the Village Conduct Rules applicable to the Company in terms of this Memorandum of Incorporation.

3.21 Directors' obligations to maintain, enforce and amend the Prescribed Landscape, Materials and Plant Species Specifications

- (1) The Prescribed Landscape, Materials and Plant Species Specifications of the Company constitute an integral part of this Memorandum of Incorporation. It is recorded that the Prescribed Landscape, Materials and Plant Species Specifications of the Company contain the procedures, requirements and guidelines to be adhered to by every Member, the Directors and the estate manager who wishes to effect construction, improvements or alterations to or undertake any renovation of any Erf, the Common Property, the Rental Properties and/or the Servitude Properties or any building or structure erected on or to be erected on any Erf, the Common Property, the Rental Properties and/or the Servitude Properties in the Development. The Prescribed Landscape, Materials and Plant Species Specifications of the Company that will be in

force and effect are those published by the Directors from time to time and as may be amended from time to time by the Directors.

- (2) Any amendment, addition or deletion by the Directors to the Prescribed Landscape, Materials and Plant Species Specifications of the Company, shall require the approval of Members at the next Annual General Meeting. In the period, however, between two Annual General Meetings, the Directors shall be entitled to amend, delete or substitute any such rules, guidelines or specifications if it is reasonably necessary to do so. The Directors must submit all such amendments, deletions or substitutions to the immediately following Annual General Meeting for ratification.

ARTICLE 4 - TRANSPARENCY, ACCOUNTABILITY AND INTEGRITY OF THE COMPANY

4.1 Access to the Company's Records and Financial Statements

- (1) In terms of the Act and the Memorandum of Incorporation, no person, other than a Director and every holder of a beneficial interest in this Company, shall have any right to inspect any accounting records or document of the Company, except the right to do so as conferred by the Companies Act or as authorised by the Board or as authorised by an Ordinary Resolution of the ordinary Members or as permitted in terms of this clause of the Memorandum of Incorporation.
- (2) The accounting records shall be kept at or be accessible from its Registered office. The accounting records shall be open to inspection by any of the Directors at any time. The Directors may from time to time determine whether and to what extent and at what times and places and under what conditions, the accounting records of the Company or any of them shall be open to inspection by Members, not being Directors, and subject to the rights granted to Members in terms of the Companies Act. No Member, other than a Director, shall be entitled to inspect the accounting records, unless authorised by the Directors.
- (3) The Board may from time to time in its discretion, grant any member, on such terms and subject to such conditions and for such period(s) as the Board may from time to time determine in writing, the right to access (inspect and/or copy) any information pertaining to the Company, but no such right if conferred may negate or diminish any mandatory protection of any record, as set out in Part 3 of the Promotion of Access to Information Act, No.2 of 2000, as amended, provided further that the confidential information of the Company is adequately safeguarded and protected.
- (4) A person not contemplated in this sub-article of the Memorandum of Incorporation, has a right to inspect or copy the members register of a Non-Profit Company that has members, or the register of directors of the Company, upon payment of an amount not exceeding the prescribed maximum fee for any such inspection.

4.2 Financial Year End of the Company

- (1) The Company's financial year which is its annual accounting period, ends on a date set out in the Company's Notice of Incorporation, subject to any change made in terms of this sub-article of the Memorandum of Incorporation.

The first financial year of the Company begins on the date that the incorporation of the Company is registered, as stated in its registration certificate, and ends on the date set out in the Notice of Incorporation, which may not be more than 15 (fifteen) months after the date that the Incorporation of the Company is registered.

The second and each subsequent financial year of the Company begins when the preceding financial year ends; and ends on the first anniversary of the date that the incorporation of the Company is registered unless the financial year end has been changed in terms of this sub-article of the Memorandum of Incorporation.

- (2) In terms of the Act and this Memorandum of Incorporation, the financial year end of the Company, or any changes to the financial year end, shall be such period or adjusted period as the member by ordinary resolution from time to time approve. The board, may, with the prior approval of members by ordinary resolution, change the financial year of the Company in terms of section 27(4).
- (3) The board of the Company may change its financial year end at any time, by filing a notice of that change by filing Form CoR 25, but the Company is prohibited in terms of the Memorandum of Incorporation to do so more than once during any financial year, the newly established financial year end shall be later than the date on which the notice is filed, and the date as changed shall not result in a financial year ending more than 15 (fifteen) months after the end of the preceding financial year.

4.3 Accounting Records of the Company

- (1) In terms of the Act and the Memorandum of Incorporation the Company shall keep accurate and complete accounting records in one of the official languages of the Republic, as necessary to provide an adequate information base sufficient to enable the Company to satisfy all reporting requirements applicable to it, as set out in this sub-article, and to provide for the compilation of financial statements.

DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC) shall maintain the necessary Accounting Records in accordance with section 28 of the Companies Act.

- (2) The accounting records shall include a record of any property held by the Company in a fiduciary capacity, or in any capacity or manner contemplated in section 65(2) of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

4.4 Financial Statements and Financial Year

- (1) The Company's financial statements, including any Annual Financial Statements, shall satisfy the financial reporting standards as to form and content, present fairly the state of affairs and business of the Company, show the Company's assets, liabilities and equity, as well as its income and expenses, set out the date on which the statements were published, and the accounting period to which the statements apply, and bear, on the first page of the statements, a prominent notice indicating whether the statements have been audited in compliance with any applicable requirements of this Act, if not audited, have been independently reviewed in compliance with any applicable requirements of this Act, or have not been audited or independently reviewed, and the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements.
- (2) Any financial statements prepared by the Company, including any Annual Financial Statements of the Company in terms of Article: Transparency, Accountability and Integrity - Annual Financial Statements of this Memorandum of Incorporation, shall not be false or misleading in any material respect, or incomplete in any material particular, subject only to clause 3 of this sub-article.
- (3) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is not limited or restricted by the Memorandum of Incorporation to provide any person with a summary of any particular financial statements, but any such summary shall comply with any prescribed requirements, and the first page of the summary shall bear a prominent notice stating that it is a summary of particular financial statements prepared by the Company, and setting out the date of those statements, stating whether the financial statements that it summarises have been audited, independently reviewed, or are unaudited, in terms of clause 1 of this sub-article, stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the financial statements that it summarises, and setting out the steps required to obtain a copy of the financial statements that it summarises.
- (4) The Memorandum of Incorporation permits the Company the flexibility to have its financial statements internally or independently compiled and reported. In the event that the statements are independently compiled and reported, it should be prepared by an independent accounting professional, on the basis of financial records provided by the Company, and in accordance with any relevant financial reporting standards.
- (5) In terms of the Memorandum of Incorporation, any financial statements in terms of this sub-article and Article: Transparency, Accountability and Integrity - Accounting Records of this Memorandum of Incorporation shall comply with the applicable standards for the category of the Company as follows:
 - (5.1) where the Company's Public Interest Score for a particular financial year is at least 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Company meets the scoping requirements outlined in the IFRS for

SMEs;

- (5.2) where the Company's Public Interest Score for a particular financial year is at least 100 (one hundred) but less than 350 (three hundred and fifty) one of IFRS or IFRS for SMEs provided that the Company meets the scoping requirements outlined in the IFRS for SMEs or SA GAAP;
- (5.3) where the Company's Public Interest Score for a particular financial year is less than 100 (one hundred) and whose statements are internally compiled, the Financial Reporting Standards as determined by the Company for as long as no Financial Reporting Standards is prescribed.

"IFRS" means the International Financial Reporting Standards as issued from time to time by the International Accounting Standards Board or its successor body, and

"IFRS for SMEs" means the International Financial Reporting Standards for Small and Medium Enterprises, as issued from time to time by the International Accounting Standards Board or its successor body.

- (6) The Directors shall, in accordance with sections 30 and 31 of the Companies Act, cause to be prepared and laid before the Company at its Annual General Meeting its audited or independently reviewed Financial Statements, subject to clause 3 of Article: Transparency, Accountability and Integrity - Annual Financial Statements, not less than 10 (ten) business days before the date of any annual general meeting, a summarised form of the Financial Statements to be presented at such meeting and directions for obtaining a copy of the complete Financial Statements for the preceding financial year shall be sent to every member, subject and in accordance with the provisions of the Companies Act and this Memorandum of Incorporation. Nothing contained in this clause, shall impose a duty on the directors to send copies of such documents to any person whose address is not known to the Company.

If a Member requests a copy of the Annual Financial Statements, the Company shall make same available to such Member free of charge.

4.5 Annual Financial Statements

- (1) The Company's Annual Financial Statements shall be prepared in accordance with the provisions of section 30(2)(b)(ii) of the Act and section 20(c) of Act 3 of 2011 and be audited voluntarily as required by Special Resolution of Members, resulting in a non-statutory audit and the Annual Financial Statements shall be audited by the Auditor appointed in terms of the Memorandum of Incorporation.

Since the Company voluntarily elects an audit by Special Resolution of Members, section 90 (prohibitions on Auditor), section 91 (resignation of Auditor), section 92 (rotation of Auditor) and section 93 (restricted functions of an Auditor) do not apply.

- (2) An Auditor must be appointed upon the Company's incorporation if the requirements to have its Annual Financial Statements audited applies when it is incorporated, or at the General Meeting at which the requirements to have its Annual Financial Statements audited first applies to the Company, and at each General Meeting thereafter.

Any Auditor so appointed must be a Registered Auditor. If the Company appoints a firm as its Auditor, any change in the composition of the Members of that firm shall not by itself create a vacancy in the office of Auditor.

- (3) The audited Annual Financial Statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall:
- (3.1) satisfy as to form and content, the financial reporting standards of IFRS; and
- (3.2) subject to and in accordance with IFRS:

- (3.2.1) present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
 - (3.2.2) show the Company's assets, liabilities and equity, as well as its income and expenses;
 - (3.2.3) set out the date on which the statements were produced and the accounting period to which they apply; and
 - (3.2.4) bear on the first page thereof a prominent notice indicating that the Annual Financial Statements have been audited as a non-statutory audit and the name and professional designation of the person who prepared them.
- (4) The Annual Financial Statements of the Company shall be approved by the Board, be Signed by an authorised Director and be presented to the Members at the first Members' Meeting after the statements have been approved by the Board.

4.6 Appointment of Auditor

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is a Non-Profit Company and although it is not required by the Companies Act to comply with the extended accountability requirements in terms of Chapter 3 of the Act, the Company elects to comply with the extended accountability and transparency requirements of Chapter 3 of the Companies Act and the Companies Regulations.
- (2) Subject to Article: Transparency, Accountability and Integrity - Annual Financial Statements the Company is required by the Act, or the Regulations to have its Annual Financial Statements audited every year, resulting in the Company being required in terms of section 34(1) to comply with the provisions of Chapter 3 - Enhanced Accountability and Transparency requirements of the Act.
- (3) The Memorandum of Incorporation requires the Company to appoint an Auditor.
- (4) Provided that no person who is ineligible (other than by virtue of being juristic person) or disqualified from serving as a Director of the Company in terms of section 69(7) or (8) shall be appointed as the Auditor.
- (5) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall appoint a person or a firm as an Auditor of the Company and the individual determined by that firm shall be a Registered Auditor.
- (6) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** prohibits in terms of the Memorandum of Incorporation to appoint any of the following persons as an Auditor of the Company:
- (6.1) a Director or Prescribed Officer of the Company;
 - (6.2) an employee or consultant of the Company who was or has been engaged for more than 1 (one) year in the maintenance of any of the Company's financial records or the preparation of any of its financial statements;
 - (6.3) a Director, officer or employee of a person appointed as Company Secretary;
 - (6.4) a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work for the Company;
 - (6.5) a person who, at any time during the 5 (five) financial years immediately

preceding the date of appointment, was any of the persons abovementioned or a person related to any of the persons above mentioned.

4.7 Use of the Company's Name and Registration Number

- (1) The Memorandum of Incorporation limits and restricts the Company to withhold its full registered name and registration number to any person on demand and prohibits the Company to misstate its name or registration number in a manner likely to mislead or deceive any person.
- (2) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall have its name and registration number mentioned in legible characters in all notices and other official publications of the Company, including such notices and publications in electronic format as contemplated in the Electronic Communications and Transactions Act, and in all bills of exchange, promissory notes, cheques and orders for money or goods and in all letters, delivery notes, invoices, receipts and letters of credit of the Company.
- (3) The Memorandum of Incorporation prohibits, limits and restricts the use of the name or registration number of the Company in a manner likely to convey an impression that the person is acting or communicating on behalf of the Company, unless the Company has authorised that person to do so, or using a form of name for any purpose if, in the circumstances, the use of that form of name is likely to convey a false impression that the name is the name of the Company.
- (4) A contravention of this sub-article of this Memorandum of Incorporation constitutes an offence.

4.8 Annual Return

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** shall file its annual return in Form CoR 30.1 together with the prescribed fee set out in Table CR 28, unless exempt from such payment in terms of Regulation 30(8), within 30 (thirty) business days after each anniversary of its date of incorporation, in the case of a Company that was incorporated in the Republic, in compliance with section 33(1) of the Act read with Regulation 30, or the date that its registration was transferred to the Republic, in the case of a domesticated Company, including in that return a copy of its Annual Financial Statements, if it is required to have such statements audited in terms of Article: Transparency, Accountability and Integrity-Annual Financial Statements Memorandum of Incorporation (section 30(2) and (7) or the Regulations of the Act).
- (2) In the event that the Company is required in terms of the Memorandum of Incorporation and Regulation 28 to have its Annual Financial Statements audited, it must file a copy of the latest approved audited financial statements on the date that it files its annual return.
- (3) In the event that the Company is not required in terms of the Memorandum of Incorporation or Regulation 28 to have its Annual Financial Statements audited, it may file a copy of its reviewed financial statements on the date that it files its annual return.
- (4) In the event that the Company has been inactive during the financial year preceding the date on which its annual return becomes due in terms of clause 1 of this sub-article of the Memorandum of Incorporation, it may apply to the Commission for exemption from payment of the prescribed fee in terms of clause 1 of this sub-article of the Memorandum of Incorporation, provided that the application is supported by the financial statements indicating that the Company had in fact no turnover during that financial year.

ARTICLE 5 - FUNDAMENTAL TRANSACTIONS

5.1 Disposals, Mergers and Amalgamations

- (1) **DIE WATERKLOOF VILLAGE HUISEIENAARSVERENIGING (NPC)** is prohibited from amalgamating or merging with, or converting to a Non-Profit Company; or disposing any part of its assets, undertaking or business to a profit Company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.
- (2) Any proposal to dispose of all or the greater part of its assets or undertaking or amalgamate or merge with another Non-Profit Company shall be submitted to the voting members for approval.
- (3) A notice of a Members' meeting to consider a resolution to approve a disposal shall be delivered at least 10 (ten) business days before the date on which the meeting is to begin and in the prescribed manner, to each member of the Company and include a written summary of the terms of the transaction to be considered at the meeting.
- (4) The resolution shall be effective only to the extent that it authorises a specific transaction.
- (5) A proposed transaction shall be approved by a Special Resolution adopted by persons entitled to exercise voting rights on such a matter, at a meeting called for that purpose and at which sufficient persons are present to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised on that matter as required by the Company's Memorandum of Incorporation and by a Special Resolution by the Members of the Company's holding Company if the holding Company is a Company or an external Company; the proposed transaction concerns a disposal of all or the greater part of the assets or undertaking of the subsidiary; and having regard to the consolidated financial statements of the holding Company, the disposal by the subsidiary constitutes a disposal of all or the greater part of the assets or undertaking of the holding Company.
- (6) Any part of the undertaking or assets of the Company to be disposed of shall be fairly valued at the date of the proposal.
- (7) After a resolution approving an amalgamation or merger has been adopted by each Company that is a party to the agreement. Each of the amalgamating or merging companies shall cause a notice of the amalgamation or merger to be given in the prescribed manner and form to every known creditor of that Company but does not apply to a Company engaged in business rescue proceedings, in respect of any transaction pursuant to or contemplated in the Company's business rescue plan.
- (8) A notice of amalgamation or merger shall be filed with the Commission and shall include confirmation that the amalgamation or merger - has satisfied the requirements of the Companies Act; has been approved in terms of the Companies Act, if so required by that Act; has been granted the consent of the Minister of Finance in terms of section 54 of the Banks Act, if so required by that Act and is not subject to further approval by any regulatory authority; or any unfilled conditions imposed by or in terms of any law administered by a regulatory authority; and the Memorandum of Incorporation of any Company newly incorporated in terms of the agreement.
- (9) An amalgamation or merger takes effect in accordance with, and subject to any conditions set out in the amalgamation or merger agreement; does not affect any existing liability of a party to the agreement, or of a Director of any of the amalgamating or merging companies, to be prosecuted in terms of any applicable law; civil, criminal or administrative action or proceeding pending by or against an amalgamating or merging Company, and any such proceeding may continue to be prosecuted by or against any amalgamated or merged Company; or conviction against, or ruling, order or judgment in favour of or against, an amalgamating or merging Company, and any such ruling, order or judgment may be enforced by or

against any amalgamated or merged Company.

- (10) When an amalgamation or merger agreement has been implemented the property of each amalgamating and merging Company becomes the property of the newly amalgamated or surviving merged Company or Companies; and each newly amalgamated, or surviving merged Company is liable for all the obligations of every amalgamating or merging Company, in accordance with the provisions of the amalgamation or merger agreement, or any other relevant agreement, but subject to section 116(7)(a) and (b) substituted by section 72(d) of Act 3 of 2011.
- (11) If, as a consequence of an amalgamation or merger, any property that is registered in terms of any public regulation is to be transferred from an amalgamating or merging Company to an amalgamated or merged Company, a copy of the amalgamation or merger agreement, together with a copy of the filed notice of amalgamation or merger, constitutes sufficient evidence for the keeper of the relevant property registry to effect a transfer of the registration of that property.
- (12) If, with respect to a transaction involving a Company that is regulated in terms of the Banks Act, there is a conflict between this sub-article and a provision of section 54 of that Act, the provisions of that Act prevail.

ARTICLE 6 - DISSOLUTION AND DISTRIBUTION OF NET VALUE OF COMPANY

6.1 Winding-Up or Dissolution

- (1) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, no past or present member or director of the Company or person appointing a director of the Company is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied.
- (2) Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, no past or present member or director of the Company or person appointing a director of the Company is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied and the entire net value of the Company shall be distributed to one or more Non-Profit Companies, registered external Non-Profit Companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to its main object; and as determined in terms of the Company's Memorandum of Incorporation or by its members or its Directors at or immediately before the time of its dissolution or by the court, if the Memorandum of Incorporation by its Members or its Directors, at or immediately before the time of its dissolution, failing such determination, in terms of the provisions of the Companies Act 2008 or by order of Court.
- (3) Any Resolution for the winding-up or deregistration of the Company be approved by the Commissioner of the South African Revenue Service.

On dissolution or liquidation the excess funds and remaining assets of the Company be transferred to one or more of the following:

- (3.1) A similar organisation incorporated or established in the Republic which has been approved as a Public Benefit Organisation in terms of section 30 of the Income Tax Act;
- (3.2) An organisation established under any law which is exempt from Tax in terms of section 10(1)(cA) of the Income Tax Act whose sole or principal object is the carrying on of an approved public benefit activity;
- (3.3) A department of State of Administration in the National, Provincial or Local sphere of Government of South Africa.

ARTICLE 7 - COMPANY SIGNATURE

7.1 Company Signature

- (1) All cheques, promissory notes, drafts, bills of exchange, and other negotiable instruments, shall be made, signed, drawn, accepted and endorsed, or otherwise executed by the person or persons from time to time authorised by a resolution of the Board of Directors.

- (2) The signature to any notice given by the Company may be:
 - (2.1) written or printed, or partly written and partly printed (section 6(12) of the Act);

 - (2.2) effected in any manner provided for in the Electronic Communications and Transactions Act (ECTA).