

MEMORANDUM OF INCORPORATION

OF

TIRONG ESTATE NON-PROFIT COMPANY

REGISTRATION NUMBER 2017/393470/08

1st Amendment : 25 August 2021

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

The **Company** is a Non Profit Company with members, with the following objects:

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- D-1 HOA MANCO – FINANCIAL POLICY (PROCUREMENT / INTERNAL CONTROLS / REPORTING)
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- (1) Insurable Risks and Insurance Claims, and
- (2) Common Property, and
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[note 11 August 2021] The insurance portfolio is presently being developed and shall be presented to the directors of the Tirong NPC by 30 August 2021

I LANDSCAPING AND PUBLIC OPEN SPACES

1) OBJECTS OF THE COMPANY

- a) The main object of the Company is to protect and advance the communal interest of owners, occupants and other users of any of the properties (or any portion or sub-division thereof or any Unit thereof), comprising the Township, as are more fully defined in this Memorandum of Incorporation, hereunder.
- b) "*Township*" means the property comprising of the Tirong Estate.
- c) It is the objective of the Company:
 - i) to manage, control, and administer, on behalf of its members, the common property which may include, and where required and necessary, all electric, water, reticulation services, sewerage systems, storm water systems, roads, telecommunication and intercom systems and security within the Township; and
 - ii) to collect levies and contributions towards funds of the Company for the attainment of the objects of the Company, to promote and maintain any business or enterprise of the Company; and
 - iii) to create Rules of Conduct concerning the powers and obligations of members and the use of common property and units within the Township and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation, are enforced equally upon all members and are adhered to for the benefit of the members as a whole and subject to such restrictions and/or conditions, restrictions and/or powers as may be imposed by the members upon the Directors, at a General Meeting, on the basis that all members shall have equal rights and obligations.

2) MEMORANDUM OF INCORPORATION

- a) In this Memorandum of Incorporation-
 - i) A reference to a section by number refers to the corresponding section of the Companies Act, (Act 71 of 2008 as amended by the Companies Amendment Act 2011 (Act 2 of 2011) ("as hereinafter referred to as The Companies Act, 2008);
 - ii) Words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and
 - iii) Words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option.
 - iv) the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them ("*the Definitions*"):
 - (1) "**Business Day**" : A business day is calculated by:

- (a) Excluding the day on which the first such event occurs;
 - (b) Including the day on or by which the second event so occurs; and
 - (c) Excluding any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively
- (2) **“Common Property”** : Refers to the **Common Property Areas** in the **Township**, including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the **Common Property Areas** and within the servitude areas registered in favour of the **Company**, that are owned by the **Company** and for which the **Company** bears the responsibility to maintain, such as, amongst others, the streets, streetscapes, pavements, fencing, security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, stormwater reticulation and any equipment or amenities used ancillary to such common property areas;
- (3) **“Common Property Areas”** : Means those erven or areas transferred to or registered in the name of the **Company** and located in the **Township**;
- (4) **“Companies Act** : Companies Act 71 of 2008 as amended by the Companies Amendment Act of 2011 (Act 3 of 2011)
- (5) **“Developer”** : Means Tirong Development Trust, the owner or seller of **Units** in the **Township** before any individual transfers were affected and with voting rights in respect of those **Units** still registered in the **Developer’s** name from time to time.
- (6) **“Development Period”**: Means the period which commenced with establishment of the **Township** and which terminates when the last **Unit** in the **Township** is transferred from the **Developer** to a third party or is developed for occupation by the **Developer**;
- (7) **“Levies”**: Means all contributions levied from time to time by the Directors upon **Members** for the purpose of meeting all the expenses which the **Company** has incurred or which the Directors reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Schedule 1, Part E, Item 5 of the **Memorandum of Incorporation**;
- (8) **“Local Authority”** : Means **City of Johannesburg Metropolitan Municipality**;
- (9) **“Managing Agent”** : Means any person or body or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed by the **Company** as an independent contractor from time to time;
- (10) **“Member / Members”** : Means the Developer and/or his Representatives during the **Development Period** in respect of those Units still registered in the name of the **Developer** and/or any person who is reflected in the Deeds registry of the relevant Deeds Office as the

registered owner of a **Unit** in the **Township** or has successfully applied for membership of the **Company**;

(11)“**Township**” : Means the property comprising the **Tirong Estate**;

(12)“**Unit**” : Means an erf or any subdivision thereof in the **Township**;

3) **ARTICLE 1 – INCORPORATION AND NATURE OF THE COMPANY**

a) **INCORPORATION**

- i) The Company is incorporated as a Non-Profit Company, as defined in the Companies Act, 2008.
- ii) The Company is incorporated in accordance with, and governed by-
 - (1) The unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit Companies;
 - (2) The alterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - (3) The provisions of this Memorandum of Incorporation.

b) **OBJECTS AND POWERS OF THE COMPANY**

- i) The objects of the Company are set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Companies Act.
- ii) The Company is subject to certain provisions contemplated in section 15(2)(b) or (c) as set out in Part B of Schedule 1.
- iii) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with-
 - (1) Item 1(4)(b) of Schedule 1 of the Companies Act, 2008; and
 - (2) The provisions, if any as set out in Part C of Schedule 1 of this Memorandum.

c) **MEMORANDUM OF INCORPORATION AND COMPANY RULES**

- i) This Memorandum of Incorporation of the Company may be altered or amended only in the manner set out in sections 16, 17 or 15(2)(b).

- ii) The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15(3) to (5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- iii) The Board must publish any rules made in terms of section 15(3) to (5) in accordance with the requirements set out in Part D of Schedule 1.
- iv) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 7(1) in accordance with the requirements set out in Part D of Schedule 1.

d) OPTIONAL PROVISIONS OF COMPANIES ACT, 2008 DO NOT APPLY

- i) The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008.

e) MEMBERS OF THE COMPANY

- i) As contemplated in item 4(1) of Schedule 1 of the Act, the Company has members, who are in either of two classes, being voting and non-voting members, respectively.
- ii) The terms and conditions of membership in the company are set out in Part E of Schedule 1 to this Memorandum.

4) ARTICLE 2 – RIGHTS OF MEMBERS

a) MEMBER'S AUTHORITY TO ACT

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

b) MEMBER'S RIGHT TO INFORMATION

- i) In addition to the rights to access information set out in section 26(1), a member of the Company has the further rights to information, if any, set out in Part B of Schedule 2 of this Memorandum of Incorporation.

c) **REPRESENTATION BY CONCURRENT PROXIES**

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

d) **AUTHORITY OF PROXY TO DELEGATE**

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

e) **REQUIREMENT TO DELIVER PROXY INSTRUMENT TO THE COMPANY**

- i) The requirement that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the member's rights at a members meeting, as set out in section 58(3)(c) is not varied by the Memorandum of Incorporation.

f) **DELIBERATIVE AUTHORITY OF PROXY**

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

g) **RECORD DATE FOR EXERCISE OF MEMBER RIGHTS**

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

5) **ARTICLE 3 – MEMBERS MEETINGS**

a) **REQUIREMENT TO HOLD MEETINGS**

- i) The Company is not required to hold any members meetings other than those specifically required by the Companies Act, 2008,

b) MEMBERS' RIGHT TO REQUISITION A MEETING

- i) The right of members to requisition a meeting, as set out in section 61(3), may be exercised by at least 35% of the voting members.

c) LOCATION OF MEMBERS MEETINGS

- i) The authority of the Company's Board of Directors to determine the location of any members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in Section 61(9) is not limited or restricted by this Memorandum of Incorporation.

d) NOTICE OF MEMBERS MEETINGS

- i) The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by Section 62 is as provided for in section 62(1).

e) ELECTRONIC PARTICIPATION IN MEMBERS MEETINGS

- i) The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this Memorandum of Incorporation.

f) QUORUM FOR MEMBERS MEETINGS

- i) The quorum requirement for a members meeting to begin, or for a matter to be considered are as set out in section 64(1) without variation.
- ii) The time periods allowed in section 64(4) and (5) apply to the Company without variation.
- iii) The authority of a meeting to continue to consider a matter, as set out in section 64(9) is not limited or restricted by this Memorandum of Incorporation.

g) ADJOURNMENT OF MEMBERS MEETINGS

- i) The maximum period allowable for an adjournment of a members meeting is as set out in section 64(13), without variation.

h) **MEMBERS RESOLUTIONS**

- i) For an ordinary resolution to be adopted at a members meeting, it must be supported by at least 50% of the members who voted on the resolution, as provided in section 65(7).
- ii) For a special resolution to be adopted at a members meeting, it must be supported by at least 75% of the members who voted on the resolution, as provided in section 65(9).
- iii) 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).

6) **ARTICLE 4 – DIRECTORS AND OFFICERS**

a) **COMPOSITION OF THE BOARD OF DIRECTORS**

- i) The Board of Directors of the Company comprises of 3 directors, and 0 alternate directors each of whom is to –
 - (1) serve for a term of 1 (one) year.
 - (2) In addition to the appointed directors there are no appointed or *ex officio* directors of the company, as contemplated in section 66(4).
 - (3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a director of a Company, a person need not satisfy any further eligibility requirements or qualifications.

b) **AUTHORITY OF THE BOARD OF DIRECTORS**

- i) The authority of the Company's Board of Directors to manage and direct the business and affairs of the Company as set out in section 66(1) is not limited or restricted by this Memorandum of Incorporation.

c) **BOARD OF DIRECTORS MEETINGS**

- i) The authority of the Company's Board of Directors to consider a matter other than at a meeting, set out in section 74 is not limited or restricted by this Memorandum of Incorporation.
- ii) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised by at least 35% of the directors, despite the provisions of that section.

- iii) The authority of the Company's Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation.
- iv) The authority of the Company's Board of Directors to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this Memorandum of Incorporation.
- v) The authority of the Company's Board of Directors to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this Memorandum of Incorporation.
- vi) The quorum requirement for a directors meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5).

d) INDEMNIFICATION OF DIRECTORS

- i) The authority of the Company's Board of Directors to advance expenses to a director, or indemnify a director, in respect of the defense of legal proceedings, as set out in section 78(3) is not limited or restricted by this Memorandum of Incorporation.
- ii) The authority of the Company's Board of Directors to indemnify a director in respect of liability, as set out in section 78(5) is not limited or restricted by this Memorandum of Incorporation.
- iii) The authority of the Company's Board of Directors to purchase insurance to protect the Company, or a director, as set out in section 78(6) is not limited or restricted by this Memorandum of Incorporation.

e) OFFICERS AND COMMITTEES

- i) The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- ii) The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board as set out in section 72(1), or to include any such committee persons who are not directors, as set out in section 72(2)(a) is not limited or restricted by this Memorandum of Incorporation.
- iii) The authority of a committee appointed by the Company's Board, as set out in section 72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

7) ARTICLE 5 – GENERAL PROVISIONS

a) DEFINITIONS

- i) In these Articles the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:
 - (1) "the Act" means the Companies Act, 2008 as amended or any Act which replaces it.
 - (2) "Architectural Guidelines" means the design guidelines promulgated by the Company from time to time.
 - (3) "Architectural Review Committee" means the committee appointed by the Board of Directors from time to time to ensure that the plans submitted to the Company comply with the Architectural Guidelines
 - (4) "Auditors" means the Auditors of the Company.
 - (5) "Common Property" means all property situated in Tirong Township which is registered in the name of the Company;
 - (6) "the Developer" means Tirong Development Trust, Registration Number IT2554/2016(G)
 - (7) "the Development Period" means the period from the date of the incorporation of the Company until the date that the Developer notifies the Company that it has ceased the Development of the property.
 - (8) "Erf / Erven" means any Erf, Erven which forms part of or which is situated in the Development known as Tirong Township
 - (9) "Estate Rules" means regulations governing the conduct upon and affairs at Tirong Township
 - (10) "Regulations" means the Estate Rules and/or Architectural Guideline and/or any other regulation and/or rules of the Company.
- ii) Unless the context otherwise requires, any word importing the singular number shall also include the plural number, and vice versa and words importing any one gender shall include the other gender and vice versa.
- iii) Subject as aforesaid, any words or expressions defined in the Act or any statutory modification thereof in force at the date on which these presents become binding on the Company shall, if not inconsistent with the subject or context, bear the same meaning in these presents.
- iv) The headnotes to the clauses in this Memorandum of Incorporation are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

b) PHASED DEVELOPMENT

- i) It is recorded that the Developer is developing and marketing Tirong Township in phases. During the Development Period the Developer:-
- (1) Shall enjoy unrestricted rights with regards to the marketing of the Development and in particular to erect signage within demarcated development area;
 - (2) Shall be entitled in its absolute discretion to sub-divide the Erven, which form part of Tirong Township and insofar as the consent of the Members are required for such subdivision, each Member hereby irrevocably grants a Power of Attorney to apply for such subdivision on behalf of the Members of the Company to the Developer.

c) ESTATE RULES, ARCHITECTURAL GUIDELINES AND OTHER REGULATIONS

- i) Members, their guests and their tenants and any person entering the estate, shall be subject to this Memorandum of Incorporation, the Conduct Rules, Security Access Policy and Contractor's Standard Code of Conduct and any other conduct rules as may be approved from time to time .
- ii) Regulations shall govern, inter alia:-
- (1) the Member's rights of use, access to, occupation and enjoyment of the Common Area;
 - (2) the control of pets and other animals at Tirong Township;
 - (3) the external appearance of and the maintenance and use of the Common Area and the buildings and other improvements erected thereon; the external appearance and maintenance of buildings and other improvements and structures erected at Tirong Township, architectural and aesthetic style and design criteria, the type of plants and the maintenance of gardens;
 - (4) the execution of building work within Tirong Township;
 - (5) the rules governing builders, contractors and owners wishing to execute building work within Tirong Township;
 - (6) the conditions of access to and egress from Tirong Township;
 - (7) security within Tirong Township;
 - (8) disputes and disciplinary measures relating to Members and others having access to Tirong Township in relation to matters affecting Tirong Township including the determination and imposition of fines, which shall become a debt owing to the Company;
 - (9) the furtherance and promotion of the affairs of the Company;
 - (10) the management of the affairs of the Company;
 - (11) the conduct at Tirong Township of Members and any person resident on or entering the estate;

(12) any matter that may assist the Company and its representative organs in administering and governing the activities of the Company generally.

iii) The Company may by Ordinary Resolution at a General Meeting:

- (1) make any regulation, or
- (2) cancel or modify any regulation.

iv) Members shall be obliged to inform the members of their households, their guests, employees, invitees and tenants of the Regulations then in force and the Company shall be entitled, but not obliged, in its discretion, to act against such guests, employees, invitees and tenants, in addition to the Member, for any breach. The Members shall be responsible and liable for the acts and omissions of their guests, employees, invitees and tenants and each Member indemnifies the Company accordingly.

v) The Architectural Review Committee shall during the Development Period be appointed by the Developer and thereafter shall be appointed by the Directors and shall consist of at least one Director, a qualified architect and such other suitably qualified persons as the Directors from time to time decide. Until such stage as the Architectural Review Committee has been appointed, the Developer shall act as the Architectural Review Committee.

vi) During the Development Period, the Architectural Guidelines may not be altered, substituted, added to or repealed unless the Developer agrees to the same.

d) STATUS OF THE DEVELOPER

i) During the Development Period, no Member shall prevent or hinder in any way the Developer from:-

- (1) gaining access to and egress from the Development.
- (2) continuing its building and/or construction operations at the Development.
- (3) marketing and selling any Erven.
- (4) Generally carrying on its business operations,

ii) provided that the provisions of clause 4.1 shall not be interpreted as allowing the Developer access onto any of the Erven already transferred to a Member unless 48 hours prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given.

iii) The Developer shall have the sole right of appointment and dismissal of any managing agent during the Development Period.

- iv) The Developer has the right and shall be entitled to build and establish on Erven 300 and 668 any amenities and facilities as it in its sole discretion deems fit.
- v) The Developer has the right in its sole discretion, to establish and locate the amenities and facilities on any portion of Erven 300 and 668, with the approval of the Local Authority.
- vi) The Company will not be entitled to change, amend or impact on the rights of the Developer or its successors in title in respect of the amenities and facilities referred to in 4.4 above, without obtaining the written consent of the Developer or its successors in title beforehand.
- vii) The Developer is entitled, in the Developer's sole discretion, as and when the Developer chooses to do so, to rezone to residential and/or commercial and/or hotel and/or business and/or special or any other zoning that the Developer chooses, those Erven which have not been sold by the Developer as at the relevant time and/or sub-divide in whichever manner the Developer chooses any of the same, to change the land use on the layout plans relating to such Erven and land and to register on such land and Erven whatever servitudes are certified as being necessary or desirable by the town planner appointed by the Developer in such positions as such town planner certifies as being appropriate. The Members irrevocably consent to the aforesaid and irrevocably grant a Power of Attorney to the Developer to enable the Developer to attend to the same whenever the Developer deems it necessary to do so. In addition the Developer shall be entitled to amend the boundaries of the common area provided that such amendment does not increase or decrease the common areas by more than 10%. The Members hereby irrevocably consent to all of the foregoing and hereby irrevocably grant the Developer Power of Attorney to enable the Developer to attend to the same and to sign any documentation on behalf of the Members to give effect to the provisions of this clause.

e) **MEMBERS' OBLIGATIONS**

- i) Each Member undertakes to the Company that he shall comply with:-
 - (1) the provisions of this Memorandum of Incorporation;
 - (2) all Rules;
 - (3) any agreements entered into by the Company which imposes obligations on the Member.
- ii) Every Member shall observe all laws, ordinances, by-laws, regulations and rules imposed by any statutory or other relevant authority and, without detracting from the generality of this clause, shall observe and comply with the provisions of any relevant road traffic legislation as fully and effectually as though the private roads situated on Erven were public roads as defined in the relevant legislation.

f) LEVY FUND

- i) The Directors shall establish and maintain a levy fund for the purposes of meeting all the expenditure which the Company has properly incurred or which they reasonably anticipate the Company will necessary or reasonably incur for the control, management, maintenance and administration of Tirong Township which includes but are not limited to:-
 - (1) security;
 - (2) rates and taxes, as well as other municipal charges and levies on assets of the Company;
 - (3) maintenance and upkeep of assets, including security systems, guard houses and the perimeter wall;
 - (4) transportation;
 - (5) administration fees;
 - (6) electricity and water consumed in the Common Area;
 - (7) security fences, walls and entrances;
 - (8) employment of security personnel;
 - (9) such other purposes as this Memorandum of Incorporation may prescribe.
- ii) The levies charged for each Erf shall be the same notwithstanding the size and/or value of such Erf.
- iii) The Directors shall not less than 30 (thirty) days prior to the end of each financial year deliver to each Member at the address chosen by such Member an estimate of the amount required by the Company to meet the expenses during the following financial year and shall include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- iv) The estimate shall specify the contribution payable by that Member to such expenses and reserve funds.
- v) The Directors may from time to time impose special levies upon the Members which are not included in the estimate made in terms of clause 6.2 above and may in imposing such levies determine the terms of payment thereof.
- vi) Any amount due by a Member in regard to arrear levies and interest shall be a debt by such Member to the Company. Notwithstanding that a Member ceases to be a Member the Company shall still have the right to recover arrear levies and interest from such Member.
- vii) Any Member whose levies are outstanding for more than 30 days will automatically be levied a monthly penalty levy equal to 2% compound interest until his/her account is settled. In addition interest will apply to all outstanding amounts.

viii) Any Member whose levies are outstanding for more than 60 days will be subject to civil action as contemplated by the relevant provisions of the Magistrates Court Act in the Randburg Magistrates Court.

g) FUNCTIONS AND POWERS OF THE BOARD OF DIRECTORS

i) The Directors shall manage and control the business and affairs of the Company and such shall have all powers which are necessary to attend to the same including but not limited to the right of appointment and dismissal of the Managing Agents and shall exercise all powers of the Company and do such acts on behalf of the Company as may be exercised and done by the Company others than those which are required to be done by the Company in General or Special Meeting or which are restricted in terms of the Act. Without limiting the generality of the aforesaid the Board of Directors have the power and right:-

- (1) to do all that is necessary and appropriate to ensure that the objects of the Company are performed and fulfilled;
- (2) to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Directors but shall not be entitled to any other remuneration in respect of the performance of such duties. Any such expenses shall be disclosed as a separate item in the income statement of the Company;
- (3) to appoint the Architectural Review Committee;
- (4) to impose fines.

h) OTHER PROFESSIONAL OFFICERS

i) Save as specifically provided otherwise in this Memorandum of Incorporation, the Board of Directors shall at all times have the right to engage on behalf of the Company, and for its benefit, the services of accountants, auditors, attorneys, advocates, architects, engineers and any other professional persons and any other employees whatsoever, for any reasons thought necessary by the Board of Directors and on such terms as the Directors may decide subject to the provisions of this Memorandum of Incorporation.

i) INDEMNITY

i) Insofar as it is permitted in terms of the Act, the Company indemnifies every Director, servant, agent and employee of the Company against all losses of whatsoever nature incurred out of

any bona fide act or deed performed by him or jointly and severally with the other Directors, servants, agents and employees of the Company and in the discharge of his duties.

j) AGENDA AT ANNUAL GENERAL MEETINGS

- i) In addition to any other matters required by this Memorandum of Incorporation and the Act to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:
- (1) the consideration of the Chairperson's report;
 - (2) the consideration of the financial statements of the Company for the financial year of the Company preceding the date of such meeting;
 - (3) the consideration of the report of the Auditors;
 - (4) the consideration of a budget and the total levy payable pursuant thereto for the relevant calendar year;
 - (5) The consideration and fixing of the remuneration of the Auditors for the financial year of the Company preceding the Annual General Meeting and the appointment of Auditors for the ensuing financial year;
 - (6) The election of the Board of Directors;
 - (7) The consideration of any resolutions of which due notice has been given and the voting upon any such resolutions;
 - (8) The consideration of any resolution regarding procedural matters proposed for adoption by such meeting and the voting upon such resolution.

k) GENERAL PROVISIONS RELATING TO LEVIES

- i) The Directors shall prepare and approve the budget and the levies payable by members at the Annual General Meeting.
- ii) The levies shall be payable monthly in advance, provided that they may be paid in instalments on term and conditions determined by the Directors.
- iii) A Member's successor in title to an Erf or Erven shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that Erf or Erven to pay the levy attributable to that Erf or Erven. No Member shall transfer his Erf unless the Member has at the date of transfer fulfilled all his financial obligations to the Company.
- iv) The levies due by a Member of the Company shall be paid without deduction or set-off, free of exchange at the offices of the Company or such other place as it may specify in writing from time to time.

- v) A Member shall not be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum which shall be due and payable to the Company in respect of his membership thereof and the Company shall be entitled to discontinue rendering services supplied by the Company to any applicable Erven 7 (seven) days after posting by registered mail of written notice requiring payment.
- vi) It is specifically recorded that the Developer shall not be liable for the payment of any levies in respect of any Erven owned by the Developer during the Development Period, however the developer will contribute pro rata to the payment of essential services. Essential services being pro rata contribution towards security services, maintenance and any other amounts agreed upon between the Home Owners Association and the Developer from time to time. The Developer will be absolved of any payment at the expiry of the development period.

l) ACCOUNTS

- i) At each Annual General meeting the Board of Directors shall lay before the Company a proper income statement and, where appropriate, a statement of source and application of funds for the immediately preceding financial year of the Company together with a proper balance sheet made up as at the last financial year end of the Company. The financial statements referred to shall be accompanied by full and proper reports of the Board of Directors and the Auditors, together with a budget for income and expenditure for the next financial year, and there shall be attached to the notice sent to the Members convening each Annual General Meeting, copies of such accounts, balance sheet, reports and budget and/or any other documents required by law to accompany the same

m) CESSATION OF MEMBERSHIP

- i) A Member ceasing to be a Member of the Company for any reason shall not, nor shall any such Member's executor, curator, trustee or liquidator, have any claim upon the interest in the funds or other assets of the Company. The provisions of this clause shall be without prejudice to the rights of the Company to claim from such Member or his estate any arrears of levies or other sums due from him to the Company at the time of his ceasing to be a Member.

n) **DISPUTES**

Disputes that cannot be amicably resolved between member or a member and the Homeowners Association shall be referred to the Community Schemes Ombud Service in accordance with the provisions of the Community Schemes Ombud Service Act, 2011 (Act No 9 of 2011)

o) **BREACH**

- i) The Board of Directors may, in its discretion, investigate any suspected or alleged breach by any Member or Director of this Memorandum of Incorporation, in such reasonable manner as it shall decide from time to time.
- ii) Should any Member fail to pay on the due date any amount payable to the Company or breach any other provision of this Memorandum of Incorporation and fail to remedy the same within a period of 10 (TEN) days after the emailing of a written notice calling upon him to remedy such breach, the Directors on behalf of the Company shall be entitled (in addition to any other rights which they have in terms of this Memorandum of Incorporation or in law or otherwise):-
 - (1) to institute action in a Court of Law to recover such monies or to force the Member the remedy such breach; and
 - (2) to take such steps that they may consider necessary to remedy the breach of this Memorandum of Incorporation and to debit the costs of remedying such breach to such Member which amount shall be deemed to be a debt payable by the Member to the Company; and
 - (3) deny the Member concerned the benefits of membership of the Company and suspend his right to vote. In such event the Member shall nonetheless remain bound to perform his obligations in terms of this Memorandum of Incorporation.
- iii) All amounts due by any Member shall attract interest at the prime overdraft rate as charged by Firstrand Bank Limited plus 2% (TWO PER CENTUM) per month, calculated from the due date to date of payment.
- iv) Notwithstanding anything to the contrary herein contained, the Company shall at the sole discretion of the Board of Directors, be entitled to institute legal proceedings in any court having jurisdiction for any relief to which it is entitled under the provisions of the this Memorandum of Incorporation including but not limited to the recovery of arrear levies.
- v) In addition to the other rights of the Company referred to in this Memorandum of Incorporation the Directors may impose a system of fines or other penalties to be paid by any person breaching the provisions of this Memorandum of Incorporation.

p) **DOMICILIUM**

- i) Unless a Member shall have nominated an alternative domicilium, being a physical address in the Republic of South Africa, by written notice delivered to the Company, a Member's domicilium citandi et executandi for all purposes in terms hereof and the serving of any legal process shall be at any Erf owned by the Member.
- ii) The Directors shall from time to time determine the domicilium citandi et executandi of the Company.
- iii) Any notice, acceptance, demand or other communication properly addressed by the Company to the Member's domicilium in terms hereof for the time being and sent by pre-paid registered post shall be deemed to be received by the latter on the 7th (seventh) day after the day following the date of posting thereof. The provision shall not be construed as precluding the utilization of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption shall arise if such other means or method is used.
- iv) A Member shall not be entitled to have notices served upon him at any address outside the Republic of South Africa.
- v) It shall be competent to give notice by telefax or email where the Member's telefax number and/or email address is recorded with the Directors.

q) **BANK ACCOUNT**

- i) All funds received by the Company shall be deposited into a bank account opened by the Directors on behalf of the Company. The funds not regularly required for disbursements may be invested in a savings or similar account approved by the Directors from time to time. No cheques shall be drawn on any account unless the same is signed by at least two Directors.

r) **BUILDING ACTIVITIES**

- i) Each Member shall conform to the prescription of the Architectural Guidelines.
- ii) Each Member shall pay the fees as set out in the Architectural Guidelines, before the commencement of any building operations on his erf. These fees can be amended by the Company from time to time.

s) **INTERPRETATION**

- i) Insofar as it is permitted in terms of the Act, for as long as the Developer is a Member the Developer's interpretation of this Memorandum of Incorporation and/or the Estate Rules shall be final and binding on the Company and all Members.

t) **RIGHTS OF AND PROVISIONS IMPOSED BY THE LOCAL AUTHORITY**

- i) The Company shall consist of members and as person shall be a member if such person is the registered owner of an erf in the township. Provided that no member shall become a registered owner of an erf unless he/she/it has made application to be a member of the Company and has agreed, to the satisfaction of the Company, that:
- (1) On registration of transfer of an erf to him/her/it, he/she/it shall become a member and he/she/it shall remain a member as long as he/she/it remains the registered owner of an erf in the township; and
 - (2) He/she/it shall automatically cease to be member when he/she/it ceases to be a registered owner of an erf in the township; and
 - (3) He/she/it shall be bound to the terms, conditions, rules and provisions contained in the Memorandum of Incorporation as well as any rule made by the Company from time to time
- ii) The main object of the Company shall not be amended without the written consent of the local authority first having been obtained.
- iii) The Company shall at all times comply with the legal requirements and/or provisions for the incorporation, existence and continuation of the company as a legal entity (a Non-profit Company as defined and contemplated in the abovementioned Act).
- u) The Company shall not apply for de-registration at the Registrar of Companies without the written consent of the local authority first having been obtained;
- v) Erven **300, 668, 181, 301, 396, 397, 521, 600, 601 and 669** shall prior to or simultaneously with the registration of the first transfer of the erven in the township and at the cost of the Developer be transferred to the Company and shall not be sold or transferred to any other person/entity and shall not be mortgaged.
- w) The Company shall undertake not to submit an application to rezone Erven **300, 668, 181, 301, 396, 397, 521, 600, 601 and 669**.
- x) Each and every owner of an Erf in Tirong Township shall have free access over Erven **300, 668, 181, 301, 396, 397, 521, 600, 601 and 669** to afford them access to a public road;
- y) Each and every owner of an erf in Tirong Township shall have free entrance to and usage of Erven **301 and 668**.

- z) The local authority's engineering services department and its emergency services are guaranteed 24 hours access to Erven **639, 640, 641, 642, 643, 644, 645, 646, 647 and 648300, 668, 181, 301, 396, 397, 521, 600, 601 and 669** to maintain the local authority's installations and provide services to the residents in Tirong Township;
- aa) The Company shall have full responsibility for the functioning and proper maintenance of Erven **300, 668, 181, 301, 396, 397, 521, 600, 601 and 669** and the engineering services within the erf as well as Erf 640 and the attenuation system(s) on the erf, all to the satisfaction of the local authority failing which such maintenance shall be done by the local authority at the cost of the Company;
- bb) The Company shall properly and clearly display the street name and street numbers allocated to the individual erven in Tirong Township and shall maintain such to the satisfaction of the local authority;
- cc) The Memorandum of Incorporation shall not be implemented and/or amended as far as the implementation and/or amendments relate to clauses 19.1 to 19.11 above and including this clause without the written consent of the local authority first being had and obtained;

8) **SCHEDULE 1 – INCORPORATION AND NATURE OF THE COMPANY**

a) **PART A**

- i) Not applicable

b) **PART B**

- i) The Memorandum of Incorporation shall not be implemented and/or amended as far as the implementation and/or amendments relate to clauses 19.1 to 19.12 of Article 5 above and including this clause without the written consent of the Johannesburg City Council first being had and obtained.

c) **PART C**

- i) Not applicable

d) **PART D**

- i) Rules made in terms of Section 15(3) to (5) must be published by delivering a copy of such rules to each Member.
- ii) The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules made in terms of Section 17(1) by delivering a copy of such alteration/s to each Member.

e) **PART E**

- i) The first Members of the Company, shall be:-
- ii) Membership of the Company shall be limited to the Developer (as defined in Article 5) in his capacity as such and his nominees for as long as the Developer (as defined in Article 5) owns

any portion of the Development (as defined in Article 5) and to every owner who owns an erf in Tirong Township. During the Development Period (as defined in Article 5), only the Developer (as defined in Article 5) shall be a member who has votes. All other Members shall not be entitled to vote until the end of the Development Period (as defined in Article 5) whereafter such members will become members who have votes.

- iii) No member of the Company shall be entitled to transfer an Erf in Tirong Township unless the transferee of such Erf has bound himself to the satisfaction of the Company to become and remain a member of the Company once such Erf has been transferred into his name.
- iv) Where any such owner is more than one person, all registered owners of that Erf shall be deemed jointly and severally to be one Member of the Company and shall be jointly and severally liable in solidum for all the obligations of the Member in terms of these Articles.
- v) The owner shall not be entitled to sell or transfer an Erf unless it is a condition of the sale and/or transfer that:-
 - (1) the transferee shall become a Member of the Company;
 - (2) the registration of the transfer of that Erf into the name of the transferee shall *ipso facto* constitute the transferee as a Member of the Company;
 - (3) he first obtains the written consent of the Company, which consent shall be given without undue delay provided the purchaser of such Erf agrees in writing to abide by this Memorandum of Incorporation, and provided the Member shall have paid all amounts due by him to the Company for the period up to the date of transfer of the Erf.
 - (4) The registered owner of an Erf may not resign as a Member of the Company or cease to be a Member of the Company.
- vi) The rights and obligations of a Member shall not be transferable and every Member shall:
 - (1) observe all the Estate Rules, Architectural Guidelines and all other rules and regulations of the Company;
 - (2) be obliged to ensure that each Erf owned by him shall have been developed by no later than the date stipulated in the Deed of Sale entered into between the Developer and the first person purchasing such Erf from the Developer;
 - (3) be obliged to submit any building plan, whether such plan is for new construction, renovation, alteration and/or addition, to the Board of Directors for examination and approval prior to the submission of such plan to the Municipality or other local authority for approval.

9) SCHEDULE 2 – RIGHTS OF MEMBERS

- a) **PART A**
 - i) Not applicable
- b) **PART B**
 - i) Not applicable
- c) **PART C**
 - i) Not applicable
- d) **PART D**
 - i) Not applicable

10) SCHEDULE 3 – MEMBERS MEETINGS

- a) **PART A**
 - i) Not applicable
- b) **PART B**
 - i) Not applicable
- c) **PART C**
 - i) Not applicable
- d) **PART D**
 - i) Not applicable
- e) **PART E**
 - i) Not applicable
- f) **PART F**
 - i) Not applicable

11) SCHEDULE 4 – DIRECTORS OF THE COMPANY

- a) **PART A**
 - i) Not applicable
- b) **PART B**
 - i) Not applicable
- c) **PART C**
 - i) Not applicable
- d) **PART D**
 - i) Not applicable
- e) **PART E**
 - i) Not applicable

- f) **PART F**
 - i) Not applicable
- g) **PART G**
 - i) Not applicable
- h) **PART H**
 - i) Not applicable