



# **MEMORANDUM OF INCORPORATION**

of

**COMMIPHORA HOME OWNERS ASSOCIATION (NPC)**

**Registration Number: 2007/003695/08**

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

Adopted by a special resolution passed on 9 November 2020

Amended by a special resolution passed on 25 August 2023

## TABLE OF CONTENTS

<b>A) OBJECTS AND POWERS OF THE COMPANY .....</b>	<b>5</b>
<b>B) ADOPTION OF MEMORANDUM OF INCORPORATION.....</b>	<b>6</b>
<b>C) DEFINITIONS.....</b>	<b>6</b>
<b>D) COMPANY ADMINISTRATION.....</b>	<b>12</b>
<b>ARTICLE 1-INCORPORATION AND NATURE OF THE COMPANY.....</b>	<b>12</b>
1.1 Incorporation.....	12
1.2 Objects and Powers of the Company.....	12
1.3 Memorandum of Incorporation and Company Rules.....	13
(1) Amendment and alteration of MOI and Rules .....	13
(2) Rules: Type of Rules.....	13
(3) Rules: Procedure enforcement of Rules.....	15
(4) Rules: Breach of Rules by Other than Member.....	16
(5) Rules: Publish any Notice or Rules Made.....	16
(6) Rules MOI: Publication of Notice for Alteration of MOI or Rules.....	16
(7) Rules: Consideration, Objection, Notice and Filing of Company Rules.....	16
(8) Rules: Ratification of Rules made by Board.....	16
(9) Rules: Previous Rules Remain of Force and Effect.....	16
(10) Rules: Rules make by Members.....	17
1.4 Optional provisions of Companies Act, 2008 do not apply.....	17
1.5 Membership of the Company.....	17
(1) Type and votes of Members.....	17
(2) Qualification for Membership.....	17
(3) Application for Membership.....	17
(4) Levy/Costs of Membership.....	18
(5) Rights and Obligation of Membership.....	18
(5.1) Duration of Membership.....	18
(5.2) Rights and Obligation of Members.....	18
(5.3) Tenants Written Agreement to bound to MOI and Rules.....	19
(5.4) Transfer Ownership Condition of Sale.....	19
(5.5) Transfer: Written Consent.....	19
(5.6) Transfer: Clearance Certificate.....	19
(5.7) Transfer: Undivided Share .....	20
(5.8) Transfer: Change in Beneficial Ownership or Control in Owner.....	20
(5.9) Transfer: Clearance Certificate Fee.....	20
(5.10) Rights of Members.....	20
(5.11) No of Rights of Members at AGM.....	20
(5.12) Transfer: Title Deed Conditions.....	21
(5.13) Binding Nature of MOI, Rules to Members, Lessee etc.....	22
(5.14) Transfer: Member liability of Debt etc. To Company.....	22
(5.15) Ownership: Person consists of several Persons.....	22
(5.16) Transferable of Rights and Obligations.....	22
(5.17) Complaint by Members.....	22
(6) Levies.....	23
(6.1) Levies: Determination Principles.....	23
(6.2) Levies: Estimate, Authority of Directors.....	23
(6.3) Levies: Notice of Estimate, 30 days prior end of Financial Year.....	23
(6.4) Levies: Estimate, Notice specify contribution .....	23
(6.5) Levies: Board Resolution.....	23

(6.6)	Levies: Payable. How, When.....	23
(6.7)	Levies: Special or Other Levies.....	23
(6.8)	Levies: Failing to give Notice of Estimate.....	23
(6.9)	Levies: Change of Ownership, Pro-rata payment.....	24
(6.10)	Levies: Special Levies.....	24
(6.11)	Levies: Due by Directors Resolution, Recover Actions.....	24
(6.12)	Levies: Interest on Levies.....	24
(6.13)	Levies: Member Obligation, Companies Right, Repayable, Successor.....	24
(6.14)	Levies: Transfer, Clearance Certificate.....	24
(6.15)	Levies: Arrear, Member Liability Recover all Costs.....	24
(6.16)	Levies: Arrear, Administration Charge.....	25
(6.17)	Levies: Interest Review.....	25
(6.18)	Levies: Payment Allocation.....	25
(6.19)	Levies: Payment Arrangement.....	25
(6.20)	Levies: Estimate CSOS Levy.....	25
1.6	The Financial year end.....	25
<b>ARTICLE 2-RIGHTS OF MEMBERS.....</b>		<b>25</b>
2.1	Members right to Information.....	25
2.2	Authority to delegate.....	26
2.3	Requirements to deliver proxy instrument to the Company.....	26
2.4	Deliberative authority of proxy.....	26
2.5	Record date for exercise of Members rights.....	26
<b>ARTICLE 3-MEMBERS MEETINGS.....</b>		<b>26</b>
3.1	Requirements to hold AGM or SGM.....	26
3.2	Members right to requisition a meeting.....	26
3.3	Location of Members meetings.....	27
3.4	Notice of Members meetings.....	27
3.5	Electronic participation in Members meeting.....	27
3.6	Quorum for Members meetings.....	27
3.7	Adjournment of Members meeting.....	28
3.8	Members resolutions.....	28
3.9	Vote of Members.....	29
3.10	Proxies.....	30
3.11	Conduct meetings.....	32
3.12	Agenda of General Meeting.....	32
3.13	Incorporation of further property into Development.....	32
<b>ARTICLE 4-DIRECTORS AND OFFICERS.....</b>		<b>33</b>
4.1	Composition of the Board of Directors.....	33
4.2	Authority of the Board of Directors.....	35
4.3	Board of Directors meetings.....	35
4.4	Indemnification of Directors.....	37
4.5	Officers and Committees.....	37
4.6	Accounting records.....	38
4.7	Annual Financial Statements, Audit and Independent Review.....	39
4.8	Directors compensation and financial assistance.....	40
4.9	Expenses incurred by Directors.....	40
4.10	Powers and functions of Directors.....	40
<b>ARTICLE 5-DISPUTE RESOLUTION.....</b>		<b>41</b>
5.1	Dispute resolution.....	41

ARTICLE 6- COMPANY RULES.....	43
ARTICLE 7-DOMICILIUM CITANDI ET EXECUTANDI.....	44
ARTICLE -8 NOTICES.....	44
ARTICLE 9- DEPOSIT ANF INVESTMENT FUNDS.....	45
ARTICLE 10-NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS.....	45
ARTICLE 11-APPOINTMENT OF DUTIES OF MANAGING AGENT.....	45
ARTICLE 12-RIGHTS RESERVED TO THE DEVELOPER.....	46
ARTICLE 13-RESTRICTION CONCERNING USE OF PORTIONS, COMMON PROPERTY AREAS.....	47
ANNEXURE A.....	50
KAART A.....	53
KAART B.....	54
ANNEXURE B Skedule instandhouding infrastruktuur.....	55

**A) OBJECTS AND POWERS OF THE COMPANY:**

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

1. The main object of the **Company** is to promote, protect and enhance the communal interest of all the **Members**, occupants and any other users of any of the **Portions** (or any consolidation or subdivision thereof) or **Common Property Areas**, comprising the **Development**, as are more fully defined in this **MOI**, hereunder.
2. It is the main business of the **Company**, ancillary to the main object, but not limited thereto, to:-
  - 2.1 to control the character and architectural standard of buildings and/or other structures to be erected in the **Development**;
  - 2.2 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, fencing, fauna and flora, telecommunication and intercom systems, if any, and security within the **Development**; and
  - 2.3 ensure that **Members** comply with any **Development Conditions** and to ensure that compliance with such conditions, restrictions or requirements are enforced;
  - 2.4 formulate and implement rules for the furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of **Members** and/or residents in the **Development** and without limitation thereto, for *inter alia* relating to security, access control, traversing rights, landscaping, vegetation, fauna and flora, road use, signage, architectural- and aesthetic guidelines, exterior finishes of buildings, fencing or walling, building activities, refuse control and -removal and rules concerning the use of **Common Property** and **Common Property Areas**;
  - 2.5 ensure that **Members** maintain their **Erven** in a clean and tidy condition;
  - 2.6 consent to consolidation, sub-division or re-zoning of any **Portion**;
  - 2.7 control access to and from the **Development**;
  - 2.8 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
  - 2.9 create rules and regulations concerning the conduct, rights and obligations of **Members** and the use of **Common Property** and **Erven** within the **Development** and rules for enforcement of any rules created 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 and/or powers as may be imposed by the **Members** upon the

**Directors**, in General Meeting, on the basis that all **Members** shall have equal rights and obligations, save to the extent that such rights and obligations are limited, extended and regulated in terms of this **MOI**;

- 2.10 in general, to do all things necessary for the furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the Company and/or for the advancement of the interests of members and/or residents in the **Development**;
- 2.11 enforce any Rules made and implement a system of fines and/or penalties in respect of non-compliance.

**B) ADOPTION OF MEMORANDUM OF INCORPORATION:**

The Company is a pre-existing Company and this Memorandum of Incorporation was formally adopted by special resolution of the members in General Meeting.

**C) DEFINITIONS:**

- (a) In this Memorandum of Incorporation –
  - (i) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
  - (ii) any word or expression which is defined in the **Act** and which is not otherwise defined in the **MOI** shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the **Company**;
  - (iii) a reference to any Act shall include any amendment thereto or Act in substitution thereof;
  - (iv) the headings to the clauses in this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of the provisions in this Memorandum of Incorporation;
- (b) The Schedule 1 Rules attached to this Memorandum are part of the Memorandum of Incorporation.
- (c) Unless the context otherwise requires, any words importing:-
  - (i) the singular number, shall include the plural number and vice versa;
  - (ii) the one gender shall include all genders; and
  - (iii) persons shall include partnerships, trusts and corporate bodies, and vice versa;
- (d) Reference to the **MOI** means this **Memorandum of Incorporation**, including all schedules and annexures hereto;
- (e) If the due date for performance of any obligations in terms of the **MOI** is a day which is not a **Business Day**, then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the succeeding **Business Day**.

- (f) Any reference to a notice shall be construed as a reference to a written notice and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the **Act** and/or the Regulations
- (g) The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- (h) Unless otherwise provided in this **MOI** or the **Act**:
  - (i) Defined terms appearing herein in upper case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the **Act**) be interpreted in accordance with the plain English meaning, and;
  - (ii) Any words and expressions defined in any Article shall, unless the application of such word or expression is specifically limited to that Article, bear the meaning assigned to such word;
  - (iii) Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- (i) The following words, expressions and abbreviations shall have the meanings hereinafter assigned to them:
  - (1) **"the Act"** : Means the Companies Act, 71 of 2008, as amended from time to time;
  - (2) **"Article"** : Means a reference to the paragraphs and clauses as set out in this **MOI**;
  - (3) **"Auditors"** : Means the **Company's** appointed Auditors from time to time;
  - (4) **"Authorized representative"** : Means a natural person, duly authorized by a **Legal Entity** to act as its representative at any General Meeting of the **Company**;
  - (5) **"Board"** : Means the **Board** of **Directors** of the **Company** and comprise all the **Directors** of the **Company** duly elected or appointed in terms of the **Act**;
  - (6) **"Business day"** : When, in this **Memorandum of Incorporation**, a particular number of 'business days' is provided for between the happening of one event and another, the number of days must be calculated by:

- (a) excluding the day on which the first such event occurs;
  - (b) including the day on or by which the second event is to occur; and
  - (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively;
- (7) **"Chairman"** : Means the **Chairman** of the **Board of Directors**, elected or appointed in accordance with this **Memorandum of Incorporation**, or if that expression is used with reference to a General Meeting or meeting of the **Directors** at which that person is not present or does not act as **Chairman**, the person acting as **Chairman** in accordance with the provisions of this Memorandum of Incorporation;
- (8) **"CIPC"** : Means the Companies and Intellectual Property Commission;
- (9) **"Commiphora Eco Park"** : Means the **Eco Park Development** on the **Property**;
- (10) **"Common Property"** : Refers to the **Common Property Areas** in the **Development**, including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the **Common Property Areas** and within servitude areas registered in favour of the **Company**, that are owned by the **Company** and for which the **Company** bears the responsibility to maintain and control, and includes **Portions 13, 16 and 28**, fencing, security controls, roads, dams, boreholes, airstrip, reservoirs, electrical reticulation, storm water reticulation and any equipment or amenities used ancillary to the **Common Property Areas**;
- (11) **"Common Property Areas"** : Means all those areas transferred to or registered in the name of the **Company** and located in the **Development**;
- (12) **"Company"** : Means the **Commiphora Home Owners Association (NPC)**, **Reg. No.: 2007/003695/08**;
- (13) **"Developer"** : Means **Erf 288 Ellisras (Pty) Ltd, Reg. No.: 1999/015699/07** and/or the successors-in-title of the **Developer**;



- (14) **“Development”** : Means the **Eco Park** developed on the **Property** by the **Developer**, as approved by the Lephalale Municipality and comprising of 55 (fifty five) **Portions**;
- Means the period from establishment of the **Development** until all **Portions** in the
- (15) **“Development period”** : **Development** have been sold by the **Developer**;
- (16) **“Directors”** : Means the **Directors** of the **Company** who shall, for the purposes of the **Act**, be the **Directors** of the **Company** appointed or elected in accordance with the provisions of this Memorandum of Incorporation;
- (17) **“Effective Date”** : Means the date upon which **CIPC** issues a Registration Certificate, or accepts this **MOI** or the date as recorded on the Notice of Incorporation, whichever event first occurs;
- (18) **“Erf” / “Erven”** : Means a designated area as approved by the **Company**, on a **Portion** and that is earmarked for residential purposes of  $\pm 1$  (one) hectare;
- (19) **“Financial year-end”** : Means the financial year of the **Company** which shall run from the first day of March in any year until the last day of February each year;
- (20) **“Land”** : Means any land comprising the **Development**;
- (21) **“Law”** : Means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- (22) **“Legal Entity”** : Means a company, close corporation, trust, statutory body, partnership or association of persons recognised by law as the subject of rights and duties and shall include such entity's successor-in-title and assigns or transferees;
- (23) **“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 this **Memorandum of Incorporation**;
- (24) **“Local Authority”** : Means the Lephalale Municipality or its successors-in-title having jurisdiction over the **Development**;
- (25) **“Managing Agent” / “MA”** : Means any **Person** 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, to manage and administer the affairs of the **Company** conferred upon such **Agent** by the **Board of Directors** of the **Company**, provided that, if at any time there is no formally appointed **Managing Agent** then any reference to the **Managing Agent** shall be a reference to the **Board**;
- (26) **“Member” / “Members”** : Means the **Developer**, the existing **members** listed as at the effective date or any **Person** who is reflected in the Deeds Registry of the relevant Deed Office as the registered **Owner** of an **Erf** in the **Development** and/or any **Person** who has successfully applied for membership of the **Company**;
- (27) **“Member’s Representative”** : Means the natural person who has been authorized by the **Member** as his/her/its representative in respect of an **Erf**;
- (28) **“MOI”** : Means the Memorandum of Incorporation of the **Company** in force from time to time;
- (29) **“Office”** : Means the registered office of the **Company** or such address as may be designated from time to time by the **Board**;
- (30) **“Ombud Service”** : Means the Ombud Service established in terms of the CSOS Act;
- (31) **“Park”** : Means the **Commiphora Eco Park Development**;
- (32) **“Person”** : Refers to a natural person and includes an authorized representative of a **Legal Entity**;
- (33) **“Portion”** : Means a Portion within the **Development**, as depicted on the General Plan and which is registered in the name of the **Company** or a **Member**, including the **Developer** as **Member**;

- (34) **“Private Roads”** : Means roads from the main access roads and secondary roads (access, service- and maintenance roads) as depicted on **Annexure “A”** (Map **“A” and “B”**) attached hereto;
- (35) **“Property”** : Means **Portion 5 of the Farm Vucht, 436, Registration Division L.Q., Limpopo Province, measuring 795,9251 hectares** and sub-divided into 55 (fifty five) **Portions** in accordance with General Plan **SG No. 433/2008**;
- (36) **“Resident(s)”** : Means a **Person** in occupation of an **Erf** in the **Development** on a temporary or permanent basis by agreement with consent from the **Member** of the relevant **Erf** or through his affiliation or association with such **Member**;
- (37) **“Roads”** : Means the internal main access road and secondary roads of the **Development**, as depicted on **Annexure “A”** (Map **“A” and “B”**) attached hereto, excluding **Private Roads**;
- (38) **“Rules”** : Means the rules made from time to time by the **Board** or the **Members** in General Meeting and which rules are enforceable upon all **Members** in order to achieve the objects of the **Company** and which rules shall include all matters authorized in terms of this **MOI**;
- (39) **“CSOS Act”** : Means the Community Schemes Ombud Service Act, Act No. 9 of 2011;
- (40) **“Sign”** : Includes the reproduction of a Signature by lithography, printing, electronic signature or any kind of stamp or any kind of stamp or any other mechanical process and “Signature” has the corresponding meaning;
- (41) **“Tenant”** : Means the **lessee** or sub-lessee of any **Erf**, situated within the **Development**. The term **Tenant** includes the lessee as well as all inhabitants of the **Erf** as a result of their relationship with the lessee;
- (42) **“Vice-Chairman”** : Means the **Vice-Chairman** of the **Board of Directors**;
- (43) **“Writing”** : Means written, printed, typewritten, lithographed, tele-faxed, electronically mailed or any other process producing words in a visible form.

**D) COMPANY ADMINISTRATION:**

**Article 1 – Incorporation and Nature of the Company**

**1.1 Incorporation**

- (1) The **Company** is a Non-Profit Company, as defined in the Companies Act, 2008.
- (2) The **Company** is incorporated in accordance with, and governed by-
  - (a) the unalterable provisions of the Companies Act, 2008 that are applicable to Non-Profit companies;
  - (b) 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
  - (c) the provisions of this Memorandum of Incorporation.
- (3) This Memorandum of Incorporation is in a form unique to the Company, as contemplated in Section 13(1)(a)(ii).

**1.2 Objects and Powers of the Company**

- (1) The Objects of the **Company** are as set out on the cover sheet (**Part A**) and, except to the extent necessarily implied by the stated objects, the **Company** has all of the legal powers and capacity of an individual and the purposes and powers of the **Company** are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii). This MOI does not limit the powers of the Company.
- (2) The **Company** is not subject to any provision contemplated in section 15(2)(b) or (c).
- (3) Upon dissolution of the **Company**, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, 2008, which holds that:-
  - (a) the net value of the **Company** must be distributed to one or more non-profit Companies, external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts – having objects similar to the **Company's** main object; and
  - (b) as determined:
    - (i) by majority resolution of the **Members**, immediately before the time of dissolution or, failing such determination;
    - (ii) by the Court.

- (4) The **Company** is not permitted to distribute its funds to any person or entity other than a Non-profit Company, Voluntary Association or Non-profit Trust, having objects similar to the **Company's** main object.
- (5) The **Company** must apply its assets and income, however derived, to advance its stated objects, as set out in this **MOI**.
- (6) The **Company** may, subject to Article 1.2(5) above, acquire and hold securities issued by a profit company, or directly or indirectly alone or with another person, carry on business, trade or undertaking consistent with or ancillary to its stated objects.

### 1.3 Memorandum of Incorporation and Company rules

- 1.3 (1) This Memorandum of Incorporation of the **Company** may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b), subject to the requirement that any alteration of the Memorandum of Incorporation or the Rules, made in terms of Section 17(1), shall be published to the **Members** of the **Company** by delivering a copy of the altered Memorandum of Incorporation or the Rules to each **Member** in the prescribed manner in terms of Article 8.
- 1.3 (2) The **Company's Board of Directors**, or the **Members** of the **Company** in General Meeting, may make rules for the **Company**, without limitation or restriction and only subject to the provisions of Article 1.3(5), as contemplated in section 15(3) – (5), which Rules shall include, but not be limited, to the following matters:
  - (a) the preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of fences and other improvements on **Erven**, whether upon or within the boundaries of any **Erven**, which may affect the general aesthetic appearance of the **Development**;
  - (b) the preservation of fauna and flora and for the control, management and use of the **Park** for game farming, the production of fodder for the game on the irrigation fields;
  - (c) rules concerning aesthetical design and guidelines in respect of all improvements to **Erven**;
  - (d) the right to prohibit, restrict or control the keeping of any animal/bird/reptile which they may regard as dangerous or likely to cause a nuisance and/or disturbance to other residents in the **Park**;
  - (e) the placing or affixing of ornamentation or embellishments to the outside of the buildings or on an **Erf** within the **Park**, including the power to remove, or order the removal, or to procure an order for removal of any such objects;
  - (f) the conduct of any person or persons within the **Park** for the preservation of peace and tranquillity and the prevention of nuisance of any nature to any **Member/Resident**, or to prevent any harm to the environment;

- (g) the furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of **Members** of the **Company**;
- (h) the enforcement of any of the Rules;
- (i) the operations and activities of all businesses whatsoever conducted on or from an **Erf** within the **Park**, including the methods of sale and advertising within the **Development**;
- (j) the maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable flora;
- (k) rules concerning construction and material specification and Architectural Guidelines and Rules and requirements of all improvements;
- (l) the use of any facilities or amenities within the **Park**;
- (m) the control and recycling of refuse, littering and other safety and anti-pollution related measures;
- (n) the maintenance and management of all **Common Property** infrastructure, including but not limited, to roads, electricity-, water- and sewage supply and management, irrigation, fencing, improvements of any nature and landscaping within the **Park** of any **Common Property** and/or **Erven**;
- (o) the right of reasonable access to any **Erf** in order to affect the maintenance of any matters referred to in this **MOI** or the rules;
- (p) the conditions for the use of all or certain parts of the **Common Property**, traversing rights and/or any restrictions thereto;
- (q) directives concerning processes to be followed regarding internal dispute resolution between **Members** and/or between **Members** and the **Company** concerning conduct and/or the use of **Common Property**;
- (r) rules that may become applicable or necessary from time to time to effectively discharge all the obligations of the **Company** as a juristic person and "responsible party" under the Protection of Personal Information Act No. 4 of 2013 and also the prescriptions of the Promotion of Access to Information Act No. 2 of 2000 for the proper protection, processing, control of and access to the personal information of its Members and any other data subjects that may come under its control.
- (s) in general, rules in order to maintain tranquillity and a peaceful living environment in the **Park**.

- 1.3 (3) For the enforcement of any Rules made by the **Directors** or the **Company**, the **Directors** shall be entitled to:
- (a) take such action, including proceedings in Court or applications to CSOS, as they may deem fit;
  - (b) implement a system of fines and penalties from time to time in order to deter any contravention of these Rules and to ensure the due enforcement of these Rules.
  - (c) Any fines or penalties imposed by the **Directors** are subject to adjustment and/or ratification by members in General Meeting.

**Procedure: Contravention of Rules**

- (d) In the event of contravention of any of these Rules, the following procedure will be followed and implemented by the **Directors/Managing Agent**:
  - (i) A letter of demand ("**the first demand**") will be sent to the **Member**, specifying the nature of the breach and demanding him to remedy the breach where it is capable of being remedied, within a period stipulated in terms of the letter of demand and which demand period shall be reasonable depending on the nature and/or urgency of the matter concerned;
  - (ii) Should the **Member** fail to adhere to the **first demand** and to remedy the breach or where a breach is not capable of being remedied (i.e. speeding, noise), then a letter of demand, incorporating a penalty ("**the final demand**") will be sent to the **Member**;
  - (iii) Should the **Member** fail to adhere to the **final demand** and to remedy the breach and/or to pay the fine then, unless written objection is received from the **Member** concerning the alleged contravention, the prescribed fine shall be implemented and levied against the **Member's** levy account and shall be enforceable, as if such fine constitutes a normal levy;
  - (iv) For any consecutive breach or transgression of the same rule within a period of 6 (six) months, it would not be necessary for the **Board** to issue a **first demand** and in such event a **final demand** (incorporating the penalty) shall be issued.
  - (v) If a **Member** disputes any breach, a Committee of 3 (three) **Directors** appointed by the **Chairman** shall on receipt of the **Member's** written objection convene a meeting with the **Member** within a period of 10 (ten) days to adjudicate upon the issue. The meeting shall take place at a venue and time, and in accordance with such procedure as the **Chairman** of the Committee shall direct, provided that the Rules of natural justice shall be observed and at which meeting the **Member** shall be entitled to address his objection and to call witnesses.
  - (vi) The decision of the **Board** shall be final unless objected to **in writing** within 10 (ten) days from notification of its decision;

- (vii) Should the **Member** refuse to accept the decision of the **Committee** on any matter, such dispute shall then be referred to the Ombud Service in terms of the **Community Schemes Ombud Service Act** and/or mediation and/or arbitration in terms of Article 5 of this **Memorandum of Incorporation**;
  - (viii) Any fine imposed upon any **Member** will be deemed to be a debt due by the **Member** to the **Company** and shall be recoverable by ordinary civil process.
- 1.3 (4) In the event of any breach of the Rules by a **Member's** lessee, **Resident**, occupant, visitor, employee, contractor, guest, member of his family or of his lessee or occupant, such breach shall be deemed to have been committed by the **Member** himself, but without prejudice to the rights of the **Company** to take or cause to be taken, such action against the person actually committing the breach, as the **Board** in their discretion may deem fit.

**Rules: Amendment, Alteration, Notice, Ratification**

- 1.3 (5) The **Board** must publish any notice or rules made in terms of section 15(3) – (5) by delivering a copy of those Rules to each **Member** by ordinary mail and/or telefax and/or e-mail. The Rules are available for inspection at the office of the **Company** at all times within business hours and a copy will be made available against payment of the reasonable fee as determined by the **Board** of **Directors** from time to time.
- 1.3 (6) 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 the notice and altered Memorandum of Incorporation or the Rules, to each **Member** in the prescribed manner in terms of Article 8.
- 1.3 (7.1) Unless objection in writing is received by **Members** entitled to exercise at least 10% of the voting rights at a General Meeting, to any amendment of the **Company Rules** within 10 (ten) days from publication of the **Company Rules**, the **Company Rules** shall become effective in accordance with Section 15(4) of the **Act**, that is the later of 10 (ten) **Business Days** after the Rule is filed or the date, if any, specified in the Rule. In the event of sufficient objection being received, the **Directors** may not submit the **Company Rules** for filing and must refer the **Company Rules** for consideration by the **Members** at the next General Meeting.
- 1.3 (7.2) Any notice of publication of the **Company Rules** shall include a prominent statement to the following effect: *"These Company rules shall take effect 10 (ten) business days after the Company Rules are filed, unless written objection is received by members entitled to exercise at least 10% of the voting rights at a General Meeting."*
- 1.3 (8) All Rules made by the **Board** of **Directors** must be ratified by the **Members** of the **Company** at the General Meeting following the publication of the Rules to the **Members**.
- 1.3 (9) Any Rules issued by the **Directors** with regards to conduct of **Members** or any other matter, in force on the date before this Memorandum of Incorporation as accepted by the **Members**, will remain of force and effect as if they were issued in terms of Article 1.3(2).



- 1.3 (10) The **Company** may itself, through the **Members** in General Meeting, make any Rules which the **Directors** may make in terms of the provisions of this **MOI** and may likewise vary or modify any Rules made by it or the **Directors** from time to time. Any Rules made by **Members** in General Meeting must be published in accordance with Section 15(3) and must be ratified at a subsequent General Meeting in terms of Section 15(4)(c), with or without amendment, or may be repealed at a subsequent General Meeting.

#### 1.4 Optional provisions of Companies Act, 2008 do not apply

Although the **Board** may elect to appoint an Auditor, such election will be voluntary and not subject to the provisions of Chapter 3 and specifically not subject to Sections 90, 91, 92 and 93 of the **Act**.

#### 1.5 Membership of the Company

##### 1.5 (1) Membership of the Company

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 subject to the provisions of and / or any exclusions as are contained in this **MOI**, has an equal vote in any matter to be decided by the **Members** of the **Company**.

##### 1.5 (2) Qualification for Membership of the Company

Membership of the **Company** shall be limited to:-

- 1.5 (2) (2.1) the incorporators of the **Company**; and
- 1.5 (2) (2.2) those persons (natural persons or juristic entities) who, at incorporation or thereafter are reflected in terms of the Deeds Registries Act No. 47 of 1937, in the records of the Deeds Office concerned as the registered **Owners** of **Portions** in the **Park**, notwithstanding the provisions of Article 1.5(3), and who will be bound by the provisions of the Companies Act, 2008, this Memorandum of Incorporation and any Rules made and incorporated hereunder;
- 1.5 (2) (2.3) Where any **Portion** in the **Park** is owned by more than one person, all the registered **Owners** of that **Portion** shall together be deemed to be one **Member** of the **Company** and have the rights and obligations of one **Member** of the **Company**; provided however that all **co-Owners** of a **Portion** shall be jointly and severally liable for the due performance of any obligations towards the **Company**.
- ##### 1.5 (3) Application for Membership of the Company
- 1.5 (3) (3.1) Subject to the provisions of Article 1.5(2.2), application for Membership of the **Company** shall be made to the **Board in writing**.
- 1.5 (3) (3.2) When application is made for membership of the **Company** by a person, such person shall declare himself bound by the terms and conditions of this Memorandum of Incorporation and any Rules made

thereunder, and such person shall be deemed to have acquainted himself with the terms and conditions thereof.

- 1.5 (3) 3.3) All **Members** who are **Members** of the **Company** at the time this Memorandum of Incorporation is adopted, shall remain **Members** of the **Company** by virtue of them being the registered **Owners** of **Portions** in the **Park**.

1.5 (4) **Initial or periodic costs for membership**

All **Members** shall be liable for payment of a monthly **Levy**, as may be determined by the **Board** or the **Members**, in terms of this Memorandum of Incorporation from time to time, as may be required for the fulfilment of the objectives of the **Company**.

1.5 (5) **Rights and obligations of Membership**

- 1.5 (5) (5.1) A **Member** of the **Company** shall remain a **Member** thereof until he ceases to be the registered **Owner**, as reflected in the relevant Deeds Office as an **Owner** of a **Portion** in the **Development** and a **Member** shall therefore not be entitled to resign as a **Member** of the **Company** unless he ceases to be an **Owner** of a **Portion** in the **Park**.

- 1.5 (5) (5.2) The rights and obligations of a **Member** shall not be transferable and every **Member** shall:

- (5.2.1) further to the best of his ability the objects and interests of the **Company**;
- (5.2.2) observe all Rules made by the **Company** or the **Directors**;
- (5.2.3) pay all **Levies** due by the **Member**, to the **Company**;
- (5.2.4) comply with Title Conditions applicable to the **Portion**;
- (5.2.5) comply with the Architectural Design Guidelines in force from time to time;
- (5.2.6) obtain the prior written approval of the **Board** of any building plans, including plans for exterior alterations to an existing building, before submission thereof for approval to any local or other authority, prior to commencement with any building activity;
- (5.2.7) not use his **Portion** or **Erf** or any part thereof, or any part of the **Common Property** or common services, or permit it to be used, in such a manner and/or for such purposes as shall be injurious to the reputation of the **Company**;
- (5.2.8) not contravene or permit the contravention of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of his **Erf** or of the **Common Property** or the carrying on of business, or so contravene or permit the contravention of the conditions of title applicable to his **Portion** or of any other **Portion** or the **Common Property**;

- (5.2.9) maintain his **Erf**, and any area allocated for his exclusive use, in a clean and tidy condition and adhere to the Architectural Design Guidelines, specific to each Body Corporate. Any deviations from these design guidelines, alterations and/or extensions to an **Erf** must be approved by the **Board**;
  - (5.2.10) allow any person so authorized by the **Board** to enter onto his **Erf** for purposes of inspecting any structure to be erected on his **Erf**. **Members** are responsible to allow entry to such persons for such purpose;
  - (5.2.11) not sub-divide or consolidate or allow the sub-division or consolidation of any **Portion** without approval by the **Members** by Special Resolution;
  - (5.2.12) abide by the Memorandum of Incorporation and adhere to the Rules proclaimed by the **Directors**, or **Members** in General Meeting, from time to time.
- 1.5 (5) (5.3) No **Member** shall let or otherwise part with occupation of his **Portion**, whether temporarily or otherwise, unless the occupant or tenant has agreed, **in writing**, to be bound by all the terms and conditions of this **MOI** and any **Rules** made thereunder, and such written undertaking is lodged with the **Board** and/or the **Managing Agent** prior to the proposed occupier taking occupation of the **Erf** or **Portion** in question.
- 1.5 (5) (5.4) Every **Member** shall, when he agrees to transfer ownership of his **Portion** in the **Development**, set it as a condition of the agreement of sale and transfer, that the new **Owner** shall apply for membership of the **Company** and be accepted as **Member** of the **Company** and therefore become a **Member** of this **Company**, accepting his/her/its obligations towards the **Company** as **Member**.
- 1.5 (5) (5.5) No **Member** of a **Portion** in the **Park** shall be entitled to transfer his **Portion** to any other person without the written consent of the **Company** first having been obtained under the hand of the **Board** or the **Managing Agent**, which consent will not be withheld unless:
  - (5.5.1) such **Member** is in arrears with any **Levies**, penalties, fines or interest or other payment due to the **Company** in terms of the Memorandum of Incorporation or the Rules or otherwise;
  - (5.5.2) such **Member** is in breach with any of his obligations towards the **Company** in terms of the Memorandum of Incorporation or the Rules and has failed to remedy such breach after having been called upon by the **Company**, **in writing**, to remedy such breach and he remains in breach, unless such breach is disputed **in writing** by the **Member** and forms the subject of a dispute resolution process;
  - (5.5.3) the prospective transferee has not applied for membership of the **Company**, where such application is required, or has not been accepted as **Member** of the **Company**.

- 1.5 (5) (5.6) No **Member** of a **Portion** in the **Park** shall be entitled to pass transfer thereof to any other person until the **Company**, under the hand of the **Board** or the **Managing Agent**, has certified by way of a clearance certificate that such **Member** as at date of transfer has complied with all his/her/its financial and other obligations towards the **Company**.
- 1.5 (5) (5.7) The provisions of Article 1.5(5.5) and (5.6) shall apply *mutatis mutandis* to any alienation of an undivided share in a **Portion** in the **Park**, i.e. disposal of an undivided share in the **Portion** by a co-**Owner**.
- 1.5 (5) (5.8) The provisions of Article 1.5(5.5) and (5.6) shall apply *mutatis mutandis* to any material change in the beneficial ownership or control in the **Owner**, where the **Owner** is an entity such as a company, close corporation or trust.
- 1.5 (5) (5.9) The **Directors** of the **Company** may impose an additional, reasonable fee upon the **Members** of the **Company** for the issuing of the Clearance Certificate as referred to in Article 1.5(5.6). The said fee will be determined by the **Directors** or the **Managing Agent** from time to time and will be subject to ratification/amendment/repeal by the **Members** in General Meeting.
- 1.5 (5) (5.10) **Members** shall have the rights prescribed by the **Act**, the Memorandum of Incorporation and any Rules made thereunder, which shall *inter alia* include the following rights:
- (5.10.1) the right to nominate and elect **Directors** and/or to vote for their removal from office;
  - (5.10.2) the right to have access to the **Company** records in accordance with the provisions of Section 26 of the **Act**;
  - (5.10.3) the right to receive notice of, attend, speak and vote at General Meetings of the **Company**;
  - (5.10.4) the right to have access to the Financial Statements or related information of the **Company**;
  - (5.10.5) the right to vote at all meetings of the **Company**, provided that they are in good standing (i.e. have paid all levies and/or other amounts due to the **Company** and are not in breach of any of the provisions of the **MOI** and/or Rules).
- 1.5 (5) (5.11) A **Member/(s)** shall not have the right to attend, unless authorised by the presiding Chairman in his/her sole discretion, or to vote or to speak at any General Meeting, or as contemplated in terms of the provisions of Section 60 of the **Act**, if:
- (5.11.1) such **Member** is in arrears with any **Levies**, service costs, contributions, penalties, fines, legal costs or interest, or any other payment due to the **Company** in terms of this Memorandum of Incorporation or the Rules or otherwise;
  - (5.11.2) such **Member** is in breach (other than payment of levies) with any of his obligations towards the **Company** in terms of this Memorandum of Incorporation or the Rules

and has failed to remedy such breach after having been called upon by the **Company, in writing**, to remedy such breach and he remains in breach, unless such breach is disputed **in writing** by the **Member** and forms the subject of a dispute resolution process.

- 1.5 (5) (5.12) Every **Member**, if so required by the **Company**, shall sign all documents required to create a condition in the Title Deed of his **Portion**, which will ensure that the **Portion** may not be sold or transferred without the buyer or transferee binding himself to become a **Member** of the **Company** and without a certificate as contemplated in Article 1.5(5.6). The condition referred to shall be worded as near as possible to the following format:

"Commiphora Home Owners Association (NPC):

- (1) *This property is subject to the following condition imposed by the transferor in favour of the **Commiphora Home Owners Association (NPC)**, a Non-Profit Company as referred to in the Companies Act, 2008:*

- 1.1 *The transferee, their successors in title or assigns/(his heirs, executors, administrators or assigns) are compelled to be a member of the abovementioned Home Owners Association from the date of registration of the **Portion** into his/her/their name.*
- 1.2 *The transferee, their successors in title or assigns/(his heirs, executors, administrators or assigns) shall not be entitled to transfer the **Portion** in any manner, without obtaining the prior written permission of the **Commiphora Home Owners Association (NPC)** and further subject to the condition that the purchaser have accepted in writing (in terms of the Purchase and Sale Agreement, a letter or other document), to become a member of the said **Commiphora Home Owners Association (NPC)** on the date of registration of the property into his name and that the purchaser have accepted to abide by the provisions of the MOI and Rules of the Company.*
- 1.3 *The Purchaser undertakes to apply in writing, for membership of the **Commiphora Home Owners Association (NPC)** (hereinafter referred to as "the **Company**") and confirms and accepts that, irrespective of such written application, his ownership of the **Portion** shall be subject to the Memorandum of Incorporation of the **Company** and any Rules made by the **Company**. A copy of the Memorandum of Incorporation of the **Company** and Rules made thereunder are available for inspection with the agent.*
- 1.4 *The Purchaser will remain a Member of the **Company** and be bound to its provisions for as long as he remains the registered **Owner** of a **Portion** in the **Development**.*
- 1.5 *Should the Purchaser sell his **Portion**, he will be obliged to inform the new Purchaser of these provisions and the new Purchaser's obligation in terms of these provisions.*

1.6 The Purchaser shall require the written consent of the **Company** to transfer the **Portion** to a third party, which consent will not unreasonably be withheld.

1.7 As from date of transfer, the Purchaser shall be liable for payment to the **Company** of a levy as determined by the **Company** and which levy shall be utilised inter alia towards maintenance of the **Common Property** belonging to the **Company**, the security fence and systems as well as payment of disbursements relating to security matters and for such other purposes as the Constitutional Documents of the **Company** may prescribe."

**1.5 (5) (5.13) Binding Nature**

(5.13.1) The provisions of this Memorandum of Incorporation and Rules, and the duties of a member in relation to the use and occupation of his **Portion** shall be binding on the member of any **Portion** and any lessee or other resident of any **Portion** and it shall be the duty of the member to ensure compliance with this Memorandum of Incorporation and Rules upon such lessee or resident, including visitors, contractors, employees, guests, any member of his family or that of his lessee or his occupant;

(5.13.2) It shall be the duty of any member to furnish a copy of this Memorandum of Incorporation and Rules to any lessee or other occupant of his **Portion** and to refer in any Lease Agreement to the binding nature of this Memorandum of Incorporation and Rules upon such lessee or occupant.

**1.5 (5) (5.14)** If a **Member** ceases to be a **Member** of the **Company** as a result of the transfer of a **Portion** to another person, such **Member** shall not be released from any liability to the **Company** in respect of any debt or other obligation, the cause of which arose prior to the transfer of such **Portion**.

**1.5 (5) (5.15)** Where a **Portion** is owned by more than 1 (one) person, all the registered **Owners** of that **Portion** shall together be deemed to be collectively 1 (one) **Member** of the **Company** and have the rights and obligations of 1 (one) **Member** of the **Company**; provided however that all **co-Owners** of any **Portion** shall be jointly and severally liable for the due performance of any obligation to the **Company**.

**1.5 (5) (5.16)** The rights and obligations of a **Member** shall not be capable of being ceded and/or assigned, in whole or in part, nor otherwise be transferable.

**1.5 (5) (5.17)** Members shall not interfere with, nor give instructions to any officers, employees, agents or contractors of the **Company** and **Managing Agent**, and any complaints shall be addressed **in writing** to the **Directors** and/or **Managing Agent**. The **Directors** may request that any complaint be dealt with at the forthcoming Annual General Meeting of the **Company**.

**1.5 (6) Levies**

- 1.5 (6) (6.1)** In the determination of **Levies** payable by the **Members** the following principles shall apply:
- (6.1.1)** The **Board** shall collect **Levies** raised in accordance with the annual budget, in equal shares upon members;
- (6.1.2)** The **Directors** may in any case where they consider it equitable to do so, assign to any **Member** any greater or lesser share of the costs as may be reasonable in the circumstances.
- 1.5 (6) (6.2)** The **Directors** may from time to time determine the **Levies** payable by the **Members** for the purpose of meeting all the expenses which the **Company** has incurred, or to which the **Directors** reasonably anticipate the **Company** will be put in the attainment of its objects or the pursuit of its business.
- 1.5 (6) (6.3)** The **Directors** shall not less than 30 (thirty) days prior to the end of each financial year or so soon thereafter as is reasonably possible, publish a notice indicating an estimate ("**estimate**"), in reasonable detail, of the amount which shall be required by the **Company** to meet the expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The **Directors** may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual or recurring nature (reserve fund).
- 1.5 (6) (6.4)** Each notice to each **Member** shall specify the contribution (levy) in accordance with the **estimate**, payable by that **Member** to such expenses and reserve fund.
- 1.5 (6) (6.5)** The annual levy for the ensuing financial year or any special- or other levy to be implemented shall become due and payable on the passing of a **Board** Resolution to that effect and the publication thereof as envisaged in Article 1.3(5).
- 1.5 (6) (6.6)** The annual levy shall be payable in equal monthly instalments due in advance on the 1<sup>st</sup> day of each and every month of each financial year, provided that **Members** in General Meeting may give directions to the **Directors** to deviate from this arrangement.
- 1.5 (6) (6.7)** Any special- or other levy shall be payable in a form that the **Directors** may direct, subject to any direction of **Members** in General Meeting by a mere majority and/or in terms of such directions as the **Members** may impose at any General Meeting and failing any direction, shall be paid to the **Company** by Electronic Funds Transfer to the **Company's** nominated bank account.
- 1.5 (6) (6.8)** In the event of the **Directors** for any reason whatsoever failing to prepare and timeously serve the notice referred to in Article 1.5(6.3) above, every **Member** shall until served with such notice, continue to

pay the levy previously imposed and shall after service of such notice pay the levy specified therein. A **Member** shall pay any deficit (comprising the difference between the levies payable during the previous financial year and the new levy imposed, if any) within 30 (thirty) days of receipt of the notice specifying the new contribution payable by the **Member**.

- 1.5 (6) (6.9) Upon the change of ownership of a **Portion**, the successor in title becomes liable for the pro-rata payment of contributions from the date of change of such ownership.
- 1.5 (6) (6.10) The **Directors** may from time to time impose special **Levies** upon the **Members** in respect of all expenses as are mentioned in Article 1.5(6)(6.1) which are not included in any estimate made in terms of Article 1.5(6)(6.2).
- 1.5 (6) (6.11) All **Levies** and any special levies referred to in Article 1.5(6.1) and (6.7), becomes due on the passing of a **Directors'** Resolution to that effect and may be recovered by the **Company** by action in any competent Court having jurisdiction or by application to CSOS, from the **Member(s)** who were **Owner(s)** of the **Erf/Erven** at the time when such Resolution was passed.
- 1.5 (6) (6.12) The **Directors** or the **Members** in General Meeting shall be empowered in addition to such other rights as the **Company** may have in law against its **Members** to determine the rate of interest from time to time chargeable upon arrear **Levies**. The interest rate shall not exceed any limitation as may be prescribed from time to time in terms of the National Credit Act, No. 34 of 2005, in which event the interest rate shall be limited to the maximum interest rate allowed. Interest shall be calculated monthly in arrears and compounded.
- 1.5 (6) (6.13) The obligation of a **Member** to pay a levy and interest shall cease upon his ceasing to be a **Member** without prejudice to the **Company's** right to recover arrear **Levies** and interest and penalties, fines and other amounts due to the **Company**. No **Levies** (excluding **Levies** paid in advance), interest, penalties, fines or other amounts paid by a **Member** shall under any circumstances be repayable by the **Company** upon his ceasing to be a **Member**. A **Member's** successor in title to a **Portion** shall be liable for payment of **Levies** and/or special levies that are still payable in respect of the **Portion**, as from the date upon which he becomes the registered **Owner** of the **Portion** as reflected in the Deeds Registry.
- 1.5 (6) (6.14) No **Portion** registered in a **Member's** name shall be capable of being transferred without a Clearance Certificate as referred to in Article 1.5(5)(5.6) first being obtained from the **Company**, confirming that all **Levies** (including payment of 3 (three) months' levies in advance or as may be determined by the **Directors** from time to time), penalties, fines or other amounts due and interest have been paid up to and including date of registration of transfer thereof.
- 1.5 (6) (6.15) A **Member** shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the **Company** in obtaining the recovery of arrear **Levies**, penalties, fines, interest or any other arrear amounts due



and owing by such **Owner** to the **Company** or in enforcing compliance with the **Act**, the provisions of this Memorandum of Incorporation, or the Rules.

- 1.5 (6) (6.16) The **Directors** may from time to time determine a charge to be levied against **Members** in arrears, as an administration charge payable to the **Company** or to the **Managing Agent**.
- 1.5 (6) (6.17) Interest imposed by the **Directors** shall be subject to review by the **Members** in General Meeting and shall not exceed any limitations set by legislation.
- 1.5 (6) (6.18) All payments made by a **Member** and received by the **Company**, shall be allocated firstly towards interest, legal costs and thereafter towards capital. The **Board** reserves the right to allocate payments as they deem fit in the absence of an express allocation by the **Member**. In the absence of an express allocation by the **Board** or the **Member**, all payments will be allocated to the debt newest in time.
- 1.5 (6) (6.19) Notwithstanding the provisions of sub-Article (1.5)(6.13), should a **Member** fail to effect payment of contributions (annual and/or special) levied in terms of this **MOI** on due date, the full outstanding balance remaining unpaid for the financial year shall become due and payable without notice and/or demand but the **Board** may at their sole election and discretion agree to a re-payment arrangement with the **Member** concerned and subject to such conditions as the **Board** may impose. The **Board**, in managing the financial obligations and cash flow requirements of the **Company**, may at their sole election and discretion agree to reduce, vary or discount the full outstanding balance remaining unpaid by a **Member**, subject to such conditions as the **Board** may impose and subject further to the ratification by the **Members**, with or without amendment, at the next General Meeting of the **Company** following such determination.
- 1.5 (6) (6.20) The "estimate" of levies provided for shall include provision for the Community Schemes Ombud Service levy for which a **Member** becomes liable from time to time in terms of the **Community Schemes Ombud Service Act** Regulations.

## 1.6 The financial year end

The financial year end of the **Company** shall be the last day of February.

## Article 2 – Rights of Members

### 2.1 Members' right to Information

A **Member** has the right to information as set out in Section 26(1) of the **Act**. A **Member** shall be entitled to the information as recorded in the **Member's** Register. Unless authorised by a **Member**, the **Company** shall not be entitled to disclose any further contact details.

## **2.2 Authority of proxy to delegate**

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

## **2.3 Requirements to deliver proxy instrument to the Company**

The requirement that a **Member** must deliver to the **Company** a copy of the instrument appointing a proxy before that proxy may exercise the **Member's** rights at a **Members** meeting, as set out in section 58(3)(c) is not varied.

## **2.4 Deliberative authority of proxy**

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

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

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

# **Article 3 – Members Meetings**

## **3.1 Requirement to hold meetings**

- (1) The **Company** shall within 6 (six) months after the end of each financial year hold a General Meeting in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices, in terms of Article 3.4 below, calling such meeting;
- (2) The abovementioned General Meeting shall be called the "Annual General Meeting" and all other General Meetings shall be called "Special General Meetings".

## **3.2 Members' right to requisition a meeting**

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

### 3.3 Location of Members meetings

The authority of the **Company's Board of Directors** to determine the location of any **Members** meeting, and the authority of the **Company** to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9) is limited or restricted to the extent that all **Members'** meetings shall be convened to take place at the **Park** or at Lephalale.

### 3.4 Notice of Members meetings

- (1) The minimum number of days for the **Company** to deliver a notice of a **Members** meeting to the **Members**, as required by section 62 is as provided for in section 62(1), being at least 15 (fifteen) **Business Days**.
- (2) The notice convening each meeting of the **Company** shall specify the place, the date and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.
- (3) The notice convening the meeting shall contain adequate motivation and information of any business and especially concerning special business to be conducted at the meeting, to enable the **Members** to make an informed decision.

### 3.5 Electronic participation in Members meetings

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

### 3.6 Quorum for Members meetings

- (1) The quorum requirement for a Members Meeting to begin, or for a matter to be considered, is 25% (twenty five percent) of the votes entitled to be exercised by the **Members** present in person or by proxy. Notwithstanding the quorum requirement, a **Members'** Meeting shall not begin unless at least 3 (three) **Members** are present in person.
- (2) The time periods allowed in section 64(4) and (5) apply to the **Company**, subject to the following variations:
  - (a) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) [25% requirement] or 64(3) [at least 3 (three) **Members** present in person], if applicable, for that meeting to begin have not been satisfied, the meeting is

postponed without motion, vote or further notice, for 1 (one) week, at the same place and time;

- (b) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for consideration of a **particular matter** to begin have not been satisfied, the meeting is adjourned for 1 (one) week at the same place and time without motion or vote, provided that if the date to which the meeting is adjourned is not a business day, the meeting is adjourned to the first next business day thereafter.
  - (c) The person intended to preside at a meeting that cannot begin due to the operation of sub-section 64(1)(a) or 64(3), where a quorum is not present, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub-section 64(5).
- (3) The authority of a meeting to continue to consider a matter after the quorum has been met, so long as at least 3 (three) **Members** remain present (in person), is not limited or restricted by this Memorandum of Incorporation.

### 3.7 Adjournment of Members meetings

- (1) If a quorum has not been reached within 15 (fifteen) minutes after the appointed time for the meeting to begin or such extended period as the **Chairman** directed, the **Chairman** appointed for the meeting will be authorized to adjourn the meeting of the **Members** for 1 (one) week. Adjournment will take place in accordance with the provisions of Sections 64(4)
- (2) The maximum period allowable for an adjournment of a **Members** meeting is 15 (fifteen) **Business Days** after the date upon which the adjournment occurred.
- (3) No business shall be transacted at an adjourned meeting, other than the business which failed to be transacted at the meeting from which the adjournment took place.
- (4) Notwithstanding any quorum requirement, the **Members** present at an adjourned meeting, shall form a quorum provided that at least 3 (three) **Members** are present in person.

### 3.8 Members resolutions

- (1) For any ordinary resolution to be adopted at a **Members** meeting, it must be supported by at least 50% (fifty percent) plus 1 vote of the **Members** who voted on the resolution, as stipulated in the provisions of section 65(7).
- (2) 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).
- (3) A special resolution adopted at a **Members** meeting is not required for a matter to be determined by the **Company**, except those matters set out in section 65(11) and the following matters:

- (a) to amend the **Company's** Memorandum of Incorporation to the extent required by Section 16(1)(c);
- (b) to approve the voluntary winding-up in the circumstances contemplated in Section 80(1);
- (c) to approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the **Act**, subject to Schedule 1 of the **Act**;
- (d) to ratify actions by the **Company** or **Directors** in excess of their authority, as contemplated in Section 20(2);
- (e) to authorize the **Board** to grant financial assistance in the circumstances contemplated in Section 44(3)(a)(ii) or 45(3)(a)(ii);
- (f) to authorize the basis for compensation of **Directors** of the **Company**, as required by Section 66(9).

### 3.9 Votes of Members

- (1) During the **Development Period**, the **Developer** shall have 1 (one) vote for each **Portion** registered in the name of the **Developer** or retained by the **Developer** in terms of a Consolidated Title;
- (2) If a **Portion** is registered in the name of more than one person, then all such **co-Owners** shall jointly have 1 (one) vote;
- (3) Save as expressly provided for in this **MOI**, no person other than a **Member**, duly registered and who has paid every levy or other sum due and payable to the **Company** in respect of or arising out of his membership, and who has complied with their obligations as are envisaged in Article 1.5(5), shall be entitled to be present or to speak or to vote on any question, either personally or by proxy, at any General Meeting, provided that the Chairman of the meeting may in his sole discretion allow a person, not being a member or not eligible to speak or to vote, to attend the meeting;
- (4) With reference to section 63(4) and section 63(5) of the **Act**, at any General Meeting a Resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll (before or in the declaration of the result of a show of hands) is demanded by the **Chairman** or **Members**. A declaration by the **Chairman** that a Resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or has been declined, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or the proportion of the votes recorded in favour or against such Resolution. The demand for a poll may be withdrawn.
- (5) If a poll is duly demanded, it shall be taken in such manner as the **Chairman** directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded. Two (2) **Members** shall be elected to determine the result of the poll.
- (6) In the case of an equality of votes, for and against any Resolution, whether on a show of hands or on a poll, the Resolution shall be deemed to have been defeated.

- (7) Every Resolution proposed for adoption by a General Meeting shall be seconded at the meeting and if not so seconded shall be deemed not to have been proposed.
- (8) Unless any **Member** present in person or by proxy at a General Meeting shall, before closure of the meeting, have objected to any declaration made by the **Chairman** of the meeting as to the result of any voting at the meeting, whether by a show of hands or otherwise, or validity of the procedure at such meeting, such declaration by the **Chairman** shall be deemed to be a true and correct statement of the voting, and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated, with or without record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.

### 3.10 Proxies

- (1) A **Member** may be represented at a General Meeting by a proxy, who need not be a **Member**.
- (2) The instrument appointing a proxy shall be **in writing**, duly signed by the **Member** concerned (or his appointed agent, duly authorized **in writing**) and shall be substantially in the form as set out in Article 3.10(5).
- (3) In accordance with the provisions of Article 2.3, a copy of the instrument appointing a proxy must be delivered to the **Company** or the **Managing Agent** (if any) at any time before the proxy exercises any rights of the **Member**.
- (4) Unless specifically specified in the proxy itself, no instrument appointing a proxy shall be valid for any meetings of the **Company**, other than the meeting for which a proxy was first appointed or in respect of any adjournment of that meeting.
- (5) The instrument appointing a proxy shall include a copy of the Identification document of the **Member** concerned (or of his appointed agent, duly authorized in writing) and where the **Member** is not a natural person, the instrument shall include a resolution of the entity authorizing the signatory, being the resolution of a Trust/CC/Company.
- (6) A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no notice of the death or insolvency, or revocation shall have been received by the **Company** and the proxy at any time prior to the vote been taken in respect of which the proxy exercises such a vote.
- (7) In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form be substantially in accordance with the following format and that the instructions to the proxy holder are indicated in an unambiguous manner:

**COMMIPHORA HOME OWNERS ASSOCIATION (NPC)**

**PROXY FORM**

I/We, \_\_\_\_\_, the undersigned, the registered **Owner** of Stand/Erf number \_\_\_\_\_, or duly authorized by the registered **Owner**, namely: \_\_\_\_\_, being a Member of the Company, do hereby appoint:

\_\_\_\_\_ of \_\_\_\_\_

Or failing him/her: \_\_\_\_\_ of \_\_\_\_\_

Or failing him/her: \_\_\_\_\_ of \_\_\_\_\_

as my proxy to vote for me on my; behalf at the General Meeting of the Association to be held on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ and at any adjournment thereof as follows:

1. Motion to \_\_\_\_\_  
(See attached draft resolution, if relevant)  
In favour ☐ Against ☐ Abstain ☐
2. Motion to \_\_\_\_\_  
(See attached draft resolution, if relevant)  
In favour ☐ Against ☐ Abstain ☐
3. Motion to \_\_\_\_\_  
(See attached draft resolution, if relevant)  
In favour ☐ Against ☐ Abstain ☐

Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification ☐ Without modification ☐

***If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.***

Signed on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

**SIGNATURE:** \_\_\_\_\_

**Note:**

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. A proxy need not be a member of the Company.
2. Documentary evidence establishing the authority of a person signing this proxy in a representative capacity (i.e. Company / Close Corporation / Trust, etc.) must be attached to this proxy instrument, unless previously recorded by the Company. If signed under Power of Attorney, such Power of Attorney must accompany this proxy form.
3. The proxy must be lodged with the Chairperson before the holder thereof can exercise any rights of the member at the relevant meeting. The holder of the proxy is referred to the rights contained in Section 58 of the Companies Act.

### 3.11 Conduct of Meetings

- (1) The **Members** may, from time to time, at the Annual General Meeting, by way of an Ordinary Resolution, determine the meeting procedures which shall be properly documented as such and which shall be strictly complied with at all General Meetings.
- (2) The **Chairperson** and **Directors** shall acquaint themselves with the meeting procedures and the **Chairperson** of the relevant meeting shall be entitled to rule on any technical irregularity regarding the conduct of any General Meeting, which ruling shall be final and binding upon the **Directors** and **Members**.

### 3.12 Agenda of General Meetings

In addition to any other matters required by the **Act** or in terms of this **Memorandum of Incorporation**, 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 Chairman's Report;
- (2) The election of **Directors** in addition to the nominated **Directors**;
- (3) The consideration of any other matters raised at the meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;
- (4) The consideration of the accountant/auditors of the **Company** for the ensuing financial year;
- (5) The consideration of the report of the auditors;
- (6) The ratification/amendment/repeal of any Rules made and published by the **Board** or by the **Members** at a previous General Meeting;
- (7) Confirmation of the estimate of income and expenditure and determination of levies payable by **Members**, as determined by the **Directors**;
- (8) The appointment of an auditor for the ensuing financial year;
- (9) The giving of directives or imposing of restrictions concerning activities of the **Board**.

### 3.13 Incorporation of further property into the Development

Further property(ies) may only be incorporated into the **Development** and/or the boundaries of the **Development** may only be extended by a Special Resolution to that effect, by the **Members** in General Meeting.



#### **Article 4 – Directors and Officers**

##### **4.1 Composition of the Board of Directors**

- 4.1** (1) Subject to the provisions of Article 4.1(8) the **Board of Directors** of the **Company** comprises the nominated and elected **Directors**, their alternate **Directors** (if appointed) and appointed **Directors**, each of whom:
- (a) is to be appointed and / or elected / nominated in the following manner:
    - (i) There shall be a **Board of Directors** of the **Company** which shall consist of not less than 3 (three) **Directors** and not more than 5 (five) **Directors** and subject to the provisions of Article 4.1(8) the **Board of Directors** of the **Company** shall comprise of appointed and elected **Directors**. The **Developer** shall be entitled to appoint 3 (three) **Directors** to the **Board**;
    - (ii) If a **Members** meeting for the election of **Directors** is not convened before the expiry of the 1 (one) year term within which a Director serves, then and in that event, such Director(s) shall continue to hold office from the date of his/her/their appointment until the next Annual General Meeting following such appointment and at which meeting each Director shall be deemed to have retired from office but will be eligible for re-election to the **Board of Directors** at such meeting;
    - (iii) Nominations for election of **Directors** must be delivered to the **Company** or to any other person acting on behalf of the **Company** (including a **Board** member or duly appointed **Managing Agent**) at any time before commencement of the proceedings or meeting at which the nomination is to be considered;
    - (iv) Upon any vacancy in respect of an elected **Director** occurring in the **Board of Directors** prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by the **Chairman** of the **Board of Directors** for the time being and in his absence or inability, the **Vice-Chairman**;
    - (v) Within 14 (fourteen) days of the holding of each Annual General Meeting, the **Board of Directors** shall meet and shall elect from their own numbers, the **Chairman** and the **Vice-Chairman**, who shall hold their respective offices until the Annual General Meeting held next after their said appointments, provided that the office of the **Chairman** or **Vice-Chairman** shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason, provided further that, during the **Development Period**, a **Director** appointed by the **Developer** shall act as **Chairman** of the **Board**;

- (vi) In compliance with Schedule 1 item 5(b), at least a third of the **Directors** to be elected, are to be elected annually; and
  - (b) shall serve for a term of 1 (one) year;
  - (d) shall be an individual but need not himself/herself be a **Member** of the **Company**.
- 4.1** (2) In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the **Company**, a person must satisfy the following additional eligibility requirements and qualifications and he must therefore:
- (a) be a paid-up **Member**, or a representative of a paid-up **Member** where the **Member** is a legal entity, and/or the spouse of a paid-up **Member**, of the **Company** at the time of appointment as Director;
  - (b) not be in breach of any of his/her obligations as a **Member** of the **Company**, as stipulated in the **MOI** or the **Rules**;
  - (c) not be disqualified from acting as Director of the **Company** in terms of the Companies Act, 2008;
  - (d) not be a nominee or representative of a **Member**, where the **Member** is a legal entity and such legal entity is in breach of any of its obligations in terms of the **MOI** or the **Rules**;
  - (e) not be an employee of the **Company** and/or the **Managing Agent** or a **Member/Director** of the **Managing Agent** or any of its employees.
- 4.1** (3) Each **appointed** (not elected) Director of the **Company** serves for an indefinite term, until substituted by the person or entity that made his appointment or until his removal in terms of the provisions of Article 4.1 (4)(a),(b),(c),(d), (e) or (g).
- 4.1** (4) Subject to the provisions of Article 4.1 (3) above, a **Director** shall be deemed to have vacated his office as such when:
- (a) he resigns his office by notice in writing to the **Company**;
  - (b) he has been disqualified to act as a **Director** in terms of the provisions of Sections 69 of the **Act**;
  - (c) he has been discharged from office under circumstances in terms of Section 71 of the **Act**;
  - (d) he becomes of unsound mind;
  - (e) he is absent from more than 2 (two) consecutive meetings of the **Directors** without leave having been granted to him and if the **Board** so resolve;
  - (f) his removal has been approved by ordinary resolution of the **Members** in General Meeting.
  - (g) he is suspended by the **Board** due to disciplinary procedures pending or to be initiated, notwithstanding the fact that the cause of such disciplinary action is disputed by the Director concerned.

- 4.1 (5) A **Director** shall not be entitled to appoint an alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfil his functions and duties, save as provided in terms of the provisions of the **MOI**.
- 4.1 (6) A **Director** may not otherwise delegate or sub-delegate any of his obligations, save as approved by the **Board**.
- 4.1 (7) During the **Development Period**, the **Developer** shall be entitled to appoint 3 (three) **Directors** to the **Board**.
- 4.1 (8) A person becomes entitled to serve as a **Director** of the **Company** when he has been duly elected and/or appointed, and has delivered to the **Company**, a written consent to serve as its **Director**.

#### 4.2 Authority of the Board of Directors

The authority of the **Company's Board of Directors** to manage and direct the business and affairs of the **Company** is not limited or restricted by this **Memorandum of Incorporation** but subject only to any restriction and direction given at a General Meeting of the **Company**.

#### 4.3 Board of Directors meetings

- 4.3 (1) The authority of the **Company's Board of Directors** to consider a matter other than at a meeting, as set out in section 74 (round-robin resolution) is not limited or restricted by this Memorandum of Incorporation and may instead be adopted by written consent of a majority of the **Directors** given in person, or by electronic communication, provided that each **Director** has received notice of the matter to be decided.
- 4.3 (2) The right of the **Company's Directors** to requisition a meeting of the **Board**, as set out in section 73(1), may be exercised by at least 25% (twenty five percent) of the **Directors**, despite the provisions of that section.
- 4.3 (3) The authority of the **Company's Board of Directors** to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3) is not limited or restricted by this Memorandum of Incorporation.
- 4.3 (4) The authority of the **Company's Board of Directors** to determine the manner and form of providing notice of its meetings, as set out in section 73(4) is not limited or restricted by this Memorandum of Incorporation, subject to the following provision:
- (a) A **Member** shall be entitled to attend and speak at any meeting of the **Directors** if such **Member** is invited to the **Board Meeting**, but shall not in his or her capacity as such be entitled to vote thereat.
- 4.3 (5) The authority of the **Company's Board of Directors** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5) is not limited or restricted by this Memorandum of Incorporation.

- 4.3** (6) The quorum requirement for a **Directors** meeting to begin is the majority the **Directors** and the voting rights at such a meeting and the requirements for approval of a resolution at such meeting, is 51% (fifty one percent), as set out in Section 73(5).
- 4.3** (7) Each **Director** has 1 (one) vote on a matter before the **Board**.
- 4.3** (8) A simple majority of the votes cast on a Resolution is sufficient to approve a Resolution of the **Board of Directors**.
- 4.3** (9) The **Directors** may meet to attend to their business, adjourn and otherwise regulate their meetings, as they think fit, subject to the provisions of the **MOI**.
- 4.3** (10) Where a **Director** has a personal interest or a conflict of interest in respect of any matter before the **Board**, the said **Director** shall be entitled to attend any meeting of the **Board** at which such matter is discussed or decided, however, such **Director** shall not be entitled to vote in respect of the matter in which he has a personal interest or conflict of interest, and shall recuse himself from any deliberations on the issue.
- 4.3** (11) Any **Director** who has such a personal interest or conflict of interest regarding any matter as mentioned in Article 4.3(10), shall be obliged to disclose such personal interest or conflict of interest to the **Board** forthwith.
- 4.3** (12) Should there be an equality of votes for or against any Resolution of the **Board**, the Resolution shall be deemed to have been defeated.
- 4.3** (13) The **Directors** shall cause the Minutes of each **Board** Meeting to be kept in accordance with Sections 73(6) and (7) of the **Act**, which Minutes shall be reduced to writing and circulated within 14 (fourteen) days of the meeting and certified as correct by the **Board** at the next **Board** meeting.
- 4.3** (14) All Minutes of **Board** Meetings shall, after certification, be placed in the **Directors'** Minute Book, which shall be kept by the **Managing Agent** in accordance with the provisions of the **Act** relating to the keeping of Minutes of Meetings of **Directors** of Companies.
- 4.3** (15) The **Directors'** Minute Book shall be open for perusal at all reasonable times by any **Director** and the **Auditors**.
- 4.3** (16) Subject to the provisions of this **MOI**, the proceedings of any **Directors'** Meeting shall be conducted in such reasonable manner and form as the **Chairman** shall direct.
- 4.3** (17) A Resolution signed ("**in Writing**") by a majority of the **Directors** shall be valid in all respects as if it had been duly passed at a meeting of the **Board of Directors** provided that the proposed resolution was circulated to all the **Directors**.
- 4.3** (18) **Chairman:**
- (a) The **Directors** will, at the first meeting after being appointed as such in terms of Article 4.1(1), elect a **Chairman** and a **Vice-Chairman** (if a Vice-Chairman is to be appointed) from their number to hold office as such for 1 (one) year or until the next Annual General Meeting, where after the newly elected **Directors** will elect a new **Chairman** (and a

**Vice-Chairman**, if any) at their first meeting after the Annual General Meeting, provided that, during the **Development Period**, the **Developer** shall be entitled to appoint a **Chairman** to the **Board**.

- (b) The **Chairman** elected shall hold his office until conclusion of the Annual General Meeting following his appointment, provided that the office of **Chairman** shall *ipso facto* be vacated by a **Director** holding such office upon him ceasing to be a **Director** for any reason. In the event of any vacancy of the aforesaid office occurring during the term for which the **Chairman** is elected, the **Vice-Chairman**, if any, shall act as such and the **Directors** present shall immediately appoint one of their number or a **Member** present, as a replacement to the office of **Chairman** or **Vice-Chairman**, subject to the rights of the **Developer** to appoint a **Chairman** during the **Development Period**.

#### 4.3 (19) Chairman to preside at meetings:

Except as otherwise provided, the **Chairman** shall preside at all meetings of the **Board** of **Directors** and at all General Meetings of **Members** and in the event of him not being present within 5 (five) minutes of the scheduled time for the commencement of the meeting or in the event of his inability or unwillingness to act as **Chairman**, the **Vice-Chairman**, to be appointed by the **Board** of **Directors**, shall preside at such meeting and failing such appointment, a **Chairman** shall be elected from the ranks of the **Members** present, by the **Members** present.

#### 4.4 Indemnification of Directors

- 4.4 (1) The authority of the **Company's Board** of **Directors** to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(4) is not limited or restricted by this Memorandum of Incorporation.
- 4.4 (2) The authority of the **Company's Board** of **Directors** to indemnify a Director in respect of liability, as set out in section 78(7) is not limited or restricted by this Memorandum of Incorporation.
- 4.4 (3) The authority of the **Company's Board** of **Directors** to purchase insurance to protect the **Company**, or a Director, as set out in section 78(7) is not limited or restricted by this Memorandum of Incorporation.
- 4.4 (4) The responsibility of the **Company's Board** of **Directors** to take out Fidelity Insurance in accordance with the **Community Schemes Ombud Service Act** is recorded.

#### 4.5 Officers and Committees

- 4.5 (1) The **Board** of **Directors** may appoint any officers or committees from their ranks or from the ranks of the **Members** or outsiders, including the Managing Agent, as they may deem fit and to delegate to such committees, such of their functions, powers and duties as they may deem fit, together with the further power to vary or revoke such appointments and delegations, as the **Directors**

may from time to time deem necessary. The **Directors** may also appoint to such committee, an executive member of the **Board** as the Chairman of the relevant committee.

- 4.5 (2) The authority of the **Company's Board of Directors** to appoint committees, chaired by a **Director**, and to delegate to any such committee any of the authority of the **Board** as set out in section 72(1), or to include in any such committee persons who are not **Directors**, as set out in section 72(2)(a) is not limited or restricted by this **MOI**.
- 4.5 (3) The authority of a committee appointed by the **Company's Board**, as set out in section 72(2)(b) and (c) may be restricted or limited by the **Board** when the committee is so established.
- 4.5 (4) The **Directors** shall ensure that each committee is under the Chairpersonship of a **Director**.
- 4.5 (5) The appointment of a committee shall be effected **in writing** with duly defined rights, powers and duties.
- 4.5 (6) The **Directors** reserve the right to terminate the existence of any committee, or to withdraw or suspend any of the rights, powers and duties so delegated.
- 4.5 (7) The Minutes of Meetings of each committee shall be promptly provided to the **Directors**.
- 4.5 (8) The **Directors** furthermore reserve the right to remove any committee member, without reasons being advanced therefor, and similarly, to appoint and/or co-opt further **Members** to such committee.
- 4.5 (9) Each committee shall meet as frequently as deemed necessary (or as otherwise directed by the **Directors**).

#### 4.6 Accounting records

- (1) The **Directors** shall cause such accounting records as are prescribed by Section 28 of the **Act** to be kept. Proper accounting records shall not be deemed to be kept if they are not kept sufficiently to fairly present the state of affairs and business of the **Company** and to explain and support the transactions and financial position of the **Company**.
- (2) The accounting records shall be kept or be accessible from the registered office of the **Company** during normal business hours of the **Company**.
- (3) Before every **AGM**, the **Directors** shall cause to be prepared an itemised estimate of the anticipated income and expenses of the **Company** during the ensuing financial year, which estimate shall be laid before the **AGM** for consideration and approval.
- (4) The estimate of expenses referred to in Article 4.6(3) above shall include a reasonable provision for contingencies and maintenance of the **Common Property**.
- (5) The **Directors** shall cause to be prepared, and shall lay before every **AGM**, for consideration and approval, a financial statement in conformity with generally accepted accounting practice and in compliance with section 29

and 30 of the **Act**, which statements shall present the state of affairs of the **Company** and its finances and transaction as at the end of the financial year concerned.

- (6) The financial statements shall include information and notes pertaining to the proper financial management by the **Company**, including:
  - (i) an analysis of the periods of debts due and the amounts due in respect of **Levies**, special levies and other contributions;
  - (ii) an analysis of the periods and the amounts due, owing by the **Company** to the creditors and in particular to any public or local authority in respect of charges for consumption or services, including but not limited to, water, electricity, gas and refuse removal;
  - (iii) the expiry dates of all insurance policies.
- (7) The **Directors** shall further cause to be prepared and shall lay before every **AGM** a report signed by the **Chairman** reviewing the affairs of the **Company** during the past year, for consideration by the **Members**.
- (8) The **Directors** shall cause copies of the schedules, estimate, audited statement and report referred to in this Article and **MOI** to be delivered to each **Member**, and to any **Registered Mortgagee** which has advised the **Company** of its interest, at least (15) fifteen business days before the date of the **AGM** at which they are to be considered.
- (9) Delivery under Article 4.6(8) above shall be deemed to have been effected if the documents referred to are sent to the **Member** at his *domicilium* referred to in Article 6.
- (10) A copy of the **Annual Financial Statements** shall be provided to a **Member** at the written request thereto, or shall be open for inspection at the registered office of the **Company** during normal business hours and upon reasonable notice.

#### 4.7 Annual Financial Statements, Audit and Independent Review

- (1) The **Directors** shall from time to time, in accordance with Section 29 and 30 of the **Act**, cause to be prepared and laid before the **Company** in General Meeting, such Annual Financial Statements as are referred to in those Sections.
- (2) The **Company's** Annual Financial Statements shall be prepared in accordance with the provisions of Section 30 of the **Act** and is subject to either a statutory audit, or non-statutory audit by **Board** Resolution only, independent review or neither, if so required in terms of Sections 30(2), 30(2A) and 30(7) and Regulations 26, 28 and 29.
- (3) In the event that the **Company** appoints an Auditor in terms of a **Board** Resolution as contemplated in Section 30(2)(b)(ii)(aa), the Auditor shall not be subject to Section 90 (Appointment of Auditor), Section 91 (Resignation of Auditors and vacancies), Section 92 (Rotation of Auditors), and Section 93 (Rights and restricted functions of Auditors) of the **Act**.
- (4) In terms of the **Act** and this **Memorandum of Incorporation**, a copy of the relevant Annual Financial Statements must be presented at the first Members

Meeting after the statements have been approved by the **Board**, provided that such copy may be made available electronically to the **Members**.

- (5) A copy of any Annual Financial Statements which are to be laid before the **Company** in Annual General Meeting, in terms of Section 30(3)(d) of the **Act**, shall be included in the notice of the Annual General Meeting, at which it is to be considered.

#### **4.8 Director's compensation and financial assistance**

The **Directors** shall not be paid any remuneration for their services, unless the **Company** has approved remuneration payable to its **Directors** for the rendering of services as **Directors**, in accordance with a Special Resolution approved by the **Members**, within the previous two years as set out in Section 66(9), provided that the Executive Committee Members shall be remunerated for their services as the **Board** may determine from time to time, subject to ratification, amendment or withdrawal of such remuneration by the **Members** in General Meeting from time to time.

#### **4.9 Expenses incurred by Directors**

Notwithstanding the provisions of Article 4.8, the **Directors** may be paid any travelling, subsistence and other expenses properly incurred by them in the execution of their duties in or about the business of the **Company** and which are authorised or ratified by the **Board**.

#### **4.10 Powers and functions of Directors**

- (1) The **Directors** may exercise all such powers which are required and/or ancillary to attaining the objects of the **Company**.
- (2) Unless otherwise resolved by way of an Ordinary Resolution at any General Meeting, the powers and functions of the **Directors** include, but are not limited to, the power to:
  - (a) appoint and dismiss on behalf of the **Company**, a **Managing Agent**;
  - (b) delegate powers to a **Managing Agent** (including the power to appoint and dismiss employees for and on behalf of the **Company**);
  - (c) appoint attorneys, auditors or such professional advisors as it deems necessary from time to time;
  - (d) delegate powers to an Aesthetical Committee;
  - (e) institute legal proceedings to protect the rights of the **Company**, enforce the provisions of the **MOI** and/or Rules and to defend any legal proceedings brought against the **Company**;
  - (f) open and conduct a banking account(s) for purposes of the **Company's** business;
  - (g) disburse from the bank account(s), such operational- and capital expenditure as approved in the budget (and/or as raised by way of



any additional- and/or special levy) and as otherwise may be authorized by the **Members** in General Meeting;

- (h) enforce compliance with the provisions of this **MOI** and the Rules and in the event of non-compliance, to impose sanctions and penalties in terms of the Rules, such penalties to be determined by the **Directors** from time to time;
- (i) enter into contracts necessary for the purposes of the objects of the **Company** and giving effect to the powers of the **Company** in its **MOI** and implementation of this **MOI**;
- (j) appoint committees with respect to security, environment, disciplinary- and such other ad hoc committees as deemed necessary, and to delegate to such committees, such powers and authorities as may be considered necessary, subject to any restrictions imposed or directives given at any General Meeting;
- (k) invest funds of the **Company**, provided that funds available for investment may only be invested with a financial institution as defined in Section 1 of the Financial Services **Board** Act, 1990 (Act Number 97 of 1990), and in securities listed on stock exchange as defined in Section 1 of the Stock Exchanges Control Act, 1985 (Act Number 1 of 1985).

## **Article 5 – Dispute Resolution**

### **5.1 Dispute Resolution**

- (1) Any dispute between the **Company**, and a **Member** or between **Members** arising out of or in connection with or related to the provisions of this **MOI** (including any or all of its Annexures) and concerning any of the rights/obligations of the parties, including any dispute as to the validity of the **MOI**, save where an interdict or any form of urgent and/or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these dispute resolution provisions; Provided that when a dispute arises and before the appointment of a Mediator the **Company** or **Member** to the dispute may elect to have the dispute referred to the Ombud Service for adjudication in terms of the **Community Schemes Ombud Service Act**.
- (2) Mediation:
  - (i) The parties will agree to the appointment of an independent person to act as mediator to the dispute.
  - (ii) If the parties are unable to agree to the appointment of a mediator, application will be made to the Association of Arbitrators, Southern Africa (AOA), for a suitably qualified mediator to be appointed.
  - (iii) The mediator shall endeavour to assist the parties to settle the dispute by agreement. The mediator shall not adjudicate the dispute, make any recommendations to the parties or advise any party on the merits of the dispute.

- (iv) The mediator shall have the discretion to conduct the mediation in such a manner as he/she determines.
- (v) The mediator shall be responsible for the administration of the mediation including the process and conduct of the mediation, which shall be done in an expeditious and cost-effective manner.
- (vi) Should the mediator be unable to mediate the matter successfully within 10 (ten) days of being appointed, the matter will be deemed to have failed mediation.

(3) Arbitration:

- (i) In the event of the mediation failing, the dispute will automatically be referred to arbitration.
- (ii) In the event of a dispute between the **Company** and a **Member** or between **Members** arising out of or in connection with or related to provisions of this **MOI**, the **Act** or the **Rules**, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions.
- (iii) Notwithstanding the provisions of Article 5.1(3)(ii) any dispute concerning the payment of **Levies** due to the **Company**; shall be excluded from arbitration and mediation.
- (iv) If a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties **in writing** and copies of such notification shall be served on the **Board** and, if appointed, the **Managing Agent** and should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.
- (v) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties shall appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- (vi) If the parties cannot agree as to the person of the arbitrator to be appointed in terms of Article 5.1(3)(v) within 5 (five) days after the arbitration has been demanded, the **Auditors** of the **Company** shall upon written application of any of the parties, appoint **in writing** an arbitrator within 7 (seven) days after they have been required to make the appointment.
- (vii) The arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 7 (seven) days after

demand for security for payment was made, the other party shall be entitled to abandon arbitration proceedings.

- (viii) The intention being that the arbitration shall be concluded within 45 (forty five) days after an arbitrator has been appointed or security for costs has been furnished.
- (ix) The arbitrator shall make his/her award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his/her award, have regard to the principles laid down in terms of the **MOI** and the **Rules** thereunder. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he/she may determine and as he/she in his/her discretion may deem appropriate, having regard for the outcome of the arbitration.
- (x) In making an award of costs, it shall be competent for the arbitrator to award costs against the **Company** on the basis that the **Member** in whose favour the award was made, shall be excluded from contributing to such costs through his general levy and/or any special levy contributions.
- (xi) The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to, or affected by, the arbitration.
- (xii) The provisions of the Arbitration Act, No. 42 of 1965 shall be applicable.
- (xiii) Notwithstanding that the Arbitration Act, No. 42 of 1965 makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the **Company** and a **Member** or more than one **Members** or between a number of **Members** arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event, not later than 10 (ten) days prior to the arbitration hearing.

#### **Article 6 – Company Rules**

- 6.1 In accordance with the provisions of Section 15 of the **Act**, the Rules as set out in Schedule 1 hereto, are effective as at the **Effective Date**, which Rules may from time to time be ratified, amended, supplemented or repealed in accordance with the provisions of the Memorandum of Incorporation and the **Act**.
- 6.2 The Rules concern all matters referred to in Article 1.3(2) and 1.3(3), and the conduct of **Members**, residents and visitors of the **Development**, including Guidelines concerning any improvements, encroachments on **Common Property** and alterations thereto, to the extent that such improvements/alterations may influence the aesthetical and harmonious appearance of the **Development**.

### **Article 7 – Domicilium Citandi Et Executandi**

- 7.1 The address of the **Company** constituting its *domicilium citandi et executandi*, shall be as is registered in terms of the Notice of Incorporation registered with the Companies and Intellectual Property Commission ("CIPC").
- 7.2 The *domicilium citandi et executandi* of each **Member** shall be the address of the **Portion** registered in his name, provided that such **Member** shall be entitled to change the said domicile but that any new domicile selected shall be situated in the Republic of South Africa, and that the change shall only be effective upon receipt of written notice thereof by the **Company**.
- 7.3 Each **Member** shall furnish to the **Company**, for purposes of any notice or document to be delivered or to be published to the **Member**, a fax number and/or an electronic mail address, for delivery and/or transmission of any such notice or document or publication.

### **Article 8 – Notices**

- 8.1 For any notice or document to be delivered or published for any purpose contemplated in the **Act**, the Regulations, this **MOI** or the **Rules** of the **Company**, the provisions of Table CR3 in terms of Regulation 7, as amended in terms of this **MOI**, shall apply and for which purpose such notice may be delivered:
- (1) by fax, if the addressee has a fax number; or
  - (2) by electronic mail, if the addressee has an address for receiving electronic mail; or
  - (3) by hand to the addressee or to any representative authorized in writing by the addressee to accept service; or
  - (4) by leaving the notice at the addressee's place of residence or business with a person who is apparently at least 16 years old and in charge of the premises at the time; or
  - (5) by leaving the notice at the addressee's place of employment with a person who is apparently at least 16 years old and apparently in authority.
- 8.2 A notice will be deemed to have been delivered if:
- (1) by fax – on the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or a different time;
  - (2) by electronic mail – on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time;
  - (3) by hand – on the date and at the time recorded on a receipt for the delivery;
  - (4) by leaving the notice at the place of residence or business of the addressee – on the date and at the time recorded on a receipt for the delivery;

- (5) by leaving the notice at the addressee's place of employment – on the date and at the time recorded on a receipt for the delivery.
- 8.3 Any notice to be given by a **Member** to the **Company** shall be delivered to the **Company** by delivery of such notice to the registered address of the **Company**, as recorded in the records of CIPC from time to time, unless a **Managing Agent** is appointed, in which event such notice shall be delivered to the office of the **Managing Agent**, as will be recorded and reflected in the Minutes of the Annual General Meeting from year to year.

#### **Article 9 – Deposit and Investment of Funds**

- 9.1 The **Directors** may authorise the **Managing Agent** to administer and operate the accounts referred to in Article 9.1 and 9.3, provided that where the **Managing Agent** is an estate agent as defined in the Estate Agents' Act (Act 112 of 1976), the **Directors** may authorise such **Managing Agent** to deposit moneys contemplated in Article 9.1 in a trust account as contemplated in section 32 (3) of the Estate Agents' Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in Article 9.1.
- 9.3 Any funds not immediately required for disbursement, may be invested in a savings or similar account with any bank approved by the **Directors**.
- 9.4 Interest on moneys invested shall be used by the **Company** for any purpose consistent with its objectives.

#### **Article 10 – No refunds or distribution of profits or assets**

- 10.1 The **Members** shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them, unless such contribution was paid in advance and lies to the **Member's** credit.
- 10.2 No portion of the profits or gains of the **Company** shall be distributed to any **Member** or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

#### **Article 11 – Appointment, powers and duties of a Managing Agent**

- 11.1 The **Directors** may from time to time and shall, if required by the **Members** of the **Company** in a general meeting, appoint in terms of a written contract, a **Managing Agent** to control, manage and administer the **Property** and the obligations to any public or local authority by the **Company** on behalf of the **Members**, and to exercise such power to collect **Levies** and to appoint a supervisor or caretaker.
- 11.2 The appointment of a **Managing Agent** shall be in **writing**.
- 11.3 The **Directors** shall ensure that there is included in the contract of appointment of any **Managing Agent**, a provision to the effect that if he is in breach of any of the

provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the **Directors** may, without notice, cancel such contract of appointment, and that the **Managing Agent** shall have no claim whatsoever against the **Company** or any of the **Members** as a result of such cancellation.

- 11.4 The contract with the **Managing Agent** shall further provide for the appointment to be revoked, and such **Managing Agent** shall cease to hold office, if:-
- (1) where the **Managing Agent** is a juristic person, an order is made for its provisional or final liquidation or, where the **Managing Agent** is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the **Managing Agent** is a company, it is placed under business rescue; or
  - (2) the **Managing Agent** is convicted of an offence involving an element of fraud or an element of dishonesty or, where the **Managing Agent** is a company or a close corporation, any of its Directors or Members is convicted of an offence involving an element of fraud or an element of dishonesty; or
  - (3) a **Board** resolution of the **Company** is passed to that effect; provided that in such event the **Managing Agent** so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.
- 11.5 The **Managing Agent** shall keep full records of his/her/its administration and shall report to the **Company** and all holders of registered sectional mortgage bonds who have notified the **Company** of their interest of all matters which in his/her/its opinion detrimentally affect the value or amenity of the **Property** and any of the sections.
- 11.6 The **Directors** shall give reasonable prior notice to the **Managing Agent** of all meetings of the **Directors** and he may with the consent of the **Directors** be present thereat.
- 11.7 The **Directors** shall from time to time furnish the **Managing Agent** with copies of all minutes of the **Directors** and of the **Members**, unless the **Managing Agent** has prepared such Minutes.

## **Article 12 – Rights reserved to the Developer**

- 12.1 During the **Development Period** the **Developer** shall be liable for payment of a levy in respect of 1 (one) **Portion** registered in the **Developer's** name, irrespective of the number of **Portions** registered in the **Developer's** name or held by the **Developer** under Consolidated Title. The Developer shall be liable to contribute to the maintenance and expenditure of the Company in accordance with **Annexure "B"** until 50% (Fifty Percent) of portions have been sold.
- 12.2 The **Developer** shall exercise, in the **Developer's** sole discretion, the management of the game, for the developers own profit or loss, and management of **Common Property Areas** still registered in the **Developer's** name until date of transfer of such **Common Property Areas** to the **Company** or until such time that the **Developer** may unilaterally waive any rights and discretion **in writing**.

- 12.3 The **Developer**, during the **Development Period**, shall have the right to consolidate and/or sub-divide any of the **Portions** still registered in the **Developer's** name and without the consent of the **Board**, the **Company** or the **Members** of the **Company**.
- 12.4 It is recorded that **Portions 14 and 15** are currently earmarked for other agricultural purposes than game farming and that the use of these **Portions** will not be changed without the written consent of the **Developer**.
- 12.5 The **Developer** shall, during the **Development Period**, have the sole right to manage and control **Portions 14 and 15** and/or any activity thereon.
- 12.6 The **Developer**, during the **Development Period**, shall be entitled to veto any proposed amendment to the MOI and Rules to the extent that such amendments affect any of the **Developer's** rights as recorded in this MOI.

**Article 13 – Restrictions concerning the use of Portions  
and the Common Property Areas**

- 13.1 Notwithstanding the fact that the **Portion** is registered in the name of a **Member**, the **Member** shall only exercise full property- and use rights in respect of an **Erf**, subject to the terms and conditions of this **MOI** and of any Rules made by the **Company** from time to time.
- 13.2 No **Member** shall demarcate his **Portion** with any fencing or obstacle on the boundaries thereof and only **Erven** may be fenced, subject to the Rules of the **Company**.
- 13.3 Subject to the provisions of Article 12.4, the **Company** shall manage and control all **Portions**, excluding the **Erven**, as if such **Portions** form part of the **Common Property Areas**, to ensure the preservation of fauna and flora and free movement and grazing of game and other species and/or in respect of traversing rights.
- 13.4 No **Member** may, without the prior written permission of the **Board** having been obtained, interfere with any flora on any **Portion**, excluding **Erven** and subject to any restrictions imposed in terms of the Rules of the **Company**.
- 13.5 No **Member** shall traverse the **Portion** of any other **Member** or of the **Company**, save for traversing on demarcated roads. No **Member** shall traverse places marked with "no entry" signs and closed gates and no **Member** shall traverse the **Common Property Areas** between sunset and sunrise without permission of the **Board**.
- 13.6 It is recorded that **Portions 13, 16 and 28** will be transferred by the **Developer** to the **Company** as part of the **Common Property Areas** after 50% (fifty percent) of **Portions** have been transferred to persons or entities other than the **Developer**.
- 13.7 It is also recorded that, since the first registration of a **Portion** from the **Developer** to an Owner, the **Developer** has transferred, as part of **Common Property**, the following improvements to and in favour of the **Company** for the management, control and administration thereof by the **Company**:
- 13.7.1 All main access roads and secondary roads marked in red and described and indicated as "access-, service- and maintenance roads" ("*toeganspad, dienspad en onderhoudspad*") on Annexure "A" (Map "A" and "B");

- 13.7.2 The main entrance gate and service gate (“hoofhek, dienshek”) marked and indicated on **ANNEXURE “A”** (Map “A”);
- 13.7.3 The water reticulation infrastructure (pipes, boreholes, pumps and reservoirs) indicated in blue as “water provision system” on **Annexure “A” (Map “A” and “B”)** to the boundary of every **Portion** for domestic use;
- 13.8 The following **Common Property Areas** and amenities shall be transferred by the **Developer** to the **Company** after 50% (fifty percent) of **Portions** have been transferred to persons or entities other than the **Developer** and these areas and amenities may not necessarily be transferred simultaneously. The **Developer** shall in its own discretion be entitled to waive any rights and to transfer these portions and **Common Property** amenities at an earlier date. The **Company** shall be liable for the maintenance, control and administration of all **Portions** and **Common Property** amenities as from date of transfer and/or hand-over thereof by the **Developer**.
- 13.8.1 The gravel pit servitude on **Portion 14** and all irrigation pipes, irrigation fields and airstrip on **Portion 16**;
- 13.8.2 All infrastructure on **Portion 13** comprising *inter alia* the manager’s house, servant quarters and shed for implements;
- 13.8.3 Game species as follows:
- |           |           |        |
|-----------|-----------|--------|
| Impala    | 24 female | 6 male |
| Kudu      | 12 female | 3 male |
| Giraffe   | 1 female  | 1 male |
| Blesbok   | 6 female  | 1 male |
| Gemsbok   | 5 female  | 1 male |
| Zebra     | 3 female  | 1 male |
| Waterbuck | 4 female  | 1 male |
| Eland     | 3 female  | 1 male |
- 13.9 The **Developer** shall, in accordance with attached **Annexure “B”**: “Skedule Instandhouding Infrastruktuur” liable for a contribution for the maintenance of amenities and infrastructure during the **Development Period** until 50% (fifty percent) of the **Portions** have been transferred to persons or entities other than the **Developer** and as agreed between the **Developer** and the **Company** from time to time.
- 13.10 **Members** shall be liable to maintain the private roads on their **Portions**.
- 13.11 It is recorded that the **Company** is a registered water services provider and shall provide a minimum of 1.4 kiloliter water per day to every **Portion** at a point of delivery, which is located on the boundary of every **Portion**.
- 13.12 The quality of water shall comply with the national standards for drinking water, as contemplated in the Water Services Act, Act 108 of 1997.



- 13.13 All **Members** are responsible for the water reticulation from the point of delivery on the **Portion** boundary to the **Erven**, subject to any rules and specifications as may be laid down by the **Company** from time to time.
- 13.14 The point of delivery that comprises of a valve and water meter remains the property of the **Company**.
- 13.15 Average water consumption per **Portion** per day may not exceed 2.53 cubic meters per portion. All Members accept the readings as indicated on the water meters as prima facie proof of water used. When a meter becomes dysfunctional an estimating of water uses for the same date and period of previous years will be considered.
- 13.16 The **Company** will determine the water price scale from time to time.
- 13.17 **Members** are obliged to install a reverse osmosis purification system for drinking water on all **Portions**.
- 13.18 Electricity power supply is made to the boundary of some **Portions** and each **Member** shall be responsible for the power reticulation from the point of supply to the **Erf** by means of underground cables in accordance with guidelines and specifications laid down by the **Company**.
- 13.19 A power supply point shall be taken over by the **Owner** of each **Portion**.
- 13.20 Only underground cables shall be allowed from the power supply point to the **Erven** and/or any improvements thereon.
- 13.21 Only environmentally safe and approved sewerage treatment systems (e.g. Lilliput, Scarab) shall be allowed to be installed on **Erven**, the cost and maintenance whereof shall be for the **Member** concerned.

## **ANNEXURE “A”**

### **ANNEXURE A: BESKRYWING INFRASTRUKTUUR-COMMIPHORA (Sien Kaart A en B-Commiphora)**

1) Reg van weg, waterpyplyn en elektriese krag 10m wyd al langs ewewydig met:

- vir ongeveer 25m oor die noordelike grens van gedeelte 20
- oor die volle lengte van die noordelike grens van gedeeltes 21,22,23
- Vir ongeveer 45m oor die noordelike grens van gedeelte 24

**En** reg van weg, waterpyplyn en elektriese krag 5m wyd al langs ewewydig met:

- Oor die volle lengte van die Noord-oostelike grens van gedeeltes 24, 25
- Vir ongeveer 130m oor die Noordelike grens van gedeelte 50
- Oor die volle lengte van die Noord-oostelike grens van gedeeltes 50,51
- Vir ongeveer 255m oor die Noord-oostelike grens van gedeelte 52
- Oor die volle lengte van die Noordelike grens van gedeeltes 55-67
- Vir ongeveer 155m oor die Noord-oostelike grens van gedeelte 52
- Oor die volle lengte van die Noord-oostelike grens van gedeeltes 53 en 54
- Oor die volle lengte van die Suid-westelike grens van gedeeltes 26,27
- Vir ongeveer 130m oor die Suidelike grens van gedeelte 27
- Oor die volle lengte van die Suid-westelike grens van gedeeltes 49,55
- Oor die volle lengte van die suidelike grens van gedeeltes 33-45,47,48

**En** reg van weg, waterpyplyn en elektriese krag 5m wyd al langs ewewydig met:

- Vir ongeveer 350m oor die Noordelike grens van gedeelte 20
- Oor die volle lengte van die Noordelike grens van gedeeltes 17,18,19
- Die volle lengte van die Oostelike grens van gedeelte 33

**En** reg van weg, waterpyplyn en elektriese krag 3m wyd al langs ewewydig met:

- Oor die volle lengte van die Oostelike grens van gedeeltes 45,46
- Vir ongeveer 315m oor die Noord-oostelike grens van gedeelte 45
- Oor die volle lengte van die Suidwestelike grens van gedeelte 31
- Vir ongeveer 233m oor die Westelike grens van gedeelte 44
- Vir ongeveer 340m oor die Oostelike grens van gedeelte 47
- Oor die volle lengte van die Westelike grens van gedeelte 46

2) Reg van weg, waterpyplyn en elektriese krag 6m wyd:

- Soos aangetoon op serwituut gedeelte 9 LG no 433/2008 en Annexure A: Kaart A
- Al langs ewewydig oor die vollengte van die noordelike grens van gedeelte 16

**En** reg van weg, waterpyplyn en elektriese krag 3m wyd al langs ewewydig met:

- Vir ongeveer 500m oor die Noordelike grens van gedeelte 50
- Oor die volle lengte van die Suidelike grens van gedeeltes 24,25

3) Reg van weg 4m wyd al langs ewewydig met:

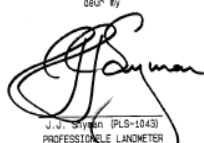
- Oor die volle lengte van die Suidelike grens van gedeeltes 14,16 en 54-67
- Oor die volle lengte van die Oostelike grens van gedeeltes 67 en 32
- Oor die volle lengte van die Noordelike grens van gedeeltes 32,28,26,
- Oor die volle lengte van die Westelike grens van gedeeltes 14-17

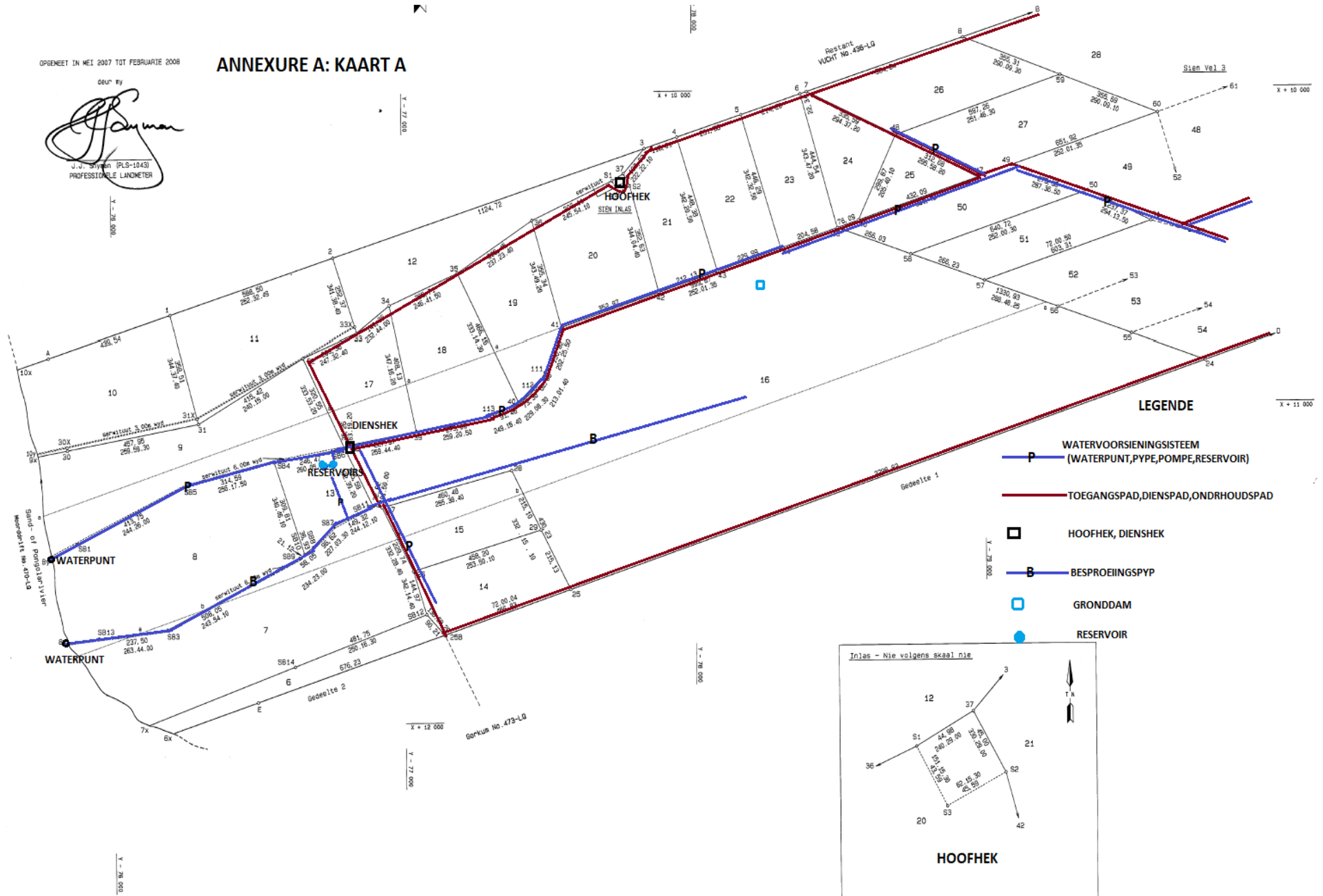
- 4) Hoofhek wat as Serwituutnota beskryf is as "Die figuur S1 37 S2 S3 S1 stel voor 'n Serwituut, groot 2005 vierkante meter, en affekteer Gedeelte 20 soos aangedui" en aangetoon op LG no 433/2008 en Annexure A: Kaart A
- 5) Dienshek geleë op gedeelte 16 en soos aangetoon op Annexure A: Kaart A
- 6) Serwituutnota wat beskryf is as "Die lyn 8x SB3 SB9 SB8 SB7 SB11 stel voor die Noordelike grens van 'n Serwituut 6,00 meter wyd en affekteer Gedeelte 7 soos aangedui" op LG no 433/2008 en Annexure A: Kaart A.
- 7) Serwituutnota wat beskryf is as "Die lyn 8y SB5 SB4 SB6 stel voor die Suidelike grens van 'n Serwituut 6,00 meter wyd en affekteer Gedeelte 9 soos aangedui" op LG no 433/2008 en Annexure A: Kaart A.
- 8) Besproeiingspyp geleë op Serwituut soos beskryf in punt 6 en gedeelte 16 en soos aangetoon op Annexure A: Kaart A
- 9) Gruisgroef geleë in die Suid-Westelike hoek van gedeelte 14 vir die ontginning van gruis, nie groter as 1.2 hektaar en om water op te berg vir besproeiingsdoeleindes of huisgebruik en om 'n pompstasie en kragpunt op te sit.
- 10) Watervoorsieningsstelsel bestaande uit 2 waterpunte geleë in die Noordwestelike hoek van Gedeelte 68 en ongeveer 6m en 41m rigting suid van die Serwituut soos beskryf in punt 7 en pyplyne (gemerk "P" en 'n ononderbroke blou lyn), pompe en reservoirs soos aangetoon op Annexure A: Kaart A en B.
- 11) Landingstrook vir vliegtuie geleë al langs en ewewydig met die suidelike grens van gedeelte 16 en strek vanaf die Oostelike grens van gedeelte 14 vir 1200m in 'n Oostelike rigting.



OPGEMEET IN MEI 2007 TOT FEBRUARIE 2008

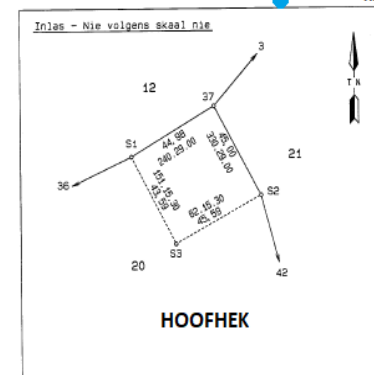
# ANNEXURE A: KAART A

08/07/07  
  
 J. J. Snyman (PLS-1043)  
 PROFESSIONELE LANDMETER



## LEGENDE

- P — WATERVOORSIENINGSISTEEM (WATERPUNT, PYPE, POMPE, RESERVOIR)
- TOEGANGSPAD, DIENSPAD, ONDRHOUDSPAD
- HOOFHEK, DIENSHEK
- B — BESPROEINGSPIJP
- GROND DAM
- RESERVOIR

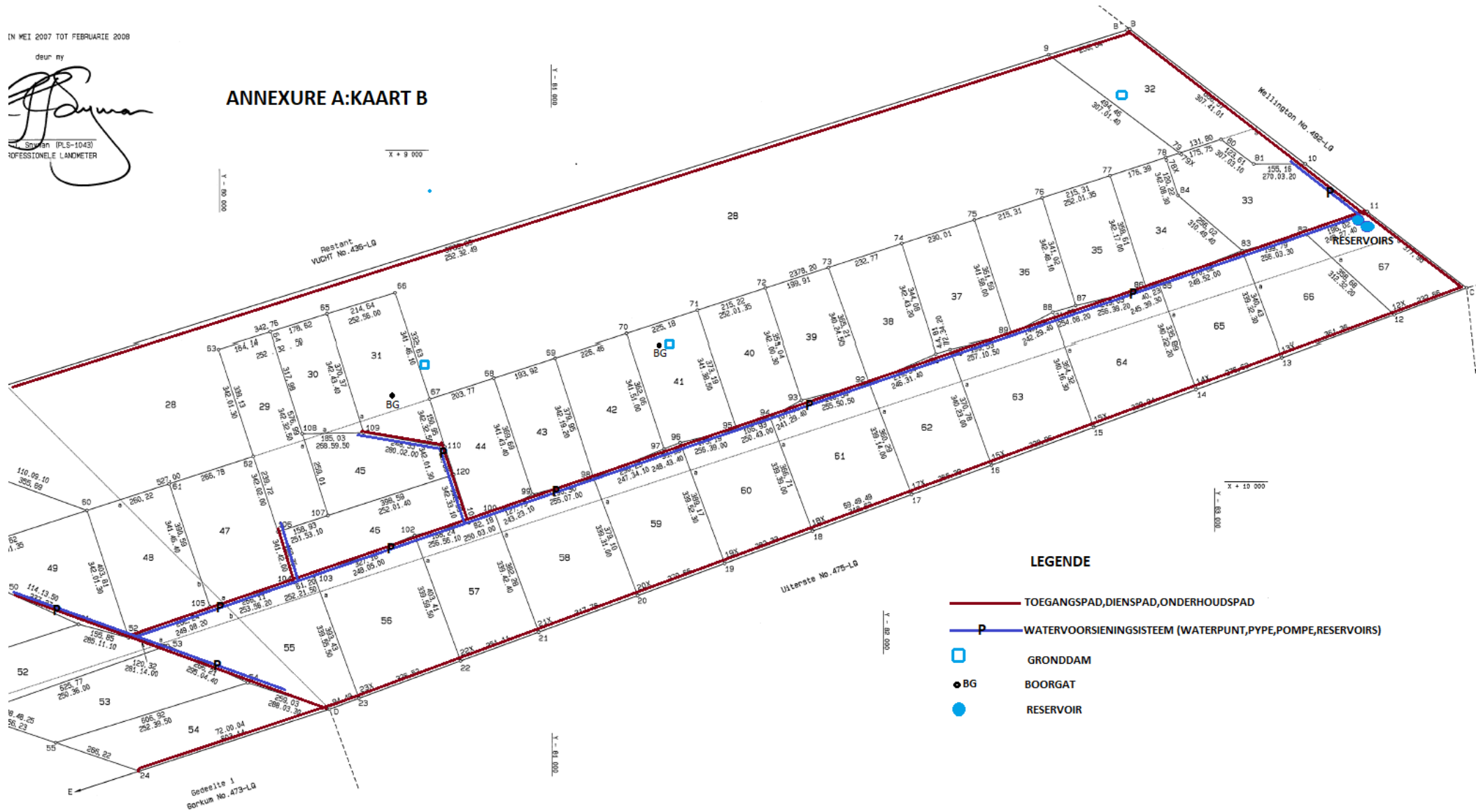


IN MEI 2007 TOT FEBRUARIE 2008

deur ny

*[Handwritten Signature]*  
 S. Swaan (PLS-1043)  
 PROFESSIONELE LANDMETER

# ANNEXURE A:KAART B



## ANNEXURE “B”

### SKEDULE INSTANDHOUDING VAN INFRASTRUKTUUR: COMMIPHORA

#### A: PAAIE

- 1) Onderhoud van die hoof Toegangspad wat Hoofhek verbind met gedeeltes 17, 54,30,32 en 67 en soos aangetoon op Annexure A: Kaart A en B word deur CHOA(NPC) gedoen.
- 2) Die Ontwikkelaar gee 'n bydrae tot bogenoemde volgens die breuk formule  $1/(n+1)$  van die koste, waar n=aantal eienaars wat erwe besit.
- 3) Privaat paaie wat strek vanaf hoofpaaie en sekondêre paaie na huise word deur die eienaars instand gehou.
- 4) Alle ander plaaspaaie geleë op oop areas word deur Ontwikkelaar instand gehou totdat dit aan CHOA(NPC) oorhandig word.

#### B: TOEGANGSHEKKE

- 1) Die onderhoud van die hoofhek en dienshek soos aangedui op Annexure A, Kaart A word deur CHOA(NPC) gedoen
- 2) Die Ontwikkelaar gee 'n bydrae tot bogenoemde volgens dieselfde formule soos gemeld in punt A 2.
- 3) Onderhoud impliseer die skoonmaak van die terrein en instandhouding van die elektriese instalasie en sonpaneel stelsel.

#### C: WATERVOORSIENING EN VERSPREIDING

- 1) Die hoofpyplyn wat strek vanaf die waterpunt in rivier tot by pompstasie/resevoirs op gedeelte 13 en verder tot by die reservoirs op gedeelte 67 sowel as taklyne wat water voorsien aan Gedeeltes 14, 26, 30, 32 en 55 word deur die Ontwikkelaar onderhou maar onderhoudskoste daarvan word as volg verdeel: **Ontwikkelaar**: (aantal aftappunte van ontwikkelaar ÷ totale aantal aftappunte) x onderhoudskoste en **CHOA(NPC)**: aantal aftappunte van CHOA(NPC) ÷ totale aantal aftappunte x onderhoudskoste.
- 2) Die aftappunte wat insluit die saalstuk, pyp, pypkoppelings, klep en die watermeter van erwe wat reeds deur eienaars besit word, word deur CHOA(NPC) onderhou.
- 3) Die aftappunte wat insluit saalstuk, pyp, pypkoppelings, klep en die watermeter van erwe wat nog aan ontwikkelaar behoort word deur ontwikkelaar instand gehou.
- 4) Pype vanaf uitlaatkant van watermeters tot by erwe word deur eienaars aan wie dit behoort onderhou.
- 5) Die pompstelsels wat strek vanaf die waterpunt tot by die pompstasie/reservoirs op gedeelte 13 en verder tot by reservoirs op gedeelte 67 wat insluit boorgat, pompe, motors, skakeltuig, aansitters, outomatiese waterbeheer stelsel, watermeters tenks en sonpaneel word deur CHOA(NPC) onderhou.

- 6) Die ontwikkelaar gee 'n bydrae tot die onderhoud in punt 5 volgens dieselfde formule soos gemeld in punt A 2.
- 7) Die CHOA(NPC) moet 'n watermeter by die waterbron installeer volgens die vereiste van Mokolo Watergebruikers vereniging.
- 8) Die dag tot dag bestuur van die waterstelsel om water te voorsien word deur CHOA(NPC) gedoen.

**D: OMHEINING**

- 1) Die onderhoud van die wildheining word deur die ontwikkelaar gedoen totdat dit oorgedra word na die CHOA(NPC).

**E: KRAGPUNT BY DIENSTE PERSEEL**

- 1) Die kragpunt by die dienste perseel wat krag voorsien vir watervoorsiening moet oorgedra word na CHOA(NPC) met gepaardgaande voorafbetaalde kragvoorsiening aan huis.

**F: TYDSDUUR VAN SKEDULE**

- 1) Bogenoemde skedule is van toepassing totdat 50% van die totale aantal erwe (52) wat aan ontwikkelaar behoort, oorgedra is aan 'n ander persoon.

Ontwikkelaar: \_\_\_\_\_ Datum \_\_\_\_\_

CHOA(NPC) 1. \_\_\_\_\_ Datum \_\_\_\_\_

2. \_\_\_\_\_ Datum \_\_\_\_\_

3. \_\_\_\_\_ Datum \_\_\_\_\_