

MEMORANDUM OF INCORPORATION
BIRD VALLEY ESTATE HOMEOWNERS ASSOCIATION NPC (RF)

Article 1 – Definitions

In this Memorandum of Incorporation, the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

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| Act, or the Companies Act | the Companies Act, 71 of 2008 |
| Bird Valley Estate, or the Estate | the property development situated on Portion 5 (of 4) of the farm Jepson's Vley No. 956 and comprising the private subs and the common area |
| Chairman | the Chairman of the Board of Directors |
| common area | Remainder of Portion 36 (of 5) of the farm Jepson's Vley No. 956, being the whole of Portion 5 (of 4) of the farm Jepson's Vley No. 956 exclusive of the Private Subs as constituted from time to time resulting from the subdivision of Portion 5 (of 4) of the farm Jepson's Vley No. 956. |
| the company | Bird Valley Estate Homeowners Association NPC (RF) |
| the developer | the initial registered owner of all the private subs, and Developer of the scheme of subdivision into Private Subs and common area. |
| in writing | written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form |
| the Local Authority | uMshwathi Municipality |
| member | a member of the Company |

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| month | a calendar month |
| the office | the registered office of the Company |
| these presents | this Memorandum of Incorporation and any regulations and by-laws of the Company, from time to time in force |
| the Private Subs | the private subdivisions separately constituted as such resulting from the subdivision of the Property known as Portion 5 (of 4) of the farm Jepson's Vley No. 956 |
| Vice Chairman | the Vice-Chairman of the Board of Directors |
| year | calendar year |

Unless the context otherwise requires, any words importing the singular numbers only shall include the plural number, and vice versa and words importing any one gender only shall include the other two genders;

Subject as aforesaid, any words or expressions defined in the Act or any statutory modification thereof in force at the date on which these presents become binding on the Company shall, if not inconsistent with the subject or context, bear the same meaning in these presents.

Article 2 – Incorporation and Nature of the Company

2.1 Incorporation

(1) The Company is incorporated as a non-profit company, as defined in the Companies Act, 2008.

(2) The Company is incorporated in accordance with, and governed by –

2.1 the provisions of the Companies Act, 2008, without any limitation, extension, variation or substitution; and

2.2 the provisions of this Memorandum of Incorporation.

- (3) A reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (4) Words that are defined in the Companies Act, 2008, bear the same meaning in this Memorandum as in the Act.

2.2 Objectives and Policies

- (1) The main business which the Company is to carry on is promoting, advancing and protecting the interests of the home owners at Bird Valley Estate.
- (2) The main object of the Company is to promote, advance and protect the communal and group interests of the members generally in respect of their ownership of the aforesaid property.

2.3. Powers of the Company

- (1) The Company is subject to a provision or provisions contemplated in section 15(2)(b) of the Act, being provisions in the Memorandum of Incorporation which contain restrictive conditions applicable to the company, or any additional requirements for the amendment of any condition in the Memorandum of Incorporation over and above those set out in section 16 of the Act nor in terms of section 15(2)(c) of the Act which prohibit the amendment of any particular provision of the Memorandum of Incorporation. In this regard, reference is to be had to sub-clauses 2.7 and 2.8 of (2) of this Article 2.3. Accordingly the Company is "ring-fenced".
- (2) The purposes and powers of the Company are as contemplated in section 19(1)(b)(ii) subject to the following inclusions, restrictions and limitations:

2.1 The Company may not form or have an interest in any company(ies), close corporation(s), trust(s), partnership(s) or other venture(s) for the purpose of acquiring the undertaking or all of the assets or liabilities of the company/close corporation, trust, partnership, or other venture, or for any other purpose which may seem, directly or indirectly, calculated to benefit the Company, and to transfer to any such company(ies), close corporation(s), trust(s), partnership(s) or venture(s) the undertaking or any of the assets or liabilities of the Company.

2.2 The Company may not amalgamate with any other company.

- 2.3 The Company may not pay gratuities and pensions and establish pension schemes, profit-sharing plans and other incentive schemes in respect of its directors, offices and employees.
- 2.4 The company may not distribute en specie or in kind any assets amongst its members.
- 2.5 To take part in the management, supervision and control of the business or operations of any other company or business having the same or similar objects as the Company and to enter into partnerships having the same or similar objects as the Company.
- 2.6 To remunerate any person or persons in cash for services rendered in its formation or in the development of its business.
- 2.7 Skiing rights and dam use rules

2.7.1 Subject to clause 2.7.1.1 below, those members of the Company who are the registered owners from time to time of the following 8 (EIGHT) Private Subs within the Estate, namely:

- (i) Portion 12 (of 5) of the farm Jepson's Vley No. 956
- (ii) Portion 13 (of 5) of the farm Jepson's Vley No. 956
- (iii) Portion 14 (of 5) of the farm Jepson's Vley No. 956
- (iv) Portion 16 (of 5) of the farm Jepson's Vley No. 956
- (v) Portion 24 (of 5) of the farm Jepson's Vley No. 956
- (vi) Portion 25 (of 5) of the farm Jepson's Vley No. 956
- (vii) Portion 26 (of 5) of the farm Jepson's Vley No. 956
- (viii) Portion 37 (of 36) of the farm Jepson's Vley No. 956

which owners shall collectively be referred to as "the Skiing Rights Holders", shall automatically by virtue of such ownership jointly hold the exclusive rights to ski on the dam situated on the Estate (the "ski rights"). Where any such property is registered in the name of more than one person, or where it is registered in the name of a juristic person, such joint owners or juristic owner shall be entitled to nominate one representative to act on their or its behalf, as the case may be.

2.7.1.1 Ski Rights can be transferred from a skiing rights holder to any other registered owner of a private sub, provided:

- a) The sites giving up the ski rights and the site receiving the ski rights both consent and notify the directors in writing to amend the MOI.
- b) Consent of any properties with a common boundary with the site receiving the ski rights must be obtained in writing.
- c) Any costs of amending the MOI are to be paid by the site receiving the ski rights.

2.7.2 The rights of the Skiing Rights Holders shall not be capable of being altered other than in accordance with this clause.

2.7.3 The Skiing Rights Holders are furthermore automatically by virtue of such ownership jointly vested with the exclusive power to make and alter Rules relating to the use of the dam situated within the Estate.

2.7.4 The Rules made by the Skiing Rights Holders (hereinafter referred to as "the Dam Use Rules") shall be applicable to and enforceable against all owners and occupiers of properties within the Estate, together with their family members, guests, employees and invitees.

2.7.4.1 It being recorded and acknowledged that Bird Valley Estate is primarily a water-skiing destination, it is noted that the Dam Use Rules are critically necessary in the interests of the safety of all users of the dam on the Estate. However, whilst the overriding principle of the Dam Use Rules is safety, the Dam Use Rules shall nevertheless be formulated on the basis of equitability and good governance and with due consideration for the varying interests of all members of the Company, and are not intended to be unfairly discriminatory against members who are not Skiing Rights Holders.

2.7.5 The provisions of :

- (a) Powers 2.7.1 to 2.7.3 and this 2.7.5 of this Memorandum of Incorporation, and

- (b) Clauses of this Memorandum of Incorporation relating to the rights of the Skiing Rights Holders, and
- (c) Power 2.7.4 of this Memorandum of Incorporation, and
- (d) The Dam Use Rules

shall in terms of this Memorandum of Incorporation not be capable of being added to, amended or deleted other than in the manner provided for, being as follows:

- (i) No addition to, amendment or deletion of the provisions of clause 2.7.1 to 2.7.5 shall be made other than upon a vote in favour thereof by all 8 (EIGHT) of the Skiing Rights Holders, provided that the provisions of this clause shall not detract from the ability to transfer ski rights as provided for in clause 2.7.1.1.
- (ii) No addition to, amendment or deletion of the provisions of the Dam Use Rules shall be made other than upon a vote in favour thereof by not less than 6 (SIX) of the Skiing Rights Holders.
- (iii) A resolution in writing signed by those Skiing Rights Holders who would constitute a quorum, shall be as valid and effective for all purposes as a resolution taken at a meeting at which a quorum of the Skiing Rights holders is present.
- (iv) The provisions of the Memorandum of Incorporation in relation to the conduct of meetings of Directors shall apply *mutatis mutandis* to a meeting of the Skiing Rights Holders for the purposes of adding to, amending or deleting the provisions set out in sub-clauses (a) to (d) above or part thereof, provided that a quorum for the dispatch of such business of the Skiing Rights Holders shall at all times,
 - A. In the case of sub-clauses (a), (b) and (c) above, be not less than all 8 (EIGHT) Skiing Rights Holders;
 - B. In the case of sub-clause (d) above, be not less than 6 (SIX) Skiing Rights Holders.

2.8 Specific inalienable rights

2.8.1 For so long as The Alcock Property Trust is the owner of Portion 26 :

- (a) the said Trust shall be entitled to keep bees, rabbits and domestic fowls on such Portion; and
- (b) Richard Charles Alcock, being a beneficiary of the said Trust, shall be entitled to conduct an accountancy practice from such Portion.

The provisions of this clause 2.8 as detailed above shall not be capable of being added to, amended or deleted other than with the written consent of The Alcock Property Trust.

(3) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with –

- (a) Item 1(4)(b) of Schedule 1 of the Companies Act; and
- (b) the provisions, if any, set out in this Memorandum of Incorporation.

2.4 Memorandum of Incorporation and Company Rules

(1) This Memorandum of Incorporation may only be amended as follows:

- 1.1 Where the manner is prescribed in terms of this Memorandum of Incorporation, in such manner;
- 1.2 By the directors in compliance with a court order;
- 1.3 By the directors where the amendment is limited to the correction of a patent error in spelling, punctuation, reference, grammar, or similar defect on the face of the document as provided for by section 17;

- 1.4 By the members according to the voting rights ascribed to the members per this Memorandum of Incorporation and the special rights afforded therein;
- 1.5 By a Business Rescue practitioner as provided for by section 152(6)(b).
- (2) The Company's Board of Directors is authorised to make rules for the Company, as contemplated in section 15. This will require the board to circulate the proposed rules to the members prior to their adoption by the board and to ensure that they are not in conflict with either this Memorandum of Incorporation or the Companies Act and filed with the Companies and Intellectual Properties Commission in accordance with the Companies Act. Any such rules filed with the Commission will be effective as of the later of 10 (ten) days after the filing of the rules or a later date as may be specified in the rules. To the extent that they are in conflict with the Memorandum of Incorporation or the Companies Act, they will be deemed to be void.
- (3) In the event of the proposed rules having not been approved by the members either by way of a general meeting or the resolution of the members other than by way of a meeting prior to the adoption thereof by the board and the filing of the rules with the Commission, any rules filed by the board are only on an interim basis until put to the vote at the next general meeting of members, at which point the rule will become permanent if ratified by the members, failing which, such rules be void. If ratified by the members, a notice of ratification must be lodged with the Commission within the time period prescribed by section 15(5)(b) of the Companies Act. is not limited or restricted in any manner by this Memorandum of Incorporation. In addition, should the rule not be adopted by the members, that rule nor any rule similar to that rule may be proposed and adopted by the board within the next 12 months without the board having obtained the approval of the rule by the members prior to the adoption thereof.
- (4) The Board must publish and circulate all proposed and adopted rules made in accordance with these provisions, by delivering a copy thereof each member by ordinary mail, or electronic mail to the extent that the company has been provided with the members electronic mail address.
- (5) 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 to each member by ordinary mail or electronic mail to the extent that the company has been provided with the members electronic mail address.

2.5 Contracts and Regulations

(1) The Directors may from time to time make regulations governing *inter alia*:

1.1 The members' rights of use, occupation and enjoyment of the common area;

1.2 The external appearance of and the maintenance of the Private Subs and the buildings or other improvements erected thereon and services thereto.

(2) Enter into agreement(s) with Local Authorities relating to the matters set out in 2.5.1 and any other incidental matters.

(3) Each member undertakes to the Company that he shall comply with :

3.1 any regulations made in terms of the preceding Article;

3.2 any agreements referred to in the preceding Article in so far as those agreements may directly or indirectly impose obligations on him.

2.6 Optional provisions of Companies Act, 2008 do not apply

(1) In accordance with section 34(2) a private company is not required to comply with the extended accountability requirements set out in Chapter 3 of the Companies Act, except to the extent that it is provided for by way of the Memorandum of Incorporation, or as may be required by section 84(1)(c) as it applies to the reduced obligations excluding requirements to appoint a company secretary and an audit committee, dependent of the requirements per the supporting Regulations to the Companies Act.. The Company accordingly does not elect, in terms of section 34 (2), to comply voluntarily with the provisions of Chapter 3 of the Companies Act, 2008

(2) The Company does not elect, in terms of section 118 (1)(c)(ii), to submit voluntarily to the positions of Parts B and C of Chapter 5 of the Companies Act, 2008, and to the Takeover Regulations provided for in that Act.

Article 3 – Securities of the Company

3.1 Securities and Members

(1) The company shall have no authorized or issued share capital.

(2) Membership of the Company shall be obligatory for and limited to the registered owners of the Private Subs, provided that:

2.1 A person who is entitled to obtain a certificate of registered title to any such Private Sub shall for the purposes of these Memorandum of Incorporation be deemed to be the registered owner thereof;

2.2 Where any such owner is more than one person, all the registered owners of that Sub shall be deemed jointly and severally to be one member of the Company.

2.3 The initial subscribers shall not necessarily be registered owners of Private Subs, and their resignation shall be deemed to have taken place immediately seven of the members of the Company have acquired registered ownership of Private Subs.

2.4 When a member ceases to be the registered owner of a Private Sub, he shall ipso facto cease to be a member of the Company.

(3) A member shall not transfer a Private Sub unless:

3.1 the transferee binds himself, as a contract for the benefit of the Company, to become a member of the Company, which contract shall be in such form as may be approved by the Company.

3.2 the transferor shall obtain a written clearance certificate from the Company in such form as may be prescribed by the Company that the provisions of these Memorandum of Incorporation have been complied with to the extent that the transferor and transferee have signed all documents required by the Company for the purposes of constituting the transferee as a member of the Company, and that the Company has agreed to constitute such transferee as a member. Thereafter the registration of transfer of the Private Sub into the name of that transferee shall ipso facto constitute the transferee as a member of the Company.

3.3 The registered owner of a Private Sub may not resign as a member of the Company.

3.4 The Directors may, by regulation, provide for the issue of a membership certificate, which certificate shall be in such form as may be prescribed by the Directors.

3.5 The rights and obligations of a member shall not be transferable and every member shall:

- further to the best of his ability the objects and interests of the Company
- observe all by-laws and regulations made by the Company or the Directors;

Provided that nothing contained in this Memorandum of Incorporation shall prevent a member from ceding his rights in terms of this Memorandum of Incorporation as security to the Mortgagee of the member's Private Sub.

(4) Cessation of Membership

No member ceasing to be a member of the Company for any reason shall, (nor shall any such member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Company, but this clause shall be without prejudice to the rights of the Company to claim from such member or his estate any arrears of levy and interest or other sums due from him to the Company at the time of his so ceasing to be a member.

3.2 Levies

- (1) The Directors shall from time to time, make levies upon 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 by way of maintenance, repair, improvement and keeping in order and condition of the common area inclusive of the dam (but excluding expenses that are funded out of the Skiing Levy referred to below), and/or of the exteriors of any buildings, structures, erections or other improvements situate on the common area and/or for payment of all rates and other charges payable by the Company in respect of the common area and/or wages of the employees of the Company and all roads and services relating to the Private Subs of whatever nature inclusive of sewage and security and generally for the payment of all expenses necessary or reasonably incurred in connection with the management of the Company, and the common area inclusive of the dam and the Company's affairs. In calculating levies the Directors shall take into account income, if any, earned by the Company.
- (2) The Directors shall estimate the amount which shall be required by the Company to meet the expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year, and shall make a levy upon the members equal as nearly as is reasonably practicable to such estimated amount. The Directors may include in such levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature. Every such levy shall be made payable by equal

monthly instalments due in advance on the first day of each and every succeeding month of such year. Any levy not paid on due date shall carry interest at such rate as the Directors may decide.

- (3) The Directors may from time to time make special levies upon the members in respect of all such expenses as are mentioned in clause 3.2.1 (which are not included in any estimate made in terms of clause 3.2.2) and such levies may be made in the sum or by such instalments and carrying such interest and at such time or times as the Directors shall think fit.
- (4) Any amount due by a member by way of a levy and/or interest shall be a debt due by such member to the Company.
- (5) The obligation of a member to pay a levy and/or interest shall cease upon such member ceasing to be a member in accordance with this Memorandum of Incorporation, without prejudice to the Company's right to recover arrear levies and/or interest.
- (6) No levies and/or interest paid by a member shall under any circumstances be repayable by the Company upon such member ceasing to be a member.
- (7) A member's successor in title to a Private Sub shall be liable pro rata as from the date upon which he becomes a member pursuant to the registration of transfer of that sub into his name, to pay the levy and interest thereon attributable to that sub.
- (8) No member shall transfer his Private Sub until the company has certified in writing that the member has as at the date of registration of transfer, fulfilled all of his financial obligations to the Company.
- (9) The levy payable by a member shall bear the same proportion to the total levy imposed on members, as the number of the Private Subs registered in the name of that member bears to the aggregate number of all the Private Subs, provided that in respect of any member who is the Developer and initial registered owner of a Private Sub, and irrespective of whether any building development has commenced thereon or not, such member shall only be obliged, up to the 31 December 2008, to pay one half of the levy usually payable by a member who is the ordinary owner of a Private Sub.
- (10) No member shall be entitled to any of the privileges of membership, including the use of the Common Property, unless and until he shall have paid every levy, interest

thereon and other sum (if any) which shall be due and payable to the Company in respect of his membership thereof.

- (11) Notwithstanding the foregoing, the aggregate levy excluding the Skiing Levy imposed in any year shall not exceed R6,000.00 (SIX THOUSAND RANDS) excluding water and electricity usage without the sanction of a Special Resolution of the Company, provided that the aforesaid limit shall not apply if it shall have the effects of the Company being unable to fulfill its objects in respect of expenditure for:

11.1 Rates and taxes and/or

11.2 Maintenance of the common area and/or

11.3 Any other obligation assumed by it in terms of an agreement with the Local Authority.

- (12) In addition to the levy referred to in the above sub-clauses, the Skiing Rights Holders shall be liable for a Skiing Levy, which levy shall be determined from time to time by the Directors and paid equally by all Skiing Rights Holders, for the purposes of meeting all the expenses which the Company has incurred or to which the Directors reasonably anticipate the Company will be put by way of acquisition, maintenance, repair, improvement and keeping in order and condition of a ski jump or jumps, slalom buoys, control of weeds, and any other matter directly connected to water skiing activities. All provisions of this clause 3.2 of Article 3 shall apply *mutatis mutandis* to the Skiing Levy.

Article 4 – Members and Meetings

4.1 Members' right to information

- (1) Every person who is a member of the Company has the rights to access information set out in section 26 (1), which provides for the all holders of beneficial interests in the company's securities to inspect and copy, without any charge for any such inspection or upon payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the company:

1.1 The Memorandum of Incorporation and any amendments to it, and any rules made by the company in accordance with the Companies Act and the Memorandum of Incorporation;

1.2 The records in respect of the company's directors, as mentioned in section 24(3)(b);

- 1.3 The reports to annual meetings, and annual financial statements as mentioned in section 24 (3) (c) (i) and (ii);
- 1.4 The notices and minutes of annual meetings and communications mentioned in section 24 (3) (d) and (e); and
- 1.5 The members register of the company as mentioned in section 24 (4).

4.2 Member's representation by proxies

- (1) This Memorandum of Incorporation does not limit, restrict or vary the right of a member of the Company –
 - 1.1 to appoint 2 or more persons concurrently as proxies including the right to appoint more than one proxy to exercise voting rights attached to different securities held by the member as set out in section 58 (3)(a);
 - 1.2 to delegate the proxy's powers to another person, as set out in section 58 (3)(b).
- (2) 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 varied by this Memorandum of Incorporation such that a member must deliver to the Company a copy of the instrument appointing a proxy before that proxy is deposited at the office no later than 48 hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument proposed to vote. No instrument appointing a proxy shall be valid after the expiration of twelve (12) months from the date of its execution.
- (3) 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.

4.3 Record date for exercise of members rights

If, at any time, the Company's Board of Directors fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is as determined in accordance with section 59 (3), this being, in the case of a meeting, the last date by which the company is required to give the members notice of the meeting as provided for in article 4.4 of Article 4; or the date of the action or event, in any other case.

4.4 Members meetings

(1) In addition to meetings required to be held in accordance with the Companies Act 2008, the Company is required to hold an annual general meeting of members by 31 October of each year and shall specify the meeting as such in the notice convening the meeting.

1.1 In addition to any other matters required by the Act to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting :

- Presentation of the financial statements, directors' report and chairman's report;
- The consideration of the report of the auditors to the extent that directors or members have elected to have the financial statements audited in accordance with section 30(2)(b)(ii)(aa);
- The election of Directors;
- 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;
- The consideration of the total levy (as referred to in clause 3.2 of Article 3 aforesaid) for the calendar year during which such Annual General Meeting takes place;
- Consideration as to whether the financial statements for the ensuing year are to be subject to be audited or independent review in accordance with section 30(2)(b)(ii).

1.2 All general meetings other than Annual General Meetings shall be called extraordinary general meetings.

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

(3) The authority of the Company's Board of Directors to determine the location of any meeting of members, and the authority of the Company to hold any such meeting in the Republic or in

any foreign country, as set out in section 61 (9) is not limited or restricted by this Memorandum of Incorporation.

- (4) The minimum number of days for the Company to deliver a notice of a meeting of members, shall be 10 business days before the meeting is to begin, as provided for in section 62 (1).
- (5) 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 prohibited;
- (6) The quorum requirement for a members meeting to begin, or for a matter to be considered is as set out in section 64(1) shall be such of the members entitled to vote, as together for the time being, represent one half of the total votes of all members of the Company entitled to vote, for the time being, provided always that 3 (THREE) members personally present shall be quorum, save as provided otherwise in this Memorandum of Incorporation.
- (7) The time periods allowed in section 64 (4) and (5) apply to the Company without variation. Accordingly, the following apply: In the event of a quorum not being present within one hour of the appointed time for the meeting to begin the meeting is postponed without motion, vote or further notice for one week. The person presiding at the meeting may, before deciding to postpone the meeting decide to extend the one-hour limit detailed herein for a reasonable period on the grounds that –
 - 7.1 Exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of members to be present at the meeting; or
 - 7.2 One or more particular members, having been delayed, have communicated an intention to attend the meeting, and these members, together with others in attendance, would satisfy the quorum requirements detailed herein.
- (8) The authority of a meeting to continue to consider a matter, as set out in section 64 (9) is not limited or restricted by this Memorandum of Incorporation. This provides that after a quorum has been established for a postponed meeting, or for a matter to be considered at a postponed meeting, the meeting may continue, or the matter may be considered, so long as at least one member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting.

- (9) The maximum period allowable for an adjournment of a members meeting are as set out in section 64 (13), being the earlier of either a date that is not more than 120 business days after the record date as may have been determined by the directors for members to receive notice, or to a date that is 60 business days after the date on which the adjournment occurred.
- (10) The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the members present at such meeting entitled to vote, shall appoint a Chairman for the meeting, who shall thereupon exercise all the power and duties of the Chairman in relation to such meeting.
- (11) The Chairman may, with the consent of any general meeting at which a quorum is present and if so directed by the meeting, adjourn a meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- (12) Except as otherwise set forth in herein presents, all general meetings shall be conducted in accordance with Roberts Rules of Order, latest revised edition.

4.5 Members resolutions

- (1) For an ordinary resolution to be adopted at a meeting of members, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution at the meeting subject to the requirements hereunder, save for the removal of a director as provided for by section 71 the rights and percentage approval requirements per section 65 are varied and are as follows:
- 1.1 At every general meeting every member in person or by proxy and entitled to vote shall have one vote for each Private Sub registered in his name, provided that if a Private Sub is registered in more than one person's name, then they shall jointly have one vote.
- 1.2 Save as expressly provided for in this Memorandum of Incorporation, no person other than a member duly registered, and who shall have paid every levy and other sum (if any) which shall be due and payable to the Company in respect of or arising out of his

membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.

- 1.3 Unless the Chairman of the meeting otherwise directs, all voting shall be in writing by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairman of the meeting shall direct.
 - 1.4 Notwithstanding the provision of the clause 1(c) of the sub clause 4.5 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy and entitled to vote.
 - 1.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
 - 1.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes for and against any resolution, the matter shall be dropped.
 - 1.7 Unless any member present in person or by proxy at a general meeting shall before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety 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 respects 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 lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded of such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.
- (2) For a special resolution to be adopted at a members meeting, it must be supported by the holders of at least 75% of the voting rights exercised on the special resolution at the meeting or at least 75% of the voting rights exercised by members entitled to vote on the matter and acting other than at a meeting, as provided in section 65 (9) subject to the proviso that the provision of sub clause 2.7 of sub clause 2.3 of Article 2 are not capable of being added to, amended or deleted other than as provided for in sub-clause 2.7.6 of clause 2.3 of Article 2

and sub clause 2.8 of sub clause 2.3 of Article 2 is not capable of being added to, amended or deleted other than as provided for in sub clause 2.8.1 of clause 2.3 of this Memorandum of Incorporation.

- (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), or elsewhere in the Act, which at minimum comprise a resolution to :
- 3.1 Amend the company's Memorandum of Incorporation subject to the restriction detailed in the Memorandum of Incorporation;
 - 3.2 Ratification of a consolidated revision of the company's Memorandum of Incorporation as contemplated in Section 18(1)(b);
 - 3.3 Ratification of actions of the directors in excess of their authority, as contemplated in section 20(2)
 - 3.4 Approve the voluntary winding up of the company, a contemplated by section 80(1);
 - 3.5 Approve the winding up of the company, a contemplated by section 81(1);
 - 3.6 Approve the application to transfer the registration of the company to a foreign jurisdiction as contemplated by section 82(5);
 - 3.7 Approve any proposed fundamental transaction, to the extent required by part A of Chapter 5;
 - 3.8 Revoke a resolution contemplated in section 164(9)(c).
- (4) 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 show of hands or by poll, or to the propriety or validity constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded of such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

Article 5 – Directors and Officers

5.1 Composition of the Board of Directors

- (1) The Board of Directors of the Company comprises no fewer than 3 (three) nor more than 7 (seven), and alternate directors, each of whom is, subject to sub-clause 1.1 below, to be elected by the company's members as contemplated in section 68.

1.1 Notwithstanding the foregoing, the Skiing Rights Holders shall be entitled to elect a minimum of 1 (ONE) Director and a maximum of 32% of the Directors based upon the ratio the number of Skiing Rights Holders bear to the total number of registered owners of Private Subs from time to time and where the Developer shall be considered to be one Skiing Rights Holder regardless of the number of Private Subs it may own (whether as registered even or as part of the Remainder of Portion 5 (of 4) of the farm Jepson's Vley No. 956), provided that it owns at least one such Private Sub.

- (2) The manner of electing directors of the Company is, subject to sub-clause 1.1 above, as set out in section 68 (2), which provides for the election of directors to be conducted by a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the board at the time are filled and in respect of the voting to fill each vacancy, each voting right entitled to be exercised may only be exercised once and the vacancy is filled only of a majority of the voting rights exercised in support the candidate, subject to the condition that for as long as the Developer is the registered owner of any private sub, he shall be a Director or shall be entitled to nominate a Director.
- (3) Each elected director of the Company serves from the date of his/her appointment to office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such, but will be eligible for re-election to the Board of Directors at such meeting.
- (4) The Board of Directors shall have the right to co-opt onto the Board any person or persons chosen by it. A co-opted Director need not necessarily be a member of the company. A co-opted Director shall have the right to be notified of and to attend all Directors meetings, and to speak thereat in all respects as if he were a full member but shall have no vote at any such meetings and may not be elected to office as Chairman or Vice Chairman. Save as aforesaid a co-opted Director shall enjoy all the rights and be subject to all the obligations of a Director.
- (6) There shall be appointed, out of the number of Directors, a Chairman and Vice- Chairman.

- (7) The first Chairman and Vice-Chairman shall be appointed by the Developer in consultation with the owners of private subs, and such office bearers shall hold their respective offices until the First Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Director holding such office his ceasing to be a Director for any reason.
- (8) Within seven (7) days of the holding of such Annual General Meeting, the Board of Directors shall meet and shall elect from its own number the Chairman and 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. No one Director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Board of Directors shall immediately meet to appoint one of their number as a replacement in such office.
- (9) Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Board of Directors, and all general meetings of members and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Board of Directors or of members, and shall allow or refuse to permit such invitees to speak at any such meetings, provided however that any such invitees shall not be entitled to vote at any such meetings.
- (10) The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or the Board of Directors.
- (11) Directors shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Directors and/or Chairman, Vice-Chairman as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- (12) For as long as the Developer is the registered owner of any private sub, he shall be a Director or shall be entitled to nominate a Director.

5.2 Authority of the Board of Directors

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

(2) If, at anytime, the Company has only one director as contemplated in section 57(3), the authority of that director to act without notice or compliance with any other internal formalities, as set out in that section is not limited or restricted by this Memorandum of Incorporation. In addition, as provided for by section 57(3), in circumstances where the company only has one director, the following matters of governance do not apply to the board:-

2.1 Removal of a director for reasons of ineligibility, disqualification, incapacity or neglect or dereliction of duty on the part of the director as provided for in sections 71(3) to 71(7);

2.2 Convening and holding of board meetings as governed by section 73; and

2.3 Ability for directors to act other than at a meeting as governed by section 74.

5.3 Director's meetings

(1) The right of the Company's directors to requisition a meeting of the Board, as set out in section 73 (1) is unaltered. Accordingly, the following applies:

1.1 Any director authorised by the board of the company may call a meeting of the board at any time; and

1.2 Any director authorised by the board of the company must call a meeting of the board if requested to do so by at least 25% of the directors, in the case of a board having 12 or more members; or two directors in any other case.

(2) This Memorandum of Incorporation does not limit or restrict the authority of the Company's Board of Directors to –

2.1 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) so long as the electronic communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, or

2.2 determine the manner and form of providing notice of its meetings, as set out in section 73(4), which requires at minimum that no meeting may be convened without notice to all of the directors subject to section 73(5) as dealt with in clause 4.3(2)(c).

2.3 proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5), which provides for the following:

If all directors acknowledge receipt of the meeting; are present at the meeting; or waive notice of the meeting, then the meeting may proceed even if the company failed to give the required notice of that meeting, or there was a defect in the giving of that notice.

- (3) The conduct of directors meetings and the maintenance of records of the meetings of directors are as provided for in section 73(5)(b) to (e), 73(6) to 73(8), which provides for the following:
- 3.1 The quorum for a meeting of directors at which a vote is to be taken shall be 3 directors (excluding co-opted directors) present in person.
 - 3.2 Each director has one vote on a matter before the board;
 - i. A majority of the votes (more than 50%) cast on a resolution is sufficient to approve a resolution, and in the case of a tied vote the chair may cast a deciding vote, if the chair did not initially have or cast a vote, or alternatively the vote fails.
 - 3.3 The company must keep minutes of meetings of the board, and any of its committees, and include in the minutes:-
 - ii. Any declaration of personal financial interest made or given to the board by a director(s) as required by section 75; and
 - iii. Every resolution of the board.
 - 3.4 Resolutions of the board must be dated and sequentially numbered and are effective as of the date of the resolution, unless the resolution states otherwise.
 - 3.5 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- (4) Directors may consider a matter other than at a meeting, as set out in section 74. This provides that a decision that could have been voted on at a meeting of the board of the company may instead be adopted by written consent of the majority of the directors, given in person, or by electronic communication, provided that each director has received notice of the matter to be decided. A decision made in this manner is of the same effect as if it had been approved by voting at a meeting.

- (5) Meetings of directors shall be held as and when required, subject to a minimum of 2 (two) meetings being held in a calendar year.

5.4 Directors compensation and financial assistance

- (1) This Memorandum of Incorporation limits the authority of the Company as follows –

1.1 The Company's directors may not be remunerated as provided otherwise than, in accordance with a special resolution approved by the Company's members within the previous two years, as set out in section 66 (9) and (10) and article 3.6(3):

- (a) The Company may advance expenses to a director, or indemnify a director, in respect of the defense of legal proceedings, as set out in section 78 (3).
- (b) The Company may indemnify a director in respect of liability, as set out in section 78 (5); or
- (c) The Company may purchase insurance to protect the Company, or a director, as set out in section 78 (6).

1.2 Directors are prohibited from receiving remuneration as provided for and set out in Section 66(9) and (10).

Article 6 – Dealing with Common Area

6. Dealing with Common Area

- (1) Neither the whole nor any portion of the common area shall be:

1.1. sold, let, alienated or otherwise disposed of, subdivided or transferred, or

1.2. mortgaged, or

1.3 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation or servitude (save those enjoyed by the members in terms hereof) or

1.4 built upon, improved or enhanced in value by the construction of buildings, erections, facilities or amenities, the cost of which directly or indirectly to the Company exceeds R50,000.00 (FIFTY THOUSAND RANDS).

Without the sanction of a Special Resolution of the Company.

Article 7 – Skiing Rights

7. Skiing Rights

- (1) The Skiing Rights Holders as defined in this Memorandum of Incorporation shall automatically by virtue of such ownership jointly hold the exclusive rights to ski on the dam situated on the Estate. Where any such property is registered in the name of more than one person, or where it is registered in the name of a juristic person, such joint owners or juristic owner shall be entitled to nominate one representative to act on their or its behalf, as the case may be.
- (2) Each Skiing Rights Holder shall be entitled on the 1st January of each year, or as close to such date as possible, to nominate in writing a total of 4 (FOUR) skiers inclusive of himself (hereinafter referred to as "Nominee Skiers").
- (3) A Nominee Skier may be any individual and need not be the Skiing Rights Holder himself/herself or a member of the Skiing Rights Holder's family. A Nominee Skier may be the owner of a Private Sub who is not a Skiing Rights Holder.
- (4) A Nominee Skier may be substituted by the Skiing Rights Holder once in each calendar year.
- (5) All nominations shall be in writing and a Register of Nominated Skiers shall be kept by the Company and available for inspection to all members of the Company.
- (6) A person who is not a Nominee Skier may ski only at the direct invitation of a Nominee Skier, provided that such invitee shall leave the water immediately upon a Nominee Skier making it known to him that he wishes to ski. Nominee Skiers shall have preference over all other skiers at all times.
- (7) Subject to the provisions of sub clause 2.7 of clause 2.3 of Article 2, Skiing Rights shall not be capable of being ceded or otherwise alienated by the Holder thereof to the registered owner of any other Private Sub or to any other person, and the Skiing Rights shall attach at all times to the registered owners of the Private Subs enumerated in this clause from time to time.

- (8) In the event of a Skiing Rights Holder selling his Private Sub to any other person, the Skiing Rights attaching to the Private Sub shall automatically be transferred to the purchaser thereof. Simultaneously, all nominations of Nominee Skiers by the seller shall lapse and be of no further force or effect.

Article 8 – Dam Use Rules

8. Dam Use Rules

- (1) The Skiing Rights Holders are jointly vested in terms of sub clause 2.7 of 2.3 of Article 2 with the exclusive power to make and alter Rules relating to the use of the dam situated within the Estate.
- (2) The Rules made by the Skiing Rights Holders (hereinafter referred to as "the Dam Use Rules") shall be applicable to and enforceable against all Nominee Skiers, all owners and occupiers of Private Subs, their family members, guests, employees and invitees.
- (3) Nominee Skiers may be invited to attend a meeting of the Skiing Rights Holders for the purposes of giving input to discussions relating to the Dam Use Rules. However, the making of, addition to, amendment or deletion of, any Dam Use Rule shall be voted on only by the Skiing Rights Holders themselves.

Article 9 - Arbitration

8. Arbitration

In the event of a dispute between any of the members or between a member and the Directors, that dispute shall be resolved by arbitration. The arbitration shall be an independent person agreed upon between the parties and failing agreement nominated by the President for the time being of the KwaZulu Natal Law Society. The arbitrator shall be entitled to resolve the dispute according to what he regards as being just and equitable and in accordance with the spirit and object of this Company and he shall therefore not be bound by the strict rules of Law. The decision of the arbitrator shall be final and binding to the parties.

Article 10 – Exercise of Members' Ownership Obligations

10. Exercise Of Members' Ownership Obligations

- (1) Members of the company shall exercise their rights of ownership of private subdivision in a restricted manner to the extent that :
- (2) No vehicular access to the respective private subs may be used except through the internal road in the common area and no vehicular access across a frontage that any such private sub may have with a public street shall be permitted.
- (3) Each private sub shall be subject and shall have the benefit of reciprocal servitudes regarding water pipes, sewers, drains electric cables or any other services which may become necessary to maintain the private subs in a serviceable condition to the satisfaction of the Company.
- (4) No private sub owner shall utilise or be connected to any sewerage disposal system other than the existing sewerage disposal system initially installed for the benefit of all private subs, and more especially no septic tank or conservancy tank shall be allowed on any private sub.

Article 11 – Cession of Rights

11. Cession Of Rights

All rights and obligations of members shall cease upon a member ceasing to be a registered owner of a private sub, except to the extent that any unpaid levies due during the period of any such member's registered ownership, shall remain due, payable and claimable to the Company.