

# **MEMORANDUM OF INCORPORATION OF THE WESTFORD BRIDGE HOME OWNERS ASSOCIATION NPC**

**(Registration number 1997/08895/08)**

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

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

The main object of The Company is to promote, advance and protect the communal interests of the members, occupiers and visitors to the Resort Il erven, and in particular in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the land, and to promote and maintain recreational facilities available to the said members, occupiers and visitors, and to facilitate the members access to the Trust land and the trails and facilities thereon.

## **Adoption of the Memorandum of Incorporation**

The Memorandum of Incorporation was adopted by the members of The Company by Special Resolution on 23<sup>rd</sup> October, 2012.

In this Memorandum of Incorporation –

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act, unless they are defined in Section A, Definitions and Interpretation below.

The schedules attached to this Memorandum are part of the Memorandum of Incorporation.

## A. DEFINITIONS AND INTERPRETATION

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

- i. “the Act” means – the Companies Act 2008;
- ii. “alienate” means – alienate any erf or part thereof and includes by way of sale, exchange, donations, deed, intestate, will, cession, assignment, court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and alienation shall have a corresponding meaning;
- iii. “Articles” means – the Articles that form part of this Memorandum;
- iv. “auditors” means – the auditors of the Company;
- v. “authorised representative” means – a member of a close corporation, or a director of a company or a trustee of a trust which, in turn, is the registered owner of an erf;
- vi. “Board” means – the Board of Directors of the Company;
- vii. “chairman” means – the chairman of the board of directors;
- viii. “common property” means – that part of the Resort II erven which is not subject to an exclusive right of use by a member, including the water procurement areas, sewerage plant area, boat and caravan storage area, roads and firebreaks;
- ix. “communal interests” means –
  1. the provision of the sewerage, water, electricity, refuse removal, telephone ducts, and such other utilities as may be provided by the Company;
  2. the management of the common property;
  3. the maintenance of roads and areas associated with such roads;
  4. the use and parking of any vehicles on the common property;
  5. the aesthetic presentation and appeal of the Resort II erven and the common property;
  6. the construction and maintenance of all buildings, out-buildings, structures including unsightly structures, the erection of fences or screenings, improvements of any nature and landscaping on the erven insofar as it affects the communal interests of members;

7. the maintenance of the security of life, the quality of life and the property of members;
8. the preservation of the natural environment, water, vegetation and fauna on the erven and the common property;
9. the management of animals insofar as it affects the communal interests of members and the conservancy of the nature reserve;
10. the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company.

The enforcement of these rules is governed by Article 5 paragraph 5.17 of the Memorandum of Incorporation.

- x. "directors" means – all the directors for the time being of the Company;
- xi. "erf" means – a plot resulting from the subdivision of the Resort II erven;
- xii. "facilities" means - any facilities of whatsoever nature which may be provided on the land;
- xiii. "financial year" means - the financial year of the Company which shall run from the first day of September in any year until the last day of August in a subsequent year;
- xiv. "land" means – Portion 1 of Farm 488, Knysna, in the Division of Knysna, measuring in extent approximately 137 hectares;
- xv. "levy" means – the levies referred to in Article 5.12 and Schedule 1, Part D, paragraphs 2.9, 2.10 and 2.11 hereof;
- xvi. "local authority" means – the local authority having jurisdiction over the land;
- xvii. "managing agent" means – any person or body appointed by the Company as an independent contractor to undertake any of the functions of the Company;
- xviii. "member" means – a member of the Company;
- xix. "Memorandum" means – this Memorandum of Incorporation including the Articles and Schedules thereto.
- xx. "Memorandum of Incorporation" means - this Memorandum of Incorporation including the Articles and Schedules thereto.
- xxi. "person" means – any person, either natural or juristic;

- xxii. "property" means – the Resort II erven, the common property and any building thereon;
  - xxiii. "registered owner" means – a registered owner of an erf registered in the relevant Deeds Office;
  - xxiv. "reserve" means – the remainder of the land, excluding the Resort I erf and the Resort II erven, and which is zoned Private Open Space Zone III;
  - xxv. "resident" means – a person, other than a member, hiring, renting or otherwise occupying a Resort II erf;
  - xxvi. "Resort I erf" means – the Resort Zone I erf resulting from the subdivision of the land;
  - xxvii. "Resort II erven" means - the Resort Zone II erven resulting from the subdivision of the land;
  - xxviii. "roads" means – all the roads on the Resort II erven;
  - xxix. "rules" means – the House Rules as determined by the Board or the Company from time to time or rules adopted by the dispute manager whichever may be applicable;
  - xxx. "services" means - the sewerage, water, electricity, refuse removal, telephone ducts, management of boat and caravan storage area, maintenance of roads and such other utilities as may be provided by the Company for the Resort II erven;
  - xxxi. "Trust" means – the Westford Bridge Private Nature Reserve Trust;
- b. Unless the context otherwise indicates, any words importing the singular shall also include the plural and vice versa, words importing any one gender shall include the other and words importing persons shall include natural and juristic persons.
- c. The headings to the respective Articles and Schedules and the paragraphs and sub-paragraphs thereto are for reference purposes only and shall not be taken into account in the interpretation of the articles.
- d. Where the consent or approval of a director or directors is required for any act by a member, such consent or approval shall be in writing and duly signed by the director or directors, shall not be unreasonably withheld, and shall be given prior to the member taking action.

- e. In the event of a member consisting of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this Memorandum.

## **1. Article 1 – Nature of the Company**

### **1.1. Incorporation**

1.1.1. The Company is incorporated as a Non Profit company, as defined in the Companies Act 2008.

(a) The Company is incorporated in accordance with, and governed by - 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

(b) the provisions of this Memorandum of Incorporation.

### **1.2. Objects and Powers of the Company**

The objects of the Company are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in section 19 (1)(b)(ii).

(1) The Company is not subject to any provision contemplated in section 15 (2)(b) or (c).

(2) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with the provisions set out in Part C of Schedule 1 of this Memorandum.

### **1.3. Memorandum of Incorporation and Company rules**

1.3.1. This Memorandum of Incorporation of the Company may be altered or amended in the manner as set out in section 16, 17 or 152 (6) (b), subject to the provisions contemplated in section 16 (1) (c), and set out in Part D of Schedule 1.

1.3.2. The authority of the Company's Board of Directors to make rules for the Company, as contemplated in section 15 (3) to (5) is limited or restricted to the extent set out in Part D of Schedule 1.

1.3.3. The Board must publish any Rules made in terms of section 15 (3) to (5) in accordance with the requirements set out in Part D of Schedule 1.

1.3.4. The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) in accordance with the requirements set out in Part D of Schedule 1.

#### **1.4. Optional provisions of Companies Act, 2008.**

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

#### **1.5. Members of the Company**

1.5.1. As contemplated in Item 4 (1) of Schedule 1 of the Act, the Company has members, who are all in a single class, being voting members, each of whom has an equal vote in any matter to be decided by the members of the company.

1.5.2. The terms and conditions of membership in the Company are as set out in Part E of Schedule 1 to this Memorandum.

### **2. Article 2 – Rights of Members**

#### **2.1. Members authority to act**

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

#### **2.2. Members' rights to information**

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

#### **2.3. Representation by concurrent proxies**

The right of a member of the Company to appoint persons concurrently as proxies, as set out in section 58 (3)(a), is limited, restricted or varied to the extent set out in Part C of Schedule 2.

#### **2.4. 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 limited or restricted to the extent set out in Part C of Schedule 2.

#### **2.5. Requirement 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 varied to the extent set out in Part C of Schedule 2.

#### **2.6. 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.

#### **2.7. 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 is as determined in accordance with section 59 (3).

### **3. Article 3 – Members Meetings**

#### **3.1. Requirement to hold meetings**

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

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

The right of members to requisition a meeting, as set out in section 61 (3), may be exercised by at least 25% (twenty-five per cent) of the voting members, as provided for in 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 set out in Part B of Schedule 3.

### **3.4. Notice of members meetings**

3.4.1. The minimum number of days for the Company to deliver a notice of a members meeting to the members, as required by section 62 is set out below.

3.4.2. An annual general meeting and a meeting called for the passing of a special resolution shall be called by giving not less than 21 (twenty-one) business days notice in writing and any other general meeting shall be called by giving not less than 15 (fifteen) business days notice in writing. The notice period shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under this Memorandum of Incorporation, entitled to receive such notices from the Company provided that a meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by not less than 51% (fifty-one percent) of the members having a right to attend and vote at the meeting and agreed by all those present at the meeting.

3.4.3. The annual general meeting shall deal with and dispose of the following matters:

- 3.4.3.1. the consideration of the Chairman's report;
- 3.4.3.2. the consideration of the annual financial statements;
- 3.4.3.3. the election of directors and dispute manager;
- 3.4.3.4. the approval of the annual expenditure budget and the consideration of the consequent calculation of income, levies or charges for the financial year during which such annual general meeting takes place;
- 3.4.3.5. the appointment of an auditor; and

may deal with any other business laid before it in terms hereof.

3.4.4. All business laid before any other general meeting shall be considered special business.

### **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.

### **3.6. Quorum for members meetings**

- 3.6.1. The quorum requirement for a members meeting to begin, or for a matter to be considered is as set out in section 64 (1) without variation.
- 3.6.2. The time periods allowed in section 64 (4) and (5) apply to the Company, subject to the variations set out in Part D of Schedule 3.
- 3.6.3. The authority of a meeting to continue to consider a matter, as set out in section 64 (9), is limited or restricted by to the extent set out in Part D of Schedule 3.

### **3.7. Adjournment of members meetings**

The maximum period allowable for an adjournment of a members meeting is as set out in section 64 (13), subject to the variations set out in Part E of Schedule 3.

### **3.8. Members resolutions**

- 3.8.1. For an ordinary resolution to be adopted at a members meeting, it must be supported by at least 51% (fifty-one per centum) of the members who voted on the resolution, as set out in Part F of Schedule 3 despite section 65 (7).
- 3.8.2. For a special resolution to be adopted at a members meeting, it must be supported by at least 75% (seventy-five per centum) of the members who voted on the resolution, as provided in section 65 (9).
- 3.8.3. A special resolution adopted at a members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65 (11).

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

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

- 4.1.1. The Board of Directors of the Company comprises of between 3 (three) and 5 (five) directors, each of whom is to be elected by the voting members of the Company -
  - (a) in the manner set out in Part A to Schedule 4; and
  - (b) serves for a term of 1 (one) year.
- 4.1.2. In addition to the elected directors there are no appointed or *ex officio* directors of the Company as contemplated in section 66 (4).
- 4.1.3. In addition to satisfying the qualification and eligibility requirements as set out in section 69, to become or remain a director of the Company, a person must satisfy the additional eligibility requirements and qualifications set out in Part C of Schedule 4.
- 4.1.4. Each elected director of the Company serves for a term of 1 (one) year subject to the limitations, restrictions or extensions set out in Part C of Schedule 4.

### **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, as set out in section 66 (1), is limited or restricted to the extent set out in Part D of Schedule 4.

### **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, is not limited or restricted by this Memorandum of Incorporation.
- 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 per centum) of the directors, as provided in 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..
- 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, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73 (5).

#### **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 (3), is limited, restricted or extended to the extent set out in Part G of Schedule 4.
- 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 (5), is limited, restricted or extended to the extent set out in Part G of Schedule 4.
- 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 (6), is limited, restricted or extended to the extent set out in Part G of Schedule 4.

#### **4.5. Officers and Committees**

- 4.5.1. The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 4.5.2. The authority of the Company's Board of Directors to appoint committees of directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), or to include in any such committee persons who are not directors, as set out in section 73 (2)(a), is limited, restricted or extended to the extent set out in Part H of Schedule 4.
- 4.5.3. The authority of a committee appointed by the Company's Board of Directors, as set out in section 72 (2)(b) and (c), is limited, restricted or extended to the extent set out in Part H of Schedule 4.

#### **4.6. Dispute Manager**

- 4.6.1. A dispute manager is a natural person to be elected by the voting members of the Company, at a general meeting of members.
- 4.6.2. The office of the dispute manager is established to resolve any dispute through a process of conciliation and arbitration specified in Schedule 5.
- 4.6.3. The dispute manager will maintain a list of arbitrators adopted by the voting members of the Company, at a general meeting of members, containing the names and contact details of persons considered by the dispute manager to be suitably qualified to be selected to arbitrate disputes fairly, quickly and cost effectively pursuant to a process specified in Schedule 5.
- 4.6.4. The office of the dispute manager is independent of the board.
- 4.6.5. The dispute manager may make rules regulating:
  - b) the practice and procedure in connection with the resolution of a dispute through conciliation or arbitration;
  - c) the process by which conciliation is initiated, and in the form, content and use of that process;
  - d) the process by which arbitration or arbitration proceedings are initiated, and the form, content and use of that process;
  - e) the joinder of any person having an interest in the dispute in any conciliation and arbitration proceedings;
  - f) the intervention of any person as an applicant or respondent in conciliation or arbitration proceedings;
  - g) the amendment of any citation and the substitution of any party for another in conciliation or arbitration proceedings;
  - h) any period that is not to be counted for the purpose of calculating time or periods for delivering any process or notice relating to any proceedings;
  - i) the forms to be used by the parties;

- j) the basis on which an arbitrator may make any order as to costs in any arbitration;
- k) all other matters incidental to performing the functions of the dispute manager.

Any rules made by the dispute manager will only be effective once ratified and adopted by the Board and published in accordance with the requirements set out in paragraph 2.14 of Part D of Schedule 1.

## 5. Article 5 – General Provisions

- 5.1. The Company may demand from members on whose erven construction is being undertaken, the payment of a deposit as determined by the Board from time to time to ensure that all damage caused to the roads, pavements and surrounding areas during the building operation is repaired to the satisfaction of the Company.
- 5.2. In the event that the member appoints an architect other than the project architect, the project architect shall examine such plans of the appointed architect and be entitled to have same amended, taking into account the provisions of the design manual governing the construction of buildings on the erven, for which the project architect shall be entitled to charge an examination fee as negotiated from time to time between the Board and the project architect.
- 5.3. Whenever they consider that the appearance of any erf or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the land generally, the directors may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member failing within a reasonable time, to be specified in such notice, to comply therewith, the directors may enter upon the erf or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Company.  

The directors shall be obliged in giving such notice to act reasonably.
- 5.4. No member shall transfer his erf until the Board of Directors under the hand of one of its members has certified that the transferring member has at date of transfer fulfilled all his financial obligations to the Company. No erf or any interests therein shall be alienated without the consent of the Company. Such consent will not be withheld unless:
  - 5.4.1. such member is indebted to the Company in any way in respect of levies or other amounts which the Company may in terms of this Memorandum of Incorporation be entitled to claim from him;

- 5.4.2. the proposed transferee has not agreed to become a member of the Company nor to sign a written undertaking in terms of which such member agrees to be bound by the terms of this Memorandum and rules of the Company;
- 5.4.3. the proposed transferee has not contractually undertaken to be bound by the Memorandum of Incorporation;
- 5.4.4. such member remains in breach of any of the provisions of this Memorandum of Incorporation or any rules after receiving proper notice from the directors requiring him to remedy such breach.
- 5.5. The Company may enter into agreements with members for the provision of amenities and services to the members and to levy a reasonable charge in respect of the provision thereof.
- 5.6. The directors shall cause such accounting records as are prescribed by Section 28 and Regulation 25 of the Act to be kept. Proper accounting records shall not be deemed to be kept if such accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company are not kept.
- 5.7. The accounting records shall be kept at the registered office of the Company or at such other place or places as the directors think fit, and shall always be open to inspection by the directors.
- 5.8. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by members not being directors, and no member (not being a director) shall have any right of inspecting any accounting records or documents of the Company except as conferred by the Companies Act, 2008, the Promotion of Access to Information Act or as authorised by the directors.
- 5.9. The directors shall from time to time, in accordance with Sections 29 and 30 of the Companies Act, 2008, cause to be prepared and laid before the Company in general meeting such financial statements as are referred to in those sections.
- 5.10. A copy of the annual financial statements which are to be laid before the Company in annual general meeting shall, not less than 21 (twenty-one) business days before the date of the meeting, be sent to every member of the Company provided that this Article shall not require a copy of those documents to be sent to any person of whose address the Company is not aware.
- 5.11. An auditor shall be appointed in accordance with Section 90 of the Companies Act, 2008.

- 5.12. The Company shall ensure that members, residents, their families and guests have the right of access to the walking trails in the reserve, as provided for in the management plan, for which the Company shall pay a monthly fee to the Trust. This fee shall be calculated by the Trust annually in conjunction with the preparation of the Company's budget and shall be collected from members by the Company and shall be included with such other levy payments as are made in terms of this Article.
- 5.13. The members of the Company shall not have access to the bush camp on the Resort I erf, and similarly the Resort I owner, family and guests shall not have access to the Resort II erven, save where such access is provided for by the management plan or as agreed between the parties.
- 5.14. Any person using any of the services, common property or facilities of the Company does so entirely at his own risk.
- 5.15. Any dispute arising out of or in connection with this Memorandum, including the cancellation thereof, the rules or any matter arising from the activities of the Company, must be determined in terms of Article 4.6 and Schedule 5 hereof, except when urgent interim relief is sought which may be obtained from a court of competent jurisdiction.
- 5.16. No person who ceases to be a member of the Company for any reasons shall (nor shall such former member's, executors, curators, trustees or liquidators) have any claim upon or interest in or right to the funds or any property of the Company.
- 5.17. The provisions of this Memorandum shall be binding upon all members and, insofar as they may be applicable, to all persons occupying any erf by, through or under any member, whatever the nature of such occupation. Every member shall sign a written undertaking to be bound by this Memorandum and/or any rules adopted in terms thereof. Every member shall furthermore take every step necessary to ensure that any resident or other person occupying any erf of which the member is the registered owner will comply fully with this Memorandum and the rules.



# **Schedule 1 – Incorporation and nature of the Company**

## **Part A**

The Company manages and is responsible for the Resort II Erven situated on the land, comprising Portion 1 of Farm 488, Knysna, in the Division of Knysna. The land, in turn, is sub-divided into three parts, being the Resort I erf (Phantom Forest Eco Reserve), the Resort II erven (Westford Bridge Home Owners Association, the Company) and Private Open Space Zone III (The Westford Bridge Private Nature Reserve Trust). The main objects of the Company are set out in the cover page to this Memorandum.

## **Part B**

The income and property of the Company derived from any source shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise howsoever, to the members of the Company: provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any member thereof in return for any services actually rendered to the Company, provided, however, that a director of the Company cannot be paid any remuneration or compensation for carrying out his duties as a director, officer or employee of the Company.

## **Part C**

1. Upon its winding-up, deregistration or dissolution the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other company, association or institution or companies, associations or institutions having objects similar to its main object and being tax exempt, to be determined by the members of the Company at or before the time of its dissolution or, failing such determination, by the Court.
2. Upon the winding-up, deregistration or dissolution of the Company, the remaining assets will be distributed to any company, association(s) and/or institution(s) within the Republic of South Africa which are themselves exempt from tax.

## **Part D**

### **1. Amendment of Memorandum of Incorporation**

- 1.1. The provisions of this Memorandum of Incorporation may only be amended by special resolution, requiring a 75% (seventy-five per centum)

majority of all members' votes cast at a special general meeting called specifically for such purpose.

- 1.2. The notice of such meeting shall, in addition to complying with Article 3, paragraph 3.4 hereof, set out in specific terms the proposed amendment of the Memorandum of Incorporation and the reasons for such proposed amendment.

## **2. Authority of the Board**

- 2.1. Subject to any restriction imposed or direction given at a general meeting of the Company and subject to the conditions imposed by the provincial and local authorities in approving the rezoning and sub-division of the land, the directors may from time to time make house rules generally so as to promote, advance and protect the communal interests of the members, and specifically with regard to:
  - 2.1.1. the right to prohibit and/or control the erection of fences or screenings, whether upon or within the boundaries of any erven;
  - 2.1.2. the right to prohibit, restrict or control the keeping of any animal;
  - 2.1.3. the conduct of any persons within the property for the prevention of nuisance to any member;
  - 2.1.4. the preservation of the natural environment, vegetation and fauna on the erven and the common property;
  - 2.1.5. the construction and maintenance of all buildings, out-buildings, structures, improvements of any nature and landscaping on the erven;
  - 2.1.6. the controlling of the number of occupiers permitted on any one erf;
  - 2.1.7. the management of both domestic and garden refuse removal;
  - 2.1.8. the restriction on usage of the erven;
  - 2.1.9. the control of the positioning of unsightly structures and/or other items;
  - 2.1.10. the controlling of the parking of motor vehicles, boats and caravans on the Resort II erven and on the common property;
  - 2.1.11. 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 the members and/or residents on the erven.
- 2.2. For the enforcement of any of the rules made by the directors in terms hereof, the directors may:

- 2.2.1. give notice to the member concerned requiring him to remedy such breach within such reasonable period as the directors may determine;
- 2.2.2. take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be a debt owing by the member concerned to the Company;
- 2.2.3. impose such fines or penalties as the Company deems fit for the breach of such rule; and/or
- 2.2.4. take such action including proceedings in court, as they may deem fit.
- 2.3. In the event of the directors instituting any legal proceedings against any member or resident on the property for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and client.
- 2.4. In the event of any breach of the rules by persons comprising any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the directors may take or cause to be taken such steps against the person actually committing the breach as they may consider to be fair and reasonable in the circumstances.
- 2.5. In the event of a member disputing the fact that he has committed a breach of any of the rules or should any other dispute arise out of or in connection with this Memorandum of Incorporation, such disputes must be determined in terms of the provisions contained in Article 4.6 and Schedule 5.
- 2.6. In general meeting the Company itself may make any rules which the directors are empowered to make and may in general meeting vary or modify any rule made by it or by the directors from time to time.
- 2.7. All rules must be reasonable and must apply equally to all members.
- 2.8. The directors may from time to time, impose levies upon the members for the purpose of meeting all the expenses which the directors have incurred, or which the directors reasonably anticipate the Company will be put to by way of payment of all charges payable by the Company, and/or the services rendered to it, and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Company, and/or the Company's affairs. In calculating levies the directors shall take into account, income and cash reserves, if any, earned by the Company.
- 2.9. In calculating the levy payable by each member the directors shall as far as is reasonably practical:

- 2.9.1. Assign those costs arising directly out of or directly attributable to the erf itself to the member owning such erf;
- 2.9.2. Subject to paragraph 2.9.1 above assign those costs relating to the Resort II erven generally to the owners of all erven equally; provided however that the directors may in any case where considered equitable to do so, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances. In particular where increased or additional costs can be attributed to a member or a group of members the Board may, in calculating the levies, allocate the increased or additional costs to that member or group of members.
- 2.9.3. The directors' calculation of the levy shall be in accordance with the budget to be approved at the Annual General Meeting of the Company, which budget must anticipate all probable costs, expenses or such like, which the Company may incur for any financial year including any unforeseen contingencies. The directors may not expose the Company to costs or incur expenses not provided for by such budget, unless such expenditure is approved by the members in general meeting.
- 2.10. Any amount due by a member by way of a levy shall be a debt due by him to the Company. The obligation of a member to pay a levy shall cease upon his ceasing to be a member of the Company, without prejudice to the Company's right to recover arrear levies. No levies 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 an erf shall be liable, as from the date upon which he becomes a member pursuant to the registration of transfer, to pay the levy attributable to that erf. No member shall be entitled to transfer his erf until the Company has certified that the member has at the date of transfer fulfilled all his financial obligations to the Company.
- 2.11. 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 any arrear levy owed by the member or other amounts due and owing to the Company by the member. This includes enforcing compliance by the member with any rules issued by the Company from time to time.
- 2.12. The Company may claim from any member or his estate any levy arrears, and interest or other sums due from him to the Company at the time of his ceasing to be a member.
- 2.13. Any rules made in accordance with this Memorandum of Incorporation must be made available to all members either by post or electronically prior to implementation.
- 2.14. Any amendments to the Memorandum of Incorporation or to the rules made in accordance with this Memorandum of Incorporation must be

made available to all members either by post or electronically prior to implementation.

## Part E

1. Membership of the Company shall be limited to any person who in the terms of the Deeds Registry's Act referred to in the records of the Deeds Office concerned is a registered owner of a Resort II erf; or
2. Where an erf is owned by more than one person, all the registered owners shall together be deemed to be one member of the Company and shall have the rights and obligations of one member of the Company, subject to the provisions of Part F of Schedule 3.
3. When a member ceases to be a registered owner of an erf on the land, he shall *ipso facto* cease to be a member of the Company.
4. No member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Company in respect of his membership thereof.
5. A member shall not in any manner alienate an erf unless it is a condition of the agreement of assignment that:
  - 5.1. The proposed transferee has bound himself contractually to become a member of the Company for the duration of his ownership of the erf, and/or will remain bound by this Memorandum of Incorporation and any rules adopted in terms thereof, and a clearance certificate has been issued by the Company to the effect that this Memorandum of Incorporation has been complied with; and
  - 5.2. The registration of that erf into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Company.
6. The provisions of paragraph 5, of Part E of Schedule 1, shall apply *mutatis mutandis* to any alienation of an undivided share in an erf.
7. This Memorandum of Incorporation shall also bind any person occupying an erf and no member shall let or otherwise part with the occupation of his erf whether temporarily or otherwise unless the proposed occupier has agreed to be bound contractually by this Memorandum of Incorporation and any rules adopted in terms thereof.
8. The registered owner of any erf shall not resign as a member of the Company.

## Schedule 2 – Rights of Members

### Part A

Not applicable

### Part B

1. The minutes of all meetings including meetings of directors will be made available to members electronically as soon as practicable after the close of each meeting.
2. Any access to information other than the minutes referred to in paragraph 1 of this Part herein is governed by the Company's manual issued in terms of section 51 of the Promotion of Access to Information Act 2000 and Section 26 (1) of the Act.

### Part C

1. A member may be represented at a general meeting by a proxy, who need not be a member of the Company.
2. A proxy must be a natural person and the Company is not obliged to accept the appointment of 2 (two) or more persons concurrently as proxies.
3. To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Company at least 24 (twenty-four) hours before the commencement of the meeting or adjourned meeting concerned but the board may from time to time determine that such documents:
  - 3.1. are to be lodged at a particular place, or
  - 3.2. are to be lodged a greater number of hours, not exceeding 48 (forty-eight) in all, before the meeting, or
  - 3.3. may be lodged at any time before or during the meeting.
4. A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.
5. The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:

# PROXY

(WBHOA NPC Incorporated Under the Companies Act, 2008)

I, \_\_\_\_\_ of \_\_\_\_\_  
being a member of “the Company” hereby appoint \_\_\_\_\_  
of \_\_\_\_\_, or failing him,  
\_\_\_\_\_ of \_\_\_\_\_, or failing him,  
\_\_\_\_\_ of \_\_\_\_\_ as my proxy  
to vote for me on my behalf at the annual/special general meeting (as the case may be)  
of the Company to be held on the \_\_\_\_\_ day of  
\_\_\_\_\_ 20\_\_\_\_\_ and any adjournment thereof, as

follows:

	<b>IN FAVOUR OF</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
Resolution No. _____			
Resolution No. _____			
Resolution No. _____			
Resolution No. _____			
Resolution No. _____			
Resolution No. _____			
Resolution No. _____			
Resolution No. _____			

(Indicate instructions to proxy by way of a cross in the space provided above).

Unless otherwise instructed, my proxy may vote as he thinks fit.

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

SIGNATURE OF MEMBER \_\_\_\_\_

(NOTE: A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a member of the Company).

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.

#### **Part D**

1. Notices may be given by the Company to any member either personally, or by sending it by post in a prepaid letter addressed to such member at his registered address or at the address (if any) within the Republic supplied by him to the Company for the giving of notices to him, or electronically to the email address supplied by him to the Company.
2. Notice of every general meeting shall be given:
  - 2.1. to every member of the Company;
  - 2.2. to the accounting officer for the time being of the Company.

No other person shall be entitled to receive a notice of general meetings.

3. Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
4. Any notice given electronically shall be deemed to have been served on the day and at the time that the electronic data was sent, and it shall be sufficient to prove that the electronic communication containing the notice was properly addressed and sent.
5. The signature to any notice given by the Company may be written or printed, or partly written and partly printed.
6. When a given number of day's notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.



## **Schedule 3 – Members Meetings**

### **Part A**

1. The Company shall within 6 (six) months after the end of each financial year hold a general meeting as its annual 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 the Act.
2. Such annual general meeting shall be held at such time and place as the directors shall decide from time to time.
3. All general meetings other than annual general meetings shall be called special general meetings.
4. The directors may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on a requisition made in terms of the Act, or in default, may be convened by the requisition as provided by and subject to the provisions of that section of the Act.

### **Part B**

1. Members meetings shall be held in, or in the environs of, Knysna in order to facilitate the attendance of members.

### **Part C**

1. There is no provision limiting or restricting the authority of the Board with respect to the use of electronic communication for members meetings.

### **Part D**

1. If within fifteen minutes after the time appointed for the commencement of a general meeting or within such extended period as the chairman of the Board or, in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day of the next week (or if that day is not a business day, the first business day following that non-business day) or to such other place, time and day as the Board may determine. If a quorum is not present at such adjourned meeting, the members present shall constitute a quorum.

## **Part E**

The chairman of a general meeting may adjourn the meeting from time to time and from place to place if the meeting approves of each adjournment by majority vote. In the event of such an adjournment:

1. no notice need be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting (unless the meeting is to be adjourned for 30 (thirty) days or more in which event notice is to be given in the same manner as for the original meeting);
2. only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

## **Part F**

1. At every general meeting:
  - 1.1. each member present in person or by proxy and entitled to vote shall have one vote for each erf registered in his name;
  - 1.2. if an erf is registered in the name of more than one person, then all such co-owners shall jointly have one vote.
2. No person other than a member duly registered and whose account with the Company in respect of every levy and other sum, if any, which shall be due and payable to the Company in respect of or ensuing out of his membership is not delinquent and who is not suspended from membership, shall be entitled to be present to vote on a question, subject to the terms hereof, either personally or by proxy, at any general meeting. For the purposes of this clause the chairman shall have the discretion to decide whether or not an account is delinquent.
3. Voting at general meetings shall take place by way of show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law.
4. Ordinary resolutions shall be passed by simple majority vote.
5. If a poll is duly demanded it shall be taken in such manner as the chairman of the meeting may direct at once or after an interval or adjournment.
6. If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by the chairman, whether or not scrutineers have been appointed to count the votes, and his decision shall be final and conclusive.
7. A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

- 7.1. written notice of the revocation is received by the Company prior to the meeting concerned; or
- 7.2. the chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
8. No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to has been cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive.
9. A declaration made in good faith by the chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed (whether by a simple majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.
10. Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a director or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

## **Schedule 4 – Directors of the Company**

### **Part A**

The Board of Directors shall be elected by the members in general meeting.

### **Part B**

1. Subject to the provisions of paragraph 5, of Part C of this Schedule, a director who retires compulsorily after serving three successive years may not stand for re-election until a further two years have elapsed.
2. The Board shall, at the end of each financial year, send invitations to each eligible member asking whether the member would like to stand for election at the next Annual General Meeting.

### **Part C**

1. There shall be a board of directors of the Company, which shall consist of not less than 3 (three) and not more than 5 (five) members.
2. A director shall be an individual and be a member of the Company, a member's spouse or the authorised representative of the member, where such member is a juristic person. A director by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this Memorandum.
3. The directors shall appoint one of their number to act as chairman for such term as they think fit, but not for longer than two successive years.
4. Save as set out in paragraph 7 of Part C of Schedule 4 below each director shall continue to hold office as such from the date of his 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 subject to the provisions of paragraphs 5 and 6 of Part C of Schedule 4 below and provided that he is not disqualified in terms of the Act.
5. No director may serve for more than three successive years whereupon he shall retire and not be eligible to stand again until a further two years have elapsed, provided that:
  - 5.1. in the first year only 3 (three) directors shall retire compulsorily and not be eligible for re-election and in the next 2 (two) years 2 (two) directors shall retire compulsorily and not be eligible for re-election;  
and

- 5.2. there are enough members willing to stand for election to ensure that the minimum required number of directors will be met, failing which a director who is due to retire compulsorily may be re-elected.
  
6. A director shall be deemed to have vacated his office as such upon:
  - 6.1. his having served three successive years as a director (subject to paragraph 5 above);
  - 6.2. his being disentitled to exercise a vote in terms of Part F of Schedule 3 dealing with voting;
  - 6.3. his becoming of unsound mind or being found lunatic;
  - 6.4. his resigning from such office in writing;
  - 6.5. his ceasing to be a member of the Company;
  - 6.6. his becoming prohibited from being a director in terms of the Companies Act 2008;
  - 6.7. his death.

provided that anything done in good faith in the capacity of director by a person who has ceased to be a director, shall be invalid only if the fact that he was no longer a director had been recorded in the minute book of the Company at the time that the action took place.

7. Upon any vacancy occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question may be filled by a person nominated by those remaining for the time being of the Board of Directors.

#### **Part D**

1. Subject to the express provisions of this Memorandum, the directors shall manage and control the business and affairs of the Company, shall have the full powers in the management and direction of such business and affairs including the right of appointment and dismissal of the managing agent, may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by this Memorandum required to be exercised or done by the Company in general meeting, subject however to such rules as may have been made by the Company in general meeting or as may be made by the directors from time to time.
2. Save as specifically provided in this Memorandum, the directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, architects, engineers, a managing agent or

any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the directors on such terms as the directors shall decide.

3. The directors shall further have the power:
  - 3.1. To require that any construction of any sort on the property shall be supervised to ensure that the provisions of this Memorandum and the rules are complied with and that all such construction is performed in a proper and workmanlike manner;
  - 3.2. To issue and maintain an architectural and environmental design and maintenance manual in respect of the property.
4. The board of directors shall have the right to vary, cancel or modify its decisions and resolutions from time to time.

#### **Part E**

1. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of this Memorandum.
2. The quorum necessary for the holding of any meetings of the directors shall be 3 (three) present personally. Any resolution of the Board of Directors shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the chairman of the meeting shall have a second or casting vote.
3. The directors shall cause minutes to be kept of every directors' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and certified correct by the chairman. All minutes of directors' meetings shall, after certification, be placed in a directors' minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The directors' minute book shall be open for inspection at all reasonable times by any director, the auditors, the members and the managing agent and the minutes shall be published electronically to all members.
4. A resolution signed by all the directors shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors.

## **Part F**

Not applicable

## **Part G**

1. 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.
2. Directors shall not be entitled to remuneration in respect of the performance of their duties, or any other duty related to the management of the Company, the Resort Il erven or the common property.
3. All directors shall be indemnified against any liabilities bona fide incurred by them in their respective capacities, other than in relation to non-disclosure of any personal financial interests they may have in any matter considered by the Board, or relating to a breach of the normal standards of directors' conduct, or for any liability set out in the Companies Act 2008, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a Court.
4. Every director, servant, agent and employee of the Company shall be indemnified by the Company against (and it shall be the duty of the directors out of the funds of the Company to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.
5. The Company is authorised to purchase insurance as is required for the protection of the Company and its assets.

## **Part H**

1. The directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including the managing agent, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the directors may from time to time deem necessary.
2. The directors shall appoint an architectural review committee which shall consist of:
  - 2.1. A practising professional architect duly qualified to practice as such for his own account in the Republic of South Africa;

- 2.2. One director;
- 2.3. Such other members as the directors may determine.
3. Members of the architectural review committee shall not necessarily be required to be members of the Company.
4. All plans for buildings, out-buildings, structures, additions and alterations shall be approved by the directors who shall first submit such plans to the architectural review committee. The directors shall not approve any such plan unless such plan shall first have been reviewed and recommended for approval by the architectural review committee.



## **Schedule 5 – Dispute Resolution**

### **Part A**

Any dispute arising out of or in connection with this Memorandum, including the cancellation thereof, the rules or any matter arising from the activities of the Company, must be determined by arbitration in terms of this schedule, except when urgent interim relief is sought which may be obtained from a court of competent jurisdiction.

### **Part B**

The office of the dispute manager is established in terms of Article 4.6 to attempt to resolve any dispute through conciliation. Once the dispute manager certifies that his/her office was unable to resolve the dispute, he or she should then take such steps as are necessary to ensure that the dispute is finally adjudicated by arbitration in terms of Schedule 5 hereto.

### **Part C**

1. If a dispute is referred to the office of the dispute manager, the dispute manager must attempt to resolve any dispute through conciliation within 30 days of the date the dispute manager received the referral; however the parties may agree to extend the 30-day period.
2. The dispute manager must determine a process to attempt to resolve the dispute, which may include:-
  - a) mediating the dispute;
  - b) conducting a fact finding exercise;
  - c) making a recommendation to the parties, which may be in the form of an advisory arbitration award.
3. If the dispute remains unresolved, and/or any party to the dispute has requested that the dispute be resolved through arbitration, the dispute manager must appoint an arbitrator to adjudicate the dispute from a list of arbitrators, such list having been adopted by the Company at a General Meeting in terms of Article 4.6.3.
4. Subject to any rules adopted by the Company in terms of Article 4.6.5. the arbitrator may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly, quickly and cost effectively, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

5. If all the parties consent, the arbitrator may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation by referring the dispute back to the dispute manager for a further period of 30 days.
6. If a party to the dispute fails to appear in person or to be represented at the arbitration proceedings, or fails to comply with any time period provided by the rules for the delivery of any document or process, and that party:-
  - a) had referred the dispute, the arbitrator may dismiss the matter;
  - b) or had not referred the dispute, the arbitrator may:-
    - i) continue with the arbitration proceedings in the absence of that party; or
    - ii) adjourn the arbitration proceedings to a later date.
7. Within fourteen (14) days of the conclusion of the arbitration proceedings:
  - a) the arbitrator must issue to the office of the dispute manager an arbitration award with brief reasons, signed by that commissioner;
  - b) the dispute manager must deliver a copy of that award to each party to the dispute or to the person who represented a party in the arbitration proceedings.
8. The arbitrator may make any appropriate arbitration award, including, but not limited to, an award that gives effect to the provisions and primary objects of the Company, the rules and the Memorandum of Incorporation of the Company.
9. The arbitrator may make an order for the payment of costs, including the costs of the arbitrator according to the requirements of law and fairness.
10. An arbitration award issued by an arbitrator is final and binding and may be enforced in terms of section 31 of the Arbitration Act 42 of 1965.