

Memorandum of Incorporation

of

LINKS GOLF CLUB (RF) LIMITED

REGISTRATION NUMBER: 2006/017924/06

Which is a **Public Company** with at least **FOUR (4) directors**, is authorised to issue securities as described in Article 3 of this Memorandum of Incorporation, and is referred to in the rest of this Memorandum of Incorporation as the “Company”.

The Main Object of the Company is: **TO OWN THE ST FRANCIS LINKS GOLF COURSE, THE CLUBHOUSE AND ASSOCIATED ELEMENTS AND TO RUN THE OPERATION AS A BUSINESS TO THE BENEFIT OF ALL SHAREHOLDERS.**

In this Memorandum of Incorporation –

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, Act 71 of 2008;*
- (b) words that are defined in the Companies Act, Act 71 of 2008 bear the same meaning in this Memorandum of Incorporation as in that Act.*

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1 ARTICLE 1 – INTERPRETATION

1.1 In this Memorandum of Incorporation, unless the context otherwise requires, the following words shall have the following meanings:

- 1.1.1 “Act” The Companies Act, Act 71 of 2008, as amended.
- 1.1.2 “Memorandum” or “MOI” The Memorandum of Incorporation of the Company.
- 1.1.3 “Association” or “SFLHOA” The St Francis Links Homeowners Association NPC
- 1.1.4 “Board” The Board of Directors of the Company for the time being.
- 1.1.5 “Body Corporate” A Body Corporate as defined in Section 1 of the Sectional Titles Act or a Share Block Company as defined in Section 1 of the Share Blocks Control Act.
- 1.1.6 “Developer” St Francis Golf Links (Pty) Ltd (Registration Number: 1988/009425/07), its successors in title and assigns.
- 1.1.7 “The Estate” The St Francis Links Estate
- 1.1.8 “Development Period” The period reckoned from the date of registration of this Company until the date upon which the Developer gives notice to the Company of the termination of the Development period.
- 1.1.9 “Directors” The Directors of the Company for the time being.
- 1.1.10 “Good Standing” “Good standing” in relation to a shareholder means a Member who is not in arrears by more than 60 (sixty) days with payment of any amount owing to the Company or to the St Francis Links Homeowners Association NPC and who has not been suspended from using the facilities of the Company including the golf course.
- 1.1.11 “Land” Any land in the Estate, including any subdivision capable of individual ownership, whether such land is improved or not, or a sectional title unit under the provisions of the Sectional Titles Act, where a sectional title scheme has been established on any such land or the right to extend a sectional title scheme by the erection of a unit (as contemplated in Section 25 of the Sectional Titles Act) where a sectional title scheme has been established on any such land.
- 1.1.12 “Member” An Owner of Property on the Estate or the holder of a

- golf playing right in the Company or the authorised user of any facilities of the Company and the Association.
- 1.1.13 “Office” The Registered Office of the Company for the time being.
- 1.1.14 “Owner” Any person who is the registered owner of land or an undivided share in land.
- 1.1.15 “Rules” The Rules made by the Board in Accordance with the provisions of Article 6 hereof.
- 1.1.16 “Sectional Titles Act” The Sectional Titles Act, No. 95 of 1986, as amended and any regulations in force thereunder from time to time.
- 1.1.17 “Share Blocks Control Act” The Share Blocks Control Act, No. 59 of 1980, as amended and any regulations in force thereunder from time to time.
- 1.2 Words and expressions used and not otherwise defined in this Memorandum of Incorporation shall have the meaning assigned to them by the Act.
- 1.3 Words importing the singular shall include the plural; words importing the masculine, feminine and neuter shall include others of such genders; and words importing persons shall include Bodies Corporate, and *vice versa* in each instance.
- 1.4 The heading above any of the Articles is intended for reference purposes only and shall not influence the interpretation of this Memorandum of Incorporation.
- 1.5 Should the provisions of this Memorandum of Incorporation conflict in any way with the provisions of the contract of sale, entered into between an Owner and the Developer, in respect of the purchase of land, the provisions of the aforesaid contract of sale shall prevail over this Memorandum of Incorporation provided that the provisions of the contract is not in contravention of any provisions of the Companies Act.
- 1.6 Where an expression has been defined and such definition contains provisions conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in this Memorandum of Incorporation.

2 ARTICLE 2 – INCORPORATION AND NATURE OF THE COMPANY

2.1 Incorporation

2.1.1 The Company has been incorporated on **7 June 2006** as a Public Company, defined in section 8(2)(d) as being a Profit driven company not being a State-Owned, Private or Personal Liability Company.

2.1.2 The Company is incorporated in accordance with and governed by-

2.1.2.1 the unalterable provisions of the Companies Act, 2008; and

2.1.2.2 the alterable provisions of the Companies Act, 2008, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation; and

2.1.2.3 the provisions of this Memorandum of Incorporation.

2.2 Powers of the Company

2.2.1 In terms of Section 15(2)(b) or (c) of the Act, the Company **is restricted** in its powers and capacity **in terms of the Issue and Transfer of Shares as set out in Article 3** of this Memorandum of Incorporation.

2.2.2 The purposes and powers of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19 (1)(b)(ii), and as such the Company has all of the legal powers and capacity of an individual to the extent that a juristic person is capable of exercising such power or having such capacity.

2.2.3 The Company is specifically authorised to transact with the St Francis Links Homeowners Association NPC (SFLHOA) in any manner approved by the Board of Directors, including appointing SFLHOA to act as it's agent in any manner.

2.3 Memorandum of Incorporation and Company Rules

2.3.1 This Memorandum of Incorporation of the Company may only be altered or amended:

2.3.1.1 In compliance with a court order, effected by a resolution of the Board of Directors of the Company, as provided for in section 16(1)(a); or

2.3.1.2 Pursuant to a Special Resolution proposed by either the Board of Directors or the Shareholders entitled to exercise 20% (twenty percent) of the Voting Rights that may be exercised on such a resolution, and which is subsequently adopted at a Shareholders Meeting or adopted as a written resolution in terms of section 60, as is provided for in section 16(1) (c); or

2.3.1.3 In terms of section 17(1) by the Board of Directors of the Company, or an individual authorised by the Board, to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document

by publishing a notice of the alteration in terms of this Memorandum of Incorporation or the Rules of the Company, and filing such a notice of alteration.

- 2.3.1.4 In terms of section 152(6) (b) by an appointed Business Rescue Practitioner as a result of a Business Rescue Plan being approved by the Shareholders of the Company to authorise, and determine the preferences, rights, limitations and other terms of, any Securities that are not otherwise authorised, but are contemplated to be issued in terms of the Business Rescue Plan.
- 2.3.2 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of section 17 (1) and pursuant to correcting a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by delivering a copy of those Rules to each Shareholder by ordinary or electronic mail or electronic publication.
- 2.3.3 The Board of Directors' powers in terms of sections 36(3) and (4) are limited as the following changes in the share capital of the Company may only be authorised by a Special Resolution of the Shareholders of the Company:
 - 2.3.3.1 increase or decrease the number of authorised Shares of any class of Shares;
 - 2.3.3.2 reclassify any classified Shares that have been authorised but not issued;
 - 2.3.3.3 classify any unclassified Shares that have been authorised but not issued; or
 - 2.3.3.4 determine the preferences, rights, limitations or other terms of Shares in a class set out but not specified.
- 2.3.4 The authority of the Company's Board of Directors to make, amend or repeal any necessary or incidental Rules relating to the governance of the Company, as contemplated in section 15 (3) to (5) and on matters not addressed in the Act or this Memorandum of Incorporation, is not limited or restricted in any manner by this Memorandum of Incorporation.
- 2.3.5 The Board must publish any Rules made in terms of section 15 (3) to (5) by delivering a copy of those Rules to each Shareholder by ordinary or electronic mail or electronic publication.
- 2.3.6 Rules made, published and filed in terms of section 15 (3), and being consistent with the Act and this Memorandum of Incorporation, take effect on a date that is the later of 10 (ten) Business Days after the Rule is filed, or any date specified in the Rule.
- 2.3.7 Rules taking effect as set out in 2.3.6 of this Memorandum of Incorporation are binding:
 - 2.3.7.1 On an interim basis from the time it takes effect until it is put to a vote at the next general Shareholders Meeting of the Company, or is put to a vote to the Shareholders by ordinary written resolution; and
 - 2.3.7.2 On a permanent basis only if it has been ratified by an Ordinary Resolution at a Shareholders Meeting or in written form.

- 2.3.8. Rules ratified in terms of 2.3.7 above require a notice of ratification being filed to the Commission within 5 (five) Business Days after such date of ratification;
- 2.3.9 Rules not ratified require a notice of non-ratification to be filed to the Commission within 5 (five) Business Days, and the Company's Board of Directors will subsequently be prohibited from making any substantially similar Rule within the ensuing 12 months, unless it has been approved in advance by Ordinary Resolution of the Shareholders.
- 2.3.10 The Rules are binding as between the Company and each Shareholder, between or among the Shareholders of the Company and between the Company and every Director, Prescribed Officer or member of any committee of the Company in the exercise of their respective functions within the Company.
- 2.3.11 In no way detracting from the generality of any other provisions of the Memorandum of Incorporation, in the event of the Association incurring any legal costs as a result of any breach of the Memorandum of Incorporation or Estate Rules by any Member, the Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale in full whether or not legal action is actually instituted.
- 2.3.12 Any amount due by a Shareholder or Member whether in respect of subscriptions or any other amount falling due for payment under these clauses, which remains unpaid after the same has fallen due, shall bear interest as from the due date for payment to the date for payment at a rate of interest equal to that charged by the financial institution at which the Association banks with at that time, as its prime overdraft rate plus 5 (five) percentage points. Such interest shall be calculated and compounded monthly.
- 2.3.13 A Member shall not be entitled to demand repayment of any amount standing to the credit of his subscriptions account.

2.4 Application of Accountability and Transparency Provisions of the Act

- 2.4.1 As the Company is a Public Company, it has to comply with the extended accountability requirements set out in Chapter Three of the Act in terms of section 34(1). This would mean the following:
- 2.4.1.1 The Company has to appoint an Auditor and the Company's Annual Financial Statements have to be audited annually;
- 2.4.1.2 The Company has to appoint a Company Secretary; and
- 2.4.1.3 The Company has to appoint an Audit Committee and Social and Ethics Committee unless otherwise so required by the Act or Regulations.
- 2.4.2 Due to the inextricable link between the Company and St Francis Links Homeowners Association NPC, any Auditor appointed shall audit both entities in any year. The Social and Ethics Committee for both entities shall comprise of the same individuals.

3 ARTICLE 3 – SECURITIES OF THE COMPANY

3.1 Shares and Share Certificates

3.1.1 The current share capital of the company is as follows:

Authorised: 1600 Ordinary Shares with a Par-Value of R1 each

These shares will retain their nature until such time as the Shareholders decide, per Special Resolution, to have the shares converted to Non Par Value Shares.

3.1.2 The number of Ordinary shares in issue shall be directly linked to the individual properties on the Estate on the basis of One Property = One Share. (Property is defined as an erf or a sectional title unit).

3.1.3 No property may be purchased in the Estate without a Club ownership Share and no Share in the Club may be purchased without an associated property. Resale of properties by owners must include the sale of the ownership Share as well.

3.1.4 The holder of each Share is entitled to:

3.1.4.1 vote on any matter to be decided by a vote of Shareholders of the Company;

3.1.4.2 participate in any distribution of profit to the Shareholders; and

3.1.4.3 share in the distribution of the Company's residual value upon its dissolution.

3.1.5 Subject to the provisions, if any, as set out in this Memorandum of Incorporation, and without prejudice to any special rights previously conferred on the holders of existing Shares, any Share may be issued without such preferred, deferred or special rights, or subject to such restrictions, whether in regards to dividend, voting, return of Share Capital or otherwise, as the Company may from time to time determine, and the Company may determine that any Preference Shares shall be issued on the condition that they are, or are at the option of the Company, liable to be redeemed.

3.1.6 Share Certificates shall be issued under the authority of the Directors, but will only be issued to the owners of property on the Estate. If any Shares are numbered, all Shares shall be numbered in numerical progression beginning with the number one and each Share shall be distinguished by its appropriate number, and, if any Shares are not numbered, each Share Certificate in respect of such Shares shall be numbered in numerical progression and each Share Certificate distinguished by its appropriate number and by such endorsement as to be able to identify the previous owner/s of such Share.

3.1.7 Every person whose name is entered in the Register of Members shall be entitled to one certificate for the Share registered in his name. Every original Member shall be entitled to one Share Certificate free of charge but for every subsequent certificate the Directors may make such charge as from time to time they may think fit, provided that if

a Share Certificate is defaced, lost or destroyed it may be renewed on payment of such fee and on such terms as to evidence and indemnity as the Directors may think fit.

- 3.1.8 A Share Certificate registered in the names of two or more persons shall be delivered to the person first named in the Register as holder thereof, and delivery of a Certificate for a Share to that person shall be sufficient delivery to all joint holders of that Share.
- 3.1.9 Other than in respect of the Shares owned by the Developer, every Owner of a Share shall be obliged to nominate a member of the golf club and shall be liable for the annual golf subscriptions which are payable to the Company and which shall be determined by the Board from time to time.
- 3.1.10 In the case of Trusts, Companies or Close Corporations being the owners of a Share, all members, trustees, beneficiaries, directors or shareholders of such Trusts, Companies or Close Corporations shall jointly and severally accept liability as co-principal debtor for the payment of annual golf subscriptions to the Company.
- 3.1.11 A Shareholder may not tender resignation of his membership of the Company.

3.2 Debt instruments

- 3.2.1 The authority of the Company's Board of Directors to authorise the company to issue secured or unsecured debt instruments, as set out in section 43 (2), is subject to each such issuing being made in terms of a general approval granted by Ordinary Resolution of the Shareholders in the two years immediately preceding the issuing.
- 3.2.2 The authority of the Company's Board of Directors to grant special privileges associated with any debt instruments to be issued by the Company, as set out in section 43 (3), is subject to each such granting being made in terms of a general approval granted by Ordinary Resolution of the Shareholders in the two years immediately preceding the granting.

3.3 Registration of beneficial interests

The Company's Board of Directors is authorised to allow the Company's issued Securities to be held by, and registered in the name of, one person for the Beneficial Interest of another person, as set out in section 56 (1).

3.4 Transferability of Shares

- 3.4.1 No Share shall be transferred to a person who does not own property in the Estate, i.e. Shares may only be transferred from one property owner to another property owner. Shares cannot be owned by a person who does not own property in the Estate.
- 3.4.2 In the case of Trusts, Companies or Close Corporations being the owners of properties, the Shares will be issued in the name of such entity. The entity shall

nominate one of its members, trustees, beneficiaries, directors or shareholders to represent it at meetings of the Company. All members, trustees, beneficiaries, directors or shareholders of such Trusts, Companies or Close Corporations shall jointly and severally accept liability as co-principal debtor for the payment of annual golf subscriptions to the Company.

- 3.4.3 In the case of partnerships, multiple heirs or other forms of fractional ownership, Shares will be issued in the name of such entity. The entity shall nominate one of its members or partners to represent it at meetings of the Company. Correspondence will only be directed to one address and will not be duplicated to all owners.
- 3.4.4 The instrument of transfer of any Share of the Company shall be executed both by the transferor and the transferee and the transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register of members in respect thereof.
- 3.4.5 The Directors may suspend the registration of transfers during the fourteen (14) days immediately preceding any General meeting of the Company and at any other times, provided that the periods of suspension shall not in any one year exceed sixty (60) days.
- 3.4.6 The Directors may decline to recognise any instrument of transfer unless:
- 3.4.6.1 The instrument of transfer is accompanied by the Certificate of the Shares to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; and
- 3.4.6.2 The Securities Transfer Tax on the Share Transfer has been paid.
- 3.4.7 Every instrument of transfer shall be left at a transfer office of the Company, accompanied by a Certificate of the Shares to be transferred. Every power of attorney given by a Shareholder authorising the transfer of Shares, shall, when lodged, produced or exhibited to the Company or any of its proper officers, be deemed as between the Company and the grantor of the power to continue and remain in full force and effect, and the Company may allow that power to be acted upon until such time as express notice in writing of its revocations has been lodged at such of the Company's registered office or transfer office, if any, as the power was lodged, produced or exhibited as aforesaid. The Company shall not be bound to allow the exercise of any act or matter by an agent for a Shareholder unless a notarial certified copy of that agent's authority be produced and lodged with the Company.
- 3.4.8 The executor of the estate of a deceased sole holder of a Share shall be the only person recognised by the Company as having any title to the Share. In the case of a Share registered in the names of two or more holders, the survivor/s or the executor of

the deceased shall be the only persons recognised by the Company as having any title to the Share.

- 3.4.9 Any person becoming entitled to a Share in consequence of the death or insolvency of a Member shall, upon such evidence being produced as may from time to time be required by the Directors, have the right, either to be registered as a Member in respect of the Share or instead of being registered himself, to make such transfer of the Share as the deceased or insolvent could have made, but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or insolvent before the death or insolvency.
- 3.4.10 The parent or guardian of a minor and the *curator bonis* of a lunatic member or any person becoming entitled to Shares in consequence of the death or insolvency of any Member or by the marriage of any female Member or by any lawful means other than by transfer in accordance with this Memorandum of Incorporation, may, upon producing such evidence as sustains the character in which he proposes to act under this section, or of his title, as the Directors think sufficient, transfer those Shares to himself or any other person, subject to the articles as to transfer herein before contained. This section is hereinafter referred to as the "Transmission Clause"
- 3.4.11 A person becoming entitled to a Share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would have been entitled if he were the registered holder of the Share, except that he shall not, before registering as a Member in respect of a Share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.
- 3.4.12 Any person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the Company, or of a Member whose estate has been sequestrated or of a Member who is otherwise under a disability or as the liquidator of any Body Corporate which is a Member of the Company, shall be entered in the Register of Members of the Company *nomine official* and shall thereafter, for all purposes, be deemed to be a Member of the Company.
- 3.4.13 In the event of a sale in execution, deceased estate or any other alienation of property the Company has the right to attend to the transfer of the associated Share in the Company to the new owner when the underlying property is transferred. The Company Secretary is hereby authorised to sign any documentation on behalf of the seller and the purchaser. In the event that the underlying share in the Club is not dealt with in any sale agreement between the seller and the purchaser, the share shall be transferred for R1.00 (One Rand).

4 ARTICLE 4 – SHAREHOLDERS

4.1 Shareholder’s authority to act

The members of the Company shall deal with and dispose of all matters prescribed in the Act, including the sanctioning of distributions, the consideration of the Annual Financial Statements, the election of Directors and the appointment of an Auditor and may deal with any other special business laid before it at any General meeting of the Company.

4.2 Representation by proxy

4.2.1 Every Shareholder of the Company, or his appointed agent has the right to appoint a proxy to represent him at any meeting of the Company. The proxy need not be a member of the Company.

4.2.2 The right of the Shareholders of the Company to appoint two or more persons concurrently as proxies, as set out in section 58 (3) (a), is not limited, restricted or varied by this Memorandum of Incorporation.

4.2.3 In all instances, the Proxy appointed to represent him at any meeting of the Company must be the same person appointed to represent him at any meeting of the St Francis Links Homeowners Association NPC.

4.3 Authority of proxy to delegate

The Shareholder’s proxy does not have authority to delegate the proxy’s powers to another person, as contemplated by section 58 (3) (b), unless the proxy instrument specifically allows for it, and subject to such delegation of the proxy’s powers to another person being reduced to writing and subject further to such delegation being delivered to the Company on the same terms as required by 4.4 below.

4.4 Requirement to deliver proxy Instrument to the Company

A copy of the instrument appointing a proxy must be delivered to the Company, or to any other person on behalf of the Company, at least seventy-two (72) hours prior to the commencement of the Shareholders Meeting at which the proxy is entitled, in terms of such proxy, to exercise any rights of the Shareholder. No instrument of proxy shall be valid after the expiration of six months from the date when it was signed, unless specifically so stated in the proxy itself, and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting. In the event that the proxy specifically states that it is valid until withdrawn in writing, the Company shall

hold such proxy and it shall be valid for all Shareholder Meetings until so withdrawn in writing.

4.5 Deliberative authority of proxy

A proxy is entitled to exercise, or abstain from exercising, any voting right of the Shareholder without direction, except to the extent that the instrument appointing the proxy, provides otherwise.

4.6 Record date for exercise of shareholder rights

4.6.1 The Board may set a Record Date for the purpose of determining which Shareholders are entitled to:

- 4.6.1.1 receive notice of a Shareholders Meeting;
- 4.6.1.2 participate in and vote at such a meeting;
- 4.6.1.3 decide any matter by written consent or electronic communication;
- 4.6.1.4 receive a Distribution; or
- 4.6.1.5 be allotted or exercise any other rights.

4.6.2 A Record Date so determined by the Board may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or the action for which the Record Date is being set, is scheduled to occur, and must be published to the Shareholders.

4.6.3 If, at any time, the Company's Board of Directors fails to determine the Record Date for determining shareholder's rights, as contemplated in section 59, the Record Date for the relevant matter is as determined in accordance with section 59 (3):

- 4.6.3.1 in the case of a meeting, the latest date by which the Company is required to give notice of that meeting; or
- 4.6.3.2 the date of the relevant action or event in any other case.

4.6.4 Only shareholders in good standing shall be entitled to attend general meetings and to vote thereat. For purposes hereof a person representing a member who is not a natural person shall not be entitled to attend a general meeting if the member in question is not in good standing.

5 ARTICLE 5 – SHAREHOLDERS MEETINGS

5.1 Requirement to hold meetings

5.1.1 The Company is required to hold an Annual General Meeting of Shareholders, once in every calendar year, but no more than fifteen (15) months after the date of the previous Annual General Meeting.

5.1.2 The Board has the authority to call a Shareholders Meeting at any time in the manner and on the terms prescribed below by this Memorandum of Incorporation.

5.2 Shareholder's right to requisition a meeting

The right of Shareholders to requisition a meeting, as set out in section 61 (3), may be exercised by the holders of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, subject to the demands from Shareholders to call a meeting being a signed written demand describing the specific purpose for which the meeting is proposed.

5.3 Location of shareholders meetings

The Company's Board of Directors has the authority to determine the location of any Shareholders Meeting, whether in the Republic or in any foreign country.

5.4 Notice of shareholders meetings

5.4.1 The minimum number of days for the Company to deliver a notice of a General meeting to the shareholders is 15 (fifteen) Business Days before the meeting is to begin, as provided for in section 62 (1).

5.4.2 The Company may call a Shareholders Meeting with less notice than required by 5.4.1 above if every person entitled to vote in respect of any item on the agenda of the meeting is present at the meeting and votes to waive the required minimum notice of the meeting.

5.4.3 The notice of a Members Meeting must be in writing, clearly stating the date, time, place, record date and purpose of/matters to be considered at the meeting. Such notice may be delivered by ordinary or electronic mail or electronic publication.

5.4.4 In addition to 5.4.3 above such a notice must also include a copy of any proposed resolution to be considered at the meeting and contain a reasonably prominent statement of the Shareholders' rights with regards to appointing proxies.

5.4.5 An immaterial defect in the notice of a Shareholders Meeting does not invalidate any action taken at the meeting.

5.4.6 A material defect in the giving of the notice of a Shareholders Meeting will prevent the meeting from proceeding, unless every Shareholder entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and votes to approve the ratification of the defective notice.

5.5 Electronic participation in shareholders 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, subject to the notice of that meeting informing Shareholders of the availability of that form of participation, and providing any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication.

5.6 Quorum for shareholders meetings

- 5.6.1 The quorum requirement for a general meeting is at least 20% (twenty percent) of all the voting rights that are entitled to be exercised being present, in person or by proxy, subject to a minimum of 3 (three) Shareholders personally present.
- 5.6.2 The quorum requirement for a general meeting where a Special Resolution shall be at least 20% (twenty percent) of the voting rights that are entitled to be exercised present in person or by proxy.
- 5.6.3 If within half-an-hour after the appointed time for a meeting to begin the requirements for a quorum as stipulated in 5.6.1 or 5.6.2 above are not met for the purposes of holding a meeting, the meeting is postponed without motion, vote or further notice, for one hour.
- 5.6.4 If within half-an-hour after the appointed time for a meeting to begin the requirements for a quorum as stipulated in 5.6.1 or 5.6.2 above are not met for the consideration of an issue, the matter may be postponed to a later time in the meeting without motion or vote, and if there are no other business on the agenda of the meeting, or if at that later time the quorum requirements are still not met, the meeting is adjourned for one hour, without motion or vote.
- 5.6.5 At such an adjourned meeting, if a quorum is still not present after half-an-hour has passed, the members present in person shall be a quorum.

5.7 Adjournment of shareholders meetings

A meeting may not be adjourned beyond the earlier of the date that is 120 (one hundred and twenty) days after the record date determined for the meeting in terms of section 59, or the date that is 60 (sixty) Business Days after the date on which the adjournment occurred.

5.8 Shareholders resolutions

- 5.8.1 For an **Ordinary Resolution** to be adopted at a Shareholders Meeting, it must be supported by **more than 50%** of the voting rights held by Shareholders, present in person or by proxy, exercised on the resolution, as provided in section 65 (7), subject to 5.8.3 below.
- 5.8.2 For a **Special Resolution** to be adopted at a Members Meeting, it must be supported by the **at least 75%** of the voting rights held by members, present in person or by proxy, exercised on the resolution, as provided in section 65 (9), subject to 5.8.3 below.
- 5.8.3 During the Development Period, no Resolution shall be carried unless the nominee of the Developer present, in person or by proxy, votes in favour of such Resolution and any Ordinary Resolution shall be carried if the nominee of the Developer present, in person or by proxy, votes in favour of such Resolution.
- 5.8.4 In addition to anything further prescribed by the Act as amended, a Special Resolution is required to:
- 5.8.4.1 Amend the company's Memorandum of Incorporation, in general or to allow for the amendment of the authorisation and classification of Shares, or the numbers, preferences, rights, limitation and other terms associated with each class of Share;
 - 5.8.4.2 Ratify a consolidated revision of a company's Memorandum of Incorporation as contemplated in section 18(1)(b);
 - 5.8.4.3 Ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20(2);
 - 5.8.4.4 Approve an issue of Shares if the voting power of the Shares issued or issuable will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before the transaction;
 - 5.8.4.5 Approve a decision of the Board for the re-acquisition of its Shares by the Company in the circumstances contemplated in section 48(8);
 - 5.8.4.6 Authorise the basis for compensation to Directors of a Profit Company, as required by section 66(9);
 - 5.8.4.7 Approve the voluntary winding up of the Company, as contemplated in section 80(1);
 - 5.8.4.8 Approve the winding up of the Company by the Court, as contemplated in section 81(1);
 - 5.8.4.9 Approve any proposed fundamental transaction, such as disposing of all or the greater part of assets or undertaking, amalgamations and mergers, schemes to

consolidate classes of Shares or further division of classes of Shares, to the extent required by Part A of Chapter 5; or

- 5.8.4.10 Revoke a resolution contemplated in section 164(9)(c) to amend the Memorandum of Incorporation by altering the preferences, rights, limitations or other terms of any class of its Shares or a resolution to enter into fundamental transaction, as mentioned in 4.8.3.9 above.

5.9 Annual General Meeting

- 5.9.1 The Company must have an Annual General Meeting once a year, not being more than fifteen (15) months after the previous Annual General Meeting of the Company and not later than 6 (six) months after the financial year end of the Company.
- 5.9.2 Notice for the Annual General Meeting has to be given, either in written or electronic format, not less than 15 (fifteen) business days before such meeting is to be held.
- 5.9.3 The notice of the Annual General Meeting should state the following information:
- 5.9.3.1 The date of the meeting;
 - 5.9.3.2 The venue where the meeting will be held;
 - 5.9.3.3 The time of the meeting;
 - 5.9.3.4 Any specific purpose not included in the matters normally considered at an Annual General Meeting;
- 5.9.4 The accidental omission to give notice of a meeting or the non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of the Members at such meeting.
- 5.9.5 The Annual General Meeting shall deal with the following matters as prescribed in the Act:
- 5.9.5.1 The consideration and approval of the Annual Financial Statements of the Company;
 - 5.9.5.2 The election of Directors or any other Officers of the Company;
 - 5.9.5.3 The appointment of an Auditor for the following year;
 - 5.9.5.4 The Sanctioning of Distributions to Members;
 - 5.9.5.5 Any other matter or business laid before the meeting.
- 5.9.6 No business shall be transacted at an Annual General Meeting without a quorum being present. A quorum for the Annual General Meeting shall be 20% (twenty percent) of all Shareholders present, in person or by proxy.

6 ARTICLE 6 – DIRECTORS AND OFFICERS

6.1 Composition of the Board of Directors

6.1.1 The Board of Directors of the Company comprises of a minimum of Four (4) Directors, to be elected by the Company's Shareholders entitled to exercise voting rights, as contemplated in section 68. The number of Directors and the election thereof shall be determined from time to time by the Members in a general meeting, subject to the following provisions:

6.1.1.1 During the Development Period there shall be a maximum of Eight (8) directors, at least Four (4) of whom shall be nominees of the developer.

6.1.1.2 The Chairman and Deputy Chairman shall be elected by the Directors at their first meeting after the Annual General Meeting of the Association, provided that for the Development Period, the Chairman and the Deputy Chairman shall be Directors nominated by the Developer.

6.1.1.3 The appointment and election of Directors of the Company shall be done simultaneously with the appointment and election of Directors of the St Francis Links Homeowners Association NPC.

6.1.1.4 The Board may call for the nomination of Directors at least 45 business days before the Annual General Meetings. Fully completed nomination forms together with curriculum vitae of the candidate and statement by candidate regarding his motivation, and key factors for consideration by Shareholders of his candidature must be returned at least 30 days before the Annual General Meeting so that full details of nominated Directors can be circulated together with the Notice of the Annual General Meeting.

6.1.2 In addition to the elected Directors there are no appointed or *ex-officio* Directors of the Company, as contemplated in section 66(4).

6.1.3 The Company's Directors elected will be the same persons appointed as Directors of St Francis Links Homeowners Association NPC

6.1.4 Each Director elected may nominate any Shareholder of the Company as Alternate Director to act in his stead if he is not able to. The appointment of this Alternate Director has to be approved by a majority of the Company's Directors present at the meeting and the person elected should not be ineligible to act as a Director as set out in Section 69 of the Act. In the event of the nomination of an Alternate Director, such person must also be nominated to act as Alternate Director in respect of the St Francis Links Homeowners Association NPC.

6.1.5 In addition to satisfying the qualifications and eligibility requirements set out in section 69, to become or remain a Director or a Prescribed Officer of the Company, a person

need not satisfy any further eligibility requirements or qualifications. To avoid confusion, the following persons will be ineligible or disqualified from serving as a Director or Prescribed Officer of the Company:

- 6.1.5.1 A Juristic Person;
 - 6.1.5.2 An unemancipated minor;
 - 6.1.5.3 A person prohibited by a court from serving as such, or having been declared to be delinquent in terms of the Act;
 - 6.1.5.4 An unrehabilitated insolvent;
 - 6.1.5.5 A person prohibited by public regulation from being a Director;
 - 6.1.5.6 A person convicted of a crime and imprisoned without the option of a fine or fined more than the prescribed amount, for any offence involving theft, fraud, dishonesty, forgery, perjury, or in connection with the formation and management of a company, or in terms of the Insolvency Act, 1936, the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001, the Security Services Act, 2004 or the Prevention and Combating of Corruption Activities Act, 2004.
- 6.1.6 Each elected Director of the Company serves for an indefinite term, as contemplated in section 68 (1).
- 6.1.7 The authority of the Company's Board of Directors to fill any vacancy on the Board on a temporary basis, as set out in section 68 (3), is not limited or restricted by this Memorandum of Incorporation.

6.2 Rotation of Directors

- 6.2.1 At the Annual General Meeting of the Company, all the Directors shall retire from office, and at the Annual General Meeting in every subsequent year one-third of the Directors for the time being, or if their number is not three (3) or a multiple of three (3), the number nearest to one-third shall retire from office.
- 6.2.2 The Directors to retire each year shall be those who have been longest in office since their last election, but as between persons who became Directors on the same day, those who retire shall, unless they otherwise agree among themselves, be determined by lot.
- 6.2.3 A retiring Director shall be eligible for re-election.
- 6.2.4 The Company at the Annual General Meeting at which a Director retires in the aforesaid manner or at any other General meeting may fill the vacancy by electing a person thereto.
- 6.2.5 If at any meeting at which an election of Directors ought to take place, the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies,

the meeting shall stand adjourned and the provisions of 5.7 shall *mutatis mutandi* apply to such adjournment, and if at such adjourned meeting the vacancies are not filled, the retiring Directors shall be deemed to have been re-elected at such adjourned meeting unless a resolution against the re-election of any such Director have been put to the meeting and was accepted.

- 6.2.6 The Company may, from time to time, in a general meeting increase or reduce the number of Directors and may also determine in what rotation such increased or reduced number is to retire from office.
- 6.2.7 Unless the Shareholders otherwise determine in a General meeting, any casual vacancy occurring on the Board of Directors may be filled by the Directors, but the Director so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose stead he is appointed, was last elected a Director. Such appointment shall be ratified at the next General meeting of Shareholders.
- 6.2.8 The directors shall have power at any time, and from time to time, to appoint a person as an additional Director but so that the total number of Directors shall not at any time exceed the number fixed according to this Memorandum of Incorporation, and such Director shall retire from office at the next following Annual General Meeting and shall then be eligible for re-election, but shall not be taken into account in determining which Directors are to retire by rotation at such meeting.

6.3 Committees of the Board

- 6.3.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.
- 6.3.2 The Company's Board of Directors is authorised to appoint committees of Directors, which committee shall have at least 1 (one) Board member or officer of the Company as appointed by the board serving on it, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1), and to include in any such committee persons who are not Directors, as set out in section 7 (2)(a), as long as such Committee Members are not ineligible or disqualified from being Directors in terms of the Act or this Memorandum of Incorporation.
- 6.3.3 A Committee appointed by the Company's Board of Directors has the full authority of the Board in respect of a matter referred to it, and may consult with or receive advice from any person. This shall not detract from the responsibilities of the Board.

6.4 Authority of the Board of Directors

- 6.4.1 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. As a result the Company's Board of Directors has the authority to exercise all of the powers and perform any of the functions of the Company in pursuing its business interests and performing its business activities.
- 6.4.2 The Directors may exercise all the powers of the Company to borrow money and to mortgage, pledge or bind its undertaking and property or any part thereof, and to issue debentures, debenture stock and other securities, whether outright or as security for any debts, liability or obligation of the Company.

6.5 Directors' Meetings

- 6.5.1 A decision that could be voted on at a meeting of the Board of Directors of the Company may instead be adopted by written consent of a majority of the Directors, given in person, or by Electronic Communication, provided that each Director has received notice of the matter to be decided.
- 6.5.2 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 3 (three) Directors.
- 6.5.3 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, 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, and to participate effectively in the meeting.
- 6.5.4 The Company's Board of Directors has the authority to determine the manner and form of providing notice of its meeting, as set out in section 73 (4), subject to no meeting being convened without notice to all of the Directors.
- 6.5.5 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 (4) is not limited or restricted by this Memorandum of Incorporation, and such a meeting may proceed if all of the Directors of the Company acknowledge actual receipt of the notice, or are present at the meeting, or waive the required notice of the meeting.
- 6.5.6 The quorum requirement for a Directors meeting to begin is a majority being present.
- 6.5.7 The voting rights at a Directors meeting will be one vote to each Director.
- 6.5.8 In the case of a tied vote during the Development Period, the Chairman may cast a second, deciding vote.

- 6.5.9 Following the Development Period and in the case of a tied vote, the Chairman shall not have a second casting vote and the resolution shall not be passed.
- 6.5.10 The Chairman and Deputy Chairman shall be elected by the Directors at their first meeting after the Annual General Meeting.

6.6 Directors compensation and financial assistance

Other than the re-imbusement of reasonable travelling expenses, no Directors compensation or financial assistance shall be authorised by the Board. Compensation of any Non-Executive Directors may be approved at a Shareholders Meeting.

6.7 Indemnification of Directors

- 6.7.1 The Company may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company, and may further directly or indirectly indemnify a Director for such expenses if the proceedings are abandoned or exculpate the Director, or if they arise in respect of any liability for which the Company is authorised to indemnify a Director in terms of 6.7.2 below.
- 6.7.2 The Company shall indemnify a Director in respect of liability arising out of performance of his duties and actions taken as Director except to the extent that such liability arise from wilful misconduct or wilful breach of trust, or in the case of the Director having:
- 6.7.2.1 Acted in the name of the Company, or performed any action on behalf of the Company, despite knowing that the he or she lacked any and all authority to do so;
- 6.7.2.2 Acted with gross negligence in such a manner that the Company is viewed to have conducted its business recklessly, with intent to defraud any person or for any fraudulent purpose; or
- 6.7.2.3 Been party to any act or omission by the Company despite knowing that the act or omission was calculated to defraud a creditor, employee or Shareholder of the Company, or had another fraudulent purpose.
- 6.7.3 The Company is authorised to purchase insurance to protect:
- 6.7.3.1 A Director against any liability or expenses for which the Company is permitted to indemnify a Director in accordance with 6.7.2 above; or
- 6.7.3.2 The Company against any contingency including, but not limited to, any expenses or liability indemnification the Company is authorised to award to the Directors.

6.8 Chief Executive Officer

The Directors may, from time to time, appoint a Chief Executive Officer (who shall be the same person so appointed in the Association), and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such power and authorities.

6.9 Resignation and / or Disqualification of Directors

The office of Director shall be vacated if the Director:

- 6.9.1 ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director by virtue of any provisions of the Act or the Memorandum of Incorporation; or
- 6.9.2 resigns his office by notice in writing to the Association and the Commissioner; or
- 6.9.3 becomes insolvent or assigns his estate for the benefit of or compounds with his creditors; or
- 6.9.4 is found to be a lunatic or of unsound mind; or
- 6.9.5 is absent for three consecutive regular meetings of the Board without obtaining prior leave of absence; or
- 6.9.6 is removed as a Director by a majority Board Decision for any reason whatsoever; or
- 6.9.7 in the case of a Director appointed by the Developer, on the Developer revoking his appointment.

Save for that, during the Development Period, a nominee of the Developer shall be a Director for so long as the Developer does not revoke his appointment.