

This is the Memorandum of Incorporation which
was adopted by Special Resolution
on the day of 2013

Director

THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)

MEMORANDUM OF INCORPORATION

OF

GREEN BUILDING COUNCIL OF SOUTH AFRICA NPC

A NON-PROFIT COMPANY WITH MEMBERS

REGISTRATION NUMBER: 2007/029477/08

REGISTRATION DATE: 11 OCTOBER 2007

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ANNEXURES

ANNEXURE "1": TABLE CR 3 A

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1 INTERPRETATION

- 1.1 In this Memorandum of Incorporation, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
- 1.1.1 "**Accounting Officer**" means an "accounting officer" as defined in the NPO Act;
- 1.1.2 "**Act**" means the Companies Act, No 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations;
- 1.1.3 "**Board**" means the board of Directors from time to time of the Company or if there is only one Director, then that Director;
- 1.1.4 "**CIPC**" means the Companies and Intellectual Property Commission established by section 185;
- 1.1.5 "**Commissioner**" means the Commissioner for the South African Revenue Service;
- 1.1.6 "**Company**" means the company named on the first page of this Memorandum of Incorporation, duly incorporated under the registration number endorsed thereon;
- 1.1.7 "**Director**" means a member of the Board as contemplated in section 66, or an alternate director, and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.8 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 1.1.9 "**Founding Member**" means Spire Property Group;
- 1.1.10 "**IFRS**" means the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards

Council established in terms of section 203;

- 1.1.11 **"Income Tax Act"** means the Income Tax Act, No 58 of 1962;
- 1.1.12 **"Member"** means any natural or juristic person, including any profit company, admitted as a member of the Company in terms of the provisions of this Memorandum of Incorporation;
- 1.1.13 **"Member in good standing"** means an organisation, company, trust or other juristic person that has paid membership fees for that current year and is not in arrears with any other fees, or any such member that has not been suspended for participating in any act or enterprise which violates the principles and values of the Company, in the sole discretion of the Board;
- 1.1.14 **"Membership Category"** means, subject to clause 10.3, the groups or categories of Members contemplated in clause 10.2.1;
- 1.1.15 **"Memorandum of Incorporation"** means this memorandum of incorporation of the Company, as amended from time to time;
- 1.1.16 **"Nonprofit Organisation"** means a nonprofit organisation as defined in the NPO Act;
- 1.1.17 **"NPO Act"** means the Nonprofit Organisations Act, No 71 of 1997;
- 1.1.18 **"NPO Director"** means the Director of Nonprofit Organisations, designated in terms of section 8 of the NPO Act;
- 1.1.19 **"Regulations"** means the regulations published in terms of the Act from time to time;
- 1.1.20 **"Republic"** means the Republic of South Africa; and
- 1.1.21 **"Rules"** means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act and clause 34 hereof.
- 1.2 In this Memorandum of Incorporation, unless the context clearly indicates otherwise –

- 1.2.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2.2 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.2.3 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and –
- 1.2.3.1 an alterable or elective provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict; and
- 1.2.3.2 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the conflict unless the Memorandum of Incorporation imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement, in which event the relevant provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.4 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.5 an expression which denotes -
- 1.2.5.1 any gender includes the other genders;
- 1.2.5.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.5.3 the singular includes the plural and *vice versa*;
- 1.2.6 if the due date for performance of any obligation in terms of this Memorandum of Incorporation is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.7 any words or expressions defined in any clause shall, unless the

application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation; and

- 1.2.8 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.3 Any reference in this Memorandum of Incorporation to –
- 1.3.1 "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;
- 1.3.2 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- 1.3.3 "**writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and form permitted in terms of the Act and/or the Regulations.
- 1.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Unless otherwise provided in this Memorandum of Incorporation or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.

- 1.6 Where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.
- 1.7 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8 Any reference herein to "**this Memorandum of Incorporation**" shall be construed as a reference to this Memorandum of Incorporation as amended from time to time.

2 JURISTIC PERSONALITY

- 2.1 The Company is a pre-existing company as defined in the Act and, as such, continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act, as contemplated in item 2 of the Fifth Schedule to the Act, and this Memorandum of Incorporation replaces and supersedes the Memorandum and Articles of Association of the Company applicable immediately prior to the filing hereof.
- 2.2 The Company is incorporated in accordance with and governed by –
- 2.2.1 the unalterable provisions of the Act, subject only to such higher standards, greater restrictions, longer periods of time or similarly more onerous requirements as may be imposed on the Company by this Memorandum of Incorporation in relation to such unalterable provisions;
- 2.2.2 the alterable provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this Memorandum of Incorporation;
- 2.2.3 the other provisions of this Memorandum of Incorporation; and
- 2.2.4 its Rules, if any.

3 OBJECT

- 3.1 The sole purpose of the Council, as an independent public benefit

organisation is the promotion of green building, and particularly the facilitation of energy efficient, resource efficient and environmentally responsible building practices ("green building") in the property market, including education and training programmes relating thereto, the development and operation of environmental rating systems for buildings, research, events and conferences and general activities to raise awareness of environmentally sustainable building for the benefit of all the citizens of South Africa.

- 3.2 The provisions of this Memorandum of Incorporation are consistent with the principles set out in item 1(2) to item 1(9) of Schedule 1 to the Act in so far as such principles are applicable to the Company and no amendment of this Memorandum of Incorporation shall be competent to the extent that it is contrary to or negates any of such principles.

4 NON-PROFIT COMPANY PROVISIONS

- 4.1 The Company is a non-profit company, and accordingly the Company –
- 4.1.1 must apply all of its assets and income, however derived, to advance its stated objects set out in clause 3; and
- 4.1.2 subject to clause 4.1.1, may –
- 4.1.2.1 acquire and hold securities issued by a profit company; or
- 4.1.2.2 directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 4.2 The Company, as a non-profit company, must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless as to how the income or asset was derived, to any person who is or was an incorporator of the Company, or who is a Member or Director, or person appointing a Director of the Company, except –
- 4.2.1 as reasonable –
- 4.2.1.1 remuneration for goods delivered or services rendered to, or at the

- direction of the Company; or
- 4.2.1.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;
- 4.2.2 as payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;
- 4.2.3 as payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance a stated object of the Company; or
- 4.2.4 in respect of any legal obligation binding on the Company.
- 4.3 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company –
- 4.3.1 no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and
- 4.3.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts –
- 4.3.2.1 having objects similar to the Company's main object;
- 4.3.2.2 as determined –
- 4.3.2.2.1 in terms of this Memorandum of Incorporation; or
- 4.3.2.2.2 by the Members, failing whom the Directors, at or immediately before the time of its dissolution; or
- 4.3.2.2.3 by the court, if no such determination is made in this Memorandum of Incorporation or by the Members or Directors; and

- 4.3.2.3 which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.

5 **LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator or Director or Member of the Company, be liable for any liabilities or obligations of the Company.

6 **POWERS OF THE COMPANY**

- 6.1 The Board shall be entitled to borrow money and to mortgage or bind the undertaking and property of the Company or any part thereof, and to issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or of any third party, subject to the resolutions issued by the Members in a General Meeting.
- 6.2 The Directors may set aside and carry to a reserve fund all the surplus funds of the Company, which at their discretion may be applied for any purpose for which such funds may properly be applied in terms of the main object.
- 6.3 The Company has all of the legal powers and capacity of an individual for purposes of carrying out its object, except to the extent that a juristic person power is incapable of exercising any such power or having any such capacity, and no provision contained in this Memorandum of Incorporation should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.
- 6.4 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).

7 **SPECIAL PROVISIONS RELATING TO TAX EXEMPTION**

- 7.1 The Company has been approved by the Commissioner for approval as a public benefit organisation as contemplated in section 30(3) of the Income Tax Act and accordingly the receipts and accruals of the Company will be

exempt from normal tax to the extent set out in section 10(1)(cN) of the Income Tax Act. In order to qualify for such tax exemption the Company shall at all times comply with the provisions of clauses 7.2 to 7.16.

- 7.2 As recorded in clauses 4.1 and 4.2 of this Memorandum of Incorporation, the income and property of the Company howsoever derived shall be applied solely towards the promotion of the Company's objects or be invested and no portion thereof shall be paid or transferred, directly or indirectly, to any person other than in the course of the promotion of the Company's objects; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company in return for any services actually rendered to the Company.
- 7.3 The Company shall take reasonable steps to ensure that each activity carried on by the Company is for the benefit of, or is widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).
- 7.4 The Company shall comply with such conditions, if any, as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its objects.
- 7.5 As recorded in clause 4.3, upon its dissolution the assets of the Company remaining after the satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to the Company's objects, which has been approved by the Commissioner as a public benefit organisation in terms of section 30 of the Income Tax Act.
- 7.6 There shall at all times be a minimum of 3 (three) Directors who are not connected persons in relation to each other, to accept the fiduciary responsibility of the Company and no single person shall directly or indirectly control the decision making powers relating to the Company. For purposes of this Memorandum of Incorporation "connected person" has the meaning ascribed to that term in the Income Tax Act.

- 7.7 The Company is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: provided that a donor (other than a donor which is an approved public benefit organisation or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.
- 7.8 The Directors shall submit copies of any amendments to the Memorandum of Incorporation to the Commissioner and to the NPO Director.
- 7.9 The Company shall not knowingly be a party to or permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.
- 7.10 The Company will not pay any remuneration, as defined in the Fourth Schedule of the Income Tax Act, to any employee, office bearer, Director or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered and will not economically benefit any person in a manner which is not consistent with the objects of the Company.
- 7.11 The Company shall submit the required income tax returns together with the relevant supporting documents to the South African Revenue Service annually and comply with all such other reporting requirements as may be determined by the Commissioner.
- 7.12 The Company has been registered in terms of section 13(5) of the NPO Act and has complied with any other requirements imposed in terms of that Act.

- 7.13 The Company will not use the Company's resources directly or indirectly to support, advance or oppose any political party.
- 7.14 All financial transactions of the Company shall be conducted by means of a banking account.
- 7.15 Any books of account, records or other documents relating to the Company must, regardless of whether such documents are kept in book form or not, be retained and carefully preserved by the Company for a period of not less than 4 (four) years after the date of the last entry in any book or document.
- 7.16 The Company shall be entitled but not obliged to procure that donations to the Company shall be allowed to be deducted from the taxable income of a taxpayer, as contemplated in section 18A of the Income Tax Act, and such other tax exemptions as are available in law, and/or as the Commissioner may allow. In that event the Company shall –
- 7.16.1 comply with any additional requirements imposed in terms of section 18A(1) of the Act that are prescribed for donations to be allowed as a deduction for the purposes of section 18A of the Act; and
- 7.16.2 ensure that an audit certificate is provided upon submission by the Company to the Commissioner of its annual return for each year of assessment, confirming that all donations received or accrued by the Company in that year, in respect of which section 18A receipts were issued by the Company, were utilised in the manner contemplated by that section.
- 7.17 Within 2 (two) calendar months after drawing up the Company's financial statements, the Company must arrange for a written report to be compiled by an Accounting Officer (which may be the auditor of the Company) and submitted to the Company stating whether or not –
- 7.17.1 the financial statements of the Company are consistent with its accounting records;
- 7.17.2 the accounting policies of the Company are appropriate and have been appropriately applied in the preparation of the financial statements; and

7.17.3 the Company has complied with the provisions of the NPO Act and of this Memorandum of Incorporation which relate to financial matters.

7.18 The Company shall preserve each of the Company's books of account, supporting vouchers, income and expenditure statements, balance sheets and Accounting Officer's reports, in an original or reproduced form, for such period as may be prescribed from time to time in terms of the NPO Act, and in any event for a period not less than that referred to in clause 7.15.

8 RESTRICTIVE CONDITIONS

This Memorandum of Incorporation does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) or (c).

9 APPLICATION OF OPTIONAL PROVISIONS OF THE ACT

The Company elects, to comply to a limited extent as contemplated in clause 30, in terms of section 34(2), to comply voluntarily with the extended accountability provisions set out in Chapter 3 of the Act.

10 MEMBERS AND ADMISSION TO MEMBERSHIP

10.1 The number of Members shall not be limited and shall not be restricted or regulated in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution of the Republic of South Africa Act, No 108 of 1996.

10.2 Subject to clause 10.6, the Members of the Company shall be –

10.2.1 divided into the following 9 (nine) separate groups or categories based on organisation type, as set out below, each comprising one or more categories based on size or scale of operations to be decided by the Board from time to time -

10.2.1.1 Commercial Property Developers;

10.2.1.2 Investors, Owners, Property Managers;

10.2.1.3 Major Corporate Tenants and Retail;

- 10.2.1.4 Building Contractors;
- 10.2.1.5 Building Product Manufacturers and Distributors;
- 10.2.1.6 Professional Services: Architects, Designers, Engineers, Quantity Surveyors, Project Managers, Consultants, Legal;
- 10.2.1.7 Research, Higher Education, NGO's, Regulators;
- 10.2.1.8 Related Interests: Utilities, Financial, Insurance; and
- 10.2.1.9 Government; and
- 10.2.2 such persons, juristic or otherwise, as the directors may from time to time resolve to admit to Membership, by reason of their ability and willingness to contribute financial or other support to the purposes of the Company.
- 10.3 The Board may at any time modify, add or delete any Membership Category or part of a Membership Category and after doing so each affected group shall be comprised of updated Membership Categories as determined by the Board.
- 10.4 Each Member must, when applying for Membership, indicate the Membership Category which that potential Member falls into, on the basis that the Membership Category in which the applicant's predominant activities are carried out should be the Membership Category identified by the applicant.
- 10.5 In the event of a dispute or uncertainty about which Membership Category a Member should be classified under, the Board shall consider such information as it deems necessary and shall make a binding decision, taking into account the objects of the Company.
- 10.6 All the Members shall be of a single class, being voting Members.
- 10.7 The Board may from time to time determine Membership fees and dues as it may deem appropriate.
- 10.8 In addition to the rights of membership prescribed by the Act and by this

Memorandum of Incorporation, membership of the Company shall confer upon each Member the right to receive –

- 10.8.1 copies of the annual financial statements of the Company; and
- 10.8.2 notice of, and to attend, speak and vote at general meetings of the Company.

11 TERMINATION OF MEMBERSHIP

- 11.1 Membership of the Company shall be terminated –
 - 11.1.1 if a Member fails to be a Member in good standing;
 - 11.1.2 upon receipt by the Company of notice in writing to that effect from the Member concerned;
 - 11.1.3 upon the issue of a final order of sequestration or liquidation of or commencement of business rescue proceedings against the Member concerned;
 - 11.1.4 upon the death of any Member, or upon any Member being declared insane or incapable of managing his own affairs;
 - 11.1.5 in the event of non-compliance by a Member with any such obligations as may attach to his Membership, upon the expiration of a period of 3 (three) months reckoned from the date of written notice by the Company to the Member concerned, requiring the remedying of such default and the Member's failure so to remedy within the period; save that the Board shall be entitled to extend the period of grace allowed to a particular Member to such extent and for such reasons as it may in its sole and absolute discretion deem appropriate;
 - 11.1.6 upon the passing of a Board resolution to this effect by a duly convened general meeting of the Company; and the Board has passed a resolution expelling the Member for actions the Board determine are prejudicial to the welfare, interest or character of the Company, including willful breach of this Memorandum of Incorporation.

- 11.1.7 upon a decision to this effect by the Board where the Member has failed to pay any fees as determined in terms of clause 10.7, after having being given written notice that such fees are due, and not paying such amount within 90 (ninety) days of receiving such notice; or
- 11.1.8 upon a decision to this effect by the Board by resolution of at 75% (seventy five percent), should the Board deem this to be in the best interests of the Company.
- 11.2 Notwithstanding anything to the contrary herein contained or implied, the termination of Membership shall in no way release a Member of any obligation undertaken by that Member prior to the termination of its Membership.
- 11.3 A Member who resigns in terms of clause 11.1.1 hereof –
- 11.3.1 shall be bound by the provisions of this Memorandum of Incorporation and any Rules of the Company until the date of the final termination of its Membership; and
- 11.3.2 shall not be entitled to any refund and shall be liable for its financial and/or any other responsibilities to the Company, including any arrears which are due up to the date of expiry of its period of notice.

12 NON-TRANSFERABILITY OF MEMBERSHIP

Save may be provided otherwise herein, Membership of the Company may not be assigned or transferred unless the Board shall otherwise determine, and in that event, subject to such conditions and in such manner as the Board in its sole discretion may deem appropriate.

13 REPRESENTATIVE MEMBERS

- 13.1 The Board is entitled (but not obliged) to recognise any person as a representative of a Member, by reason of her/his appointment as –
- 13.1.1 an executive office holder or duly authorised representative of a

particular organisation, statutory body or company;

- 13.1.2 an executor, administrator, trustee, curator or guardian of the estate of a deceased or sequestrated Member, or of a Member who is otherwise under disability; or
 - 13.1.3 the liquidator of any Member which is a body corporate in the course of being wound up.
- 13.2 Should the Board recognise a representative Member, from the date of such recognition and submission of any proof required by the Board, he/she shall be deemed to be a Member of the Company in the relevant capacity or of the same class as the Member concerned.

14 MEMBERS' REGISTER

- 14.1 The Company shall maintain a Members' register in the form prescribed by the Act and maintain such register in accordance with the prescribed standards.
- 14.2 The Members' register maintained in accordance with the Act shall be sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.
- 14.3 The Members' register shall be open to inspection by any Member free of charge at any reasonable time during the ordinary business hours of the Company.

15 MEETINGS OF MEMBERS

- 15.1 Only Members in good standing may attend and make proposals, put motions and initiate discussions at general or special meetings on matters germane to the business of the Company.
- 15.2 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a meeting of Members at any time.
- 15.3 Subject to the provisions of section 60 dealing with the passing of

resolutions of Members otherwise than at a meeting of Members, the Company shall hold a meeting of Members –

- 15.3.1 at any time that the Board is required by the Act or this Memorandum of Incorporation to refer a matter to Members for decision; or
 - 15.3.2 whenever required in terms of the Act to fill a vacancy on the Board; or
 - 15.3.3 when required in terms of clause 15.4 or by any other provision of this Memorandum of Incorporation.
- 15.4 The Board shall call a meeting of Members if 1 (one) or more written and signed demands calling for such a meeting are delivered to the Company and –
- 15.4.1 each such demand describes the specific purpose for which the meeting is proposed; and
 - 15.4.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, at the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 15.5 At any general meeting, a resolution put to the vote of the meeting shall be decided on a poll, unless a show of hands is demanded by the Chairperson, or not less than 2 (two) Members entitled to vote and personally present or represented by proxy at the meeting. The demand for a vote by a show of hand may be withdrawn. Where there is no unanimous outcome regarding a resolution put to the vote on a poll, such resolution shall not be regarded as having been decided and shall be put to the vote again and be decided by a show of hands.
- 15.6 Unless a vote by a show of hands is so demanded, a declaration by the Chairperson that a resolution has, on a poll, been carried unanimously or by a particular majority or negated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of

the votes recorded in favour of or against such resolution.

- 15.7 If a vote by a show of hands is duly demanded, it shall be taken in such manner as the Chairperson directs.
- 15.8 A vote by a show of hands demanded on the election of a Chairperson or on a question of adjournment, shall be taken forthwith. A vote by a show of hands demanded on any other question shall be taken at such time as the Chairperson of the meeting at such point in the meeting directs. The demand for a vote by a show of hands shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the vote by a show of hands has been demanded.
- 15.9 Unless a meeting is required to be held in compliance with the Act, a resolution signed by or on behalf of all Members of the Company shall be as valid and effectual as if passed at a duly convened meeting of the Company.
- 15.10 At any general meeting, except in the case of a special resolution, a resolution put to the vote shall be decided by a majority of votes.

16 ANNUAL GENERAL MEETING

16.1 Notwithstanding any provision of the Act to the contrary, and in addition to other meetings of the Company that may be convened from time to time, the Company shall convene an annual general meeting of its Members –

16.1.1 initially, no more than 18 (eighteen) months after the date of its incorporation;

16.1.2 thereafter, once in each calendar year, but no more than 15 (fifteen) months after the date of the previous annual general meeting,

provided that any such annual general meeting shall be capable of being held by Electronic Communication in accordance with the further provisions of this Memorandum of Incorporation.

16.2 Each annual general meeting of the Company contemplated in clause 16 shall provide for at least the following business to be transacted –

- 16.2.1 the presentation of the financial statements for the immediately preceding financial year of the Company;
 - 16.2.2 the election of Directors, to the extent required by the Act or by this Memorandum of Incorporation;
 - 16.2.3 the appointment of an auditor for the following financial year, to the extent that the annual financial statements of the Company are required to be audited in terms of the Act or by this Memorandum of Incorporation; and
 - 16.2.4 any matters raised by the Members, with or without advance notice to the Company save that a matter shall not be considered where it is undesirable in the interests of the Company or the good order of the Meeting
- 16.3 Save as otherwise provided herein, the Company is not required to hold any other meetings of Members other than those specifically required by the Act.
- 16.4 The Board may determine the location of any meeting of Members, and the Company may hold any such meeting in the Republic or in any foreign country, and the authority of the Board and the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 16.5 The minimum number of days for the Company to deliver a notice of a meeting of Members to the Members as required by section 62 is as provided for in section 62(1) and, accordingly, any such notice shall be delivered to all Members as of the record date for the meeting at least 15 (fifteen) business days before the meeting is to begin.
- 16.6 The quorum requirement for a meeting of Members to begin or for a matter to be considered are as set out in section 64(1) without variation and, accordingly –
- 16.6.1 a meeting of Members may not begin until sufficient persons are present at the meeting, in person or by proxy, to exercise, in aggregate, at least 1% (one percent) of the voting rights that are entitled to be exercised in

respect of at least one matter to be decided at the meeting; and

- 16.6.2 a matter to be decided at a meeting of Members may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 1% (one percent) of all of the voting rights that are entitled to be exercised in respect of that matter at the time the matter is called on the agenda,

provided that, if the Company has more than 2 (two) Members, a meeting may not begin, or a matter begin to be debated, unless –

- 16.6.3 at least 3 (three) Members are present at the meeting; and
- 16.6.4 the requirements of clauses 16.6.1 and 16.6.2 are satisfied.

- 16.7 The time periods allowed in sections 64(4) and (5) apply to the Company without variation and, accordingly, if within 1 (one) hour after the appointed time for a meeting to begin, the requirements of clause 16.6 –

- 16.7.1 for that meeting to begin have not been satisfied, the meeting shall be postponed, without any motion, vote or further notice, for 1 (one) week;

- 16.7.2 for consideration of a particular matter to begin have not been satisfied –

- 16.7.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without any motion or vote; or

- 16.7.2.2 if there is no other business on the agenda of the meeting, the meeting shall be adjourned, without any motion or vote, for 1 (one) week,

provided that the person intended to chair a meeting that cannot begin due to the operation of clause 16.6 may extend the 1 (one) hour limit allowed in clause 16.7 for a reasonable period on the grounds that –

- 16.7.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or

- 16.7.4 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of clause 16.6.
- 16.8 The accidental omission to give notice of any meeting to any particular Member or Members shall not invalidate any resolution passed at any such meeting.
- 16.9 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 16.7 unless the location for the meeting is different from –
- 16.9.1 the location of the postponed or adjourned meeting; or
- 16.9.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 16.10 If at the time appointed in terms of clause 16.7 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of clause 16.6 have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
- 16.11 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) Member with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.
- 16.12 The maximum period allowable for an adjournment of a meeting of Members is as set out in section 64(12), without variation.
- 16.13 The chairperson, if any, of the Board shall preside as chairperson at every Member's meeting.
- 16.14 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose

1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no director is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to be chairperson of the meeting.

16.15 The chairperson of a meeting of Members may -

16.15.1 appoint any firm or persons to act as scrutineers for the purpose of checking any powers of attorney received and for counting the votes at the meeting; or

16.15.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.

16.16 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution, unless -

16.16.1 it is brought to the attention of the chairperson at the meeting; and

16.16.2 in the opinion of the chairperson of the meeting, it is of sufficient magnitude to vitiate the resolution.

16.17 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised -

16.17.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

16.17.2 at the meeting or adjourned meeting at which the result of the poll was announced,

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

16.18 Even if he is not a Member -

16.18.1 any Director; or

- 16.18.2 the company's attorney (or where the company's attorneys are a firm, any partner or director thereof),

may attend and speak at any general meeting, but may not vote, unless he is a Member or the proxy or representative of a Member.

17 MEMBERS' MEETINGS BY ELECTRONIC COMMUNICATION

- 17.1 The Company may conduct a meeting of Members entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, as set out in section 63, and the power of the Company to do so is not limited or restricted by this Memorandum of Incorporation. Accordingly –

- 17.1.1 any meeting of Members may be conducted entirely by Electronic Communication; or

- 17.1.2 one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any meeting of Members that is being held in person,

so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

- 17.2 Any notice of any meeting of Members at which it will be possible for Members to participate by way of Electronic Communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Member or proxy concerned.

18 VOTES OF MEMBERS

- 18.1 Only Members in good standing will be allowed to vote.
- 18.2 At a meeting of the Company every person present and entitled to exercise voting rights shall be entitled to such number of votes as allocated by the

Board from time to time to the specific Member, having regard to *inter alia* its Membership Category.

- 18.3 At any meeting of the Company a declaration by the chairperson that a resolution has been carried or carried unanimously or by a particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceedings of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 18.4 In the case of an equality of votes, the chairperson of the meeting, shall not be entitled to a second or casting vote.
- 18.5 The board of any company or the controlling body of any other entity or person that is a Member may authorise any person to act as its representative at any meeting of Members of the Company, in which event the following provisions will apply –
- 18.5.1 the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised if it were an individual Member; and
- 18.5.2 the authorising company, entity or person shall lodge a resolution of the directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hand of the chairperson or secretary thereof, with the Company before the commencement of any meeting of Members at which such person intends to exercise any rights of such Member, unless excused from doing so by the chairperson of such meeting.

19 PROXIES AND REPRESENTATIVES

- 19.1 Subject to clause 16.1, any Member may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Member, as a proxy to –
- 19.1.1 participate in, and speak and vote at, a meeting of Members on behalf of that Member; or

- 19.1.2 give or withhold written consent on behalf of that Member to a decision contemplated in section 60.
- 19.2 A proxy appointment –
- 19.2.1 must be in writing, dated and signed by the Member; and
- 19.2.2 remains valid for –
- 19.2.2.1 1 (one) year after the date on which it was signed; or
- 19.2.2.2 any longer or shorter period expressly set out in the appointment,
- unless it is revoked in a manner contemplated in the Act or expires earlier as contemplated in the Act.
- 19.3 The holder of a power of attorney or other written authority from a Member may, if so authorised thereby, represent such Member at any meeting of the Company and such holder shall deliver the power of attorney or other written authority (if any), or a copy thereof, to the Company before such holder exercises any rights of the Member at a meeting of Members.
- 19.4 All of the remaining provisions of the Act relating to the appointment and revocation of proxies and the rights of proxies generally shall apply and, in particular –
- 19.4.1 a Member has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a);
- 19.4.2 a Member's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b);
- 19.4.3 a Member or his proxy must deliver to the Company a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends to exercise that Member's rights; and
- 19.4.4 unless the instrument appointing a proxy provides otherwise, a Member's proxy may 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),

and none of such rights or powers are limited, restricted or varied by this Memorandum of Incorporation.

19.5 Every instrument of proxy shall, as far as circumstances permit, be substantially in the following form, or in such other form as the Directors may approve from time to time –

"I/We _____

being a member of Green Building Council of South Africa NPC do hereby appoint

or failing him/her

or failing him/her, the chairperson of the meeting as my/our proxy to vote or abstain from voting on my/our behalf at the meeting of the Company to be held at _____ on _____ and at any adjournment thereof as follows:-

	<u>In favour of</u>	<u>Against</u>	<u>Abstain</u>
Special Resolution 1
Ordinary Resolution 1

(Indicate instruction to proxy by way of a cross in space provided above). Except as instructed above or if no instructions are inserted above, my/our proxy may vote as he/she thinks fit.

SIGNED this day of in the year of .

MEMBER'S SIGNATURE

(Note -- A member entitled to attend, speak and vote is entitled to appoint a proxy to attend, speak and vote in his/her stead, and such proxy need not be a member of the Company)."

19.6 Although the Chairperson of the meeting shall be entitled to condone any non-compliance with the abovementioned formalities, the Company shall be obliged to give effect to the appointment of a proxy, provided the instrument appointing such proxy including the power of attorney or other authority, if any, under which it is signed or a duly certified copy thereof, has been deposited at the office of the Company not less than 48 (forty-eight) hours before the time for holding such meeting or any adjournment

thereof.

20 MEMBERS' RESOLUTIONS

- 20.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Members exercised on the resolution, as provided in section 65(7).
- 20.2 For a special resolution to be approved it must be supported by the holders of at least 75% (seventy five percent) of the voting rights exercised on the resolution, as provided in section 65(9).
- 20.3 No matters, except those matters set out in section 65(11) (to the extent applicable to the Company) and any other matter required by the Act or by this Memorandum of Incorporation to be resolved by means of a special resolution, require a special resolution adopted at a meeting of Members of the Company.
- 20.4 In the event that any Member abstains from voting in respect of any resolution, such Member will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

21 MEMBERS ACTING OTHER THAN AT A MEETING

- 21.1 In accordance with the provisions of section 60, a resolution that could be voted on at a meeting of Members (including in respect of the election of Directors) may instead be –
- 21.1.1 submitted by the Board for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and
- 21.1.2 voted on in writing by such Members within a period of 20 (twenty) business days after the resolution was submitted to them.
- 21.2 A resolution contemplated in clause 21.1 –
- 21.2.1 will have been adopted if it is supported by persons entitled to exercise

sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted meeting of Members; and

- 21.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.
- 21.3 Within 10 (ten) business days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause 21, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

22 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

- 22.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an audit committee or a social and ethics committee, and subject to clause 7.6, the Board must comprise at least 3 (three) Directors, but not be more than 20 (twenty) Directors.
- 22.2 Subject to clause 22.3, a Director shall be not be required to be a Member in order to be appointed a Director of the Company.
- 22.3 Subject to section 66(4) and section 66(5) of the Act, the Founding Member shall have the right to appoint a director and such director shall serve for an indefinite term.
- 22.4 Subject to clause 22.3, the Board shall at least 45 (forty five) days prior to the Annual General Meeting at which the Directors shall be elected, call for nominations for the election of directors from the Members. Nominees shall be included in a list of persons from whom nominations have been received ("**Directors Candidate List**"). Each person on the Directors Candidate List must have consented in writing to act as a director. The Directors Candidate List shall be sent to the Members together with the notice of the Annual General Meeting. At the Annual General Meeting appointment of the Directors shall be decided by a majority of votes and

voting shall take place according to the procedures set out in clause 15, 16, 17 and 18. The Members shall strive to appoint at least 1 (one) director from each Membership Category. At no point in time shall there be more than 6 (six) Directors appointed to the Board, who are not Members.

22.5 The Board shall have the power, by majority vote to –

22.5.1 appoint such additional Director of Directors as the Board may consider appropriate; and/or

22.5.2 appoint a successor or successors to assume office as Director/s on the failure of any one or more of them; and/or

22.5.3 remove any Director from office,

as they may in their discretion deem fit, provided that they shall so exercise the powers hereby granted to them to ensure that the number of Directors shall not fall below 3 (three).

22.6 In the event that the number of Directors should, for any reason, fall below 10 (ten), the remaining Director/s –

22.6.1 shall retain the power to act in terms of this clause to appoint a further Director to increase the Directors to the required number; and

22.6.2 shall further, pending such appointment, have power to exercise all the functions and powers of the Directors under this Memorandum of Incorporation for a period not exceeding 2 (two) months.

22.7 In addition to satisfying the qualification and eligibility requirements set out in section 69, namely that a person is disqualified to be a director of a company if —

22.7.1 a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or subject to subsections 69(9) to 69(12), the person—

22.7.1.1 is an unrehabilitated insolvent;

- 22.7.1.2 is prohibited in terms of any public regulation to be a director of the company;
- 22.7.1.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- 22.7.1.4 has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence—
- 22.7.1.4.1 involving fraud, misrepresentation or dishonesty;
- 22.7.1.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in sections 69(2) or 69(5); or
- 22.7.1.4.3 under this Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004)..
- 22.8 a person need not satisfy any further eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company, but each Director shall be required to attend the Company's Green Star SA Accredited Professional Course or such other or similar course required by the Company, including good governance, risk and pertinent aspects from South African companies' legislation
- 22.9 Unless the terms upon which any Director is appointed provide otherwise, each Director of the Company shall serve for a period of 3 (three) years and a vacancy in the number of Directors shall only arise in the event of –
- 22.9.1 any Director ceasing to hold office or become disqualified from holding office as such for any reason; and/or
- 22.9.2 the Directors resolving to increase the number of Directors; and/or

- 22.9.3 a Director is absent without the consent of the Board from 3 (three) or more consecutive meetings of the Board; and/or
- 22.9.4 any of the other circumstances contemplated in section 70(1) arising, namely –
- 22.9.4.1 when the person’s term of office as director expires; or
- 22.9.4.2 in any case, if the person—
- 22.9.4.2.1 resigns or dies;
- 22.9.4.2.2 in the case of an *ex officio* director, ceases to hold the office, title, designation or similar status that entitled the person to be an *ex officio* director;
- 22.9.4.2.3 becomes incapacitated to the extent that the person is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time, subject to section 71(3);
- 22.9.4.2.4 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Company, in terms of section 162;
- 22.9.4.2.5 becomes ineligible or disqualified in terms of section 69, subject to section 71(3); or
- 22.9.4.2.6 is removed—
- 22.9.4.2.6.1 by resolution of the Members;
- 22.9.4.2.6.2 by resolution of the Board; or
- 22.9.4.2.6.3 by order of the court in terms of section 71(5) or (6).
- 22.10 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1), and the powers of the Board in this regard are not limited or restricted by this Memorandum of Incorporation.

- 22.11 The Directors may at any time and from time to time by power of attorney appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 22.12 Save as otherwise expressly provided herein, all cheques, promissory notes, bills of exchange and other negotiable or transferable instruments, and all documents to be executed by the Company, shall be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors shall from time to time determine.
- 22.13 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 22.14 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such terms as to remuneration and otherwise as a disinterested quorum of the Directors may determine.
- 22.15 A Director of the Company may be or become a director or other officer of,

or otherwise interested in, any company or other juristic person promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company or juristic person.

- 22.16 The Board shall, on an annual basis, evaluate and assess the performance of individual Directors, the Board and sub-committees on the same principles.

23 DIRECTORS' MEETINGS

- 23.1 Save as may be provided otherwise herein, the Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 23.2 The Directors may elect a Chairperson and a Deputy Chairperson and determine the period for which each is to hold office. The Chairperson, or in his absence the Deputy Chairperson, shall be entitled to preside over all meetings of Directors and shall serve for a term of 1 (one) year. If no Chairperson or Deputy Chairperson is elected, or if at any meeting neither is present or willing to act as Chairperson thereof within 10 (ten) minutes of the time appointed for holding the meeting, the Directors present shall choose 1 (one) of their number to be Chairperson of such meeting.
- 23.3 In addition to the provisions of section 73(1), any 2 (two) Directors shall at any time be entitled to call a meeting of the Directors.
- 23.4 The Board has the power to –
- 23.4.1 consider any matter and/or adopt any resolution other than at a meeting as set out in section 74 and, accordingly, any decision that could be voted on at a meeting of the Board may instead be adopted by the 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;

- 23.4.2 conduct a meeting entirely by Electronic Communication (conference call, videoconference, Internet meeting, e-mail meeting or any other format agreed upon by the Directors), or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), provided that, as required by such section, the Electronic Communication facility employed ordinarily enables all persons participating in the meeting to communicate concurrently with each other without an intermediary and to participate reasonably effectively in the meeting;
- 23.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4); and
- 23.4.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5),

and the powers of the Board in respect of the above matters are not limited or restricted by this Memorandum of Incorporation.

- 23.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) shall be (1/3) one third of the directors appointed at the relevant time plus one (1) -
- 23.5.1 if all of the Directors of the Company –
- 23.5.1.1 acknowledge actual receipt of the notice convening a meeting; or
- 23.5.1.2 are present at a meeting; or
- 23.5.1.3 waive notice of a meeting,
- the meeting may proceed even if the Company failed to give the required notice of that meeting or there was a defect in the giving of the notice;
- 23.5.2 each Director has 1 (one) vote on a matter before the Board;
- 23.5.3 a majority of the votes cast on a resolution is sufficient to approve that resolution;

- 23.5.4 in the case of a tied vote –
 - 23.5.4.1 the chair may not cast a deciding vote in addition to any deliberative vote; and
 - 23.5.4.2 the matter being voted on fails.
- 23.6 Resolutions adopted by the Board –
 - 23.6.1 must be dated and sequentially numbered; and
 - 23.6.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 23.7 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.
- 23.8 The minutes of every general meeting and annual general meeting of the Company may be inspected and copied as contemplated in clause 16.3.
- 23.9 If receipt of a notice is disputed by a Member, such notice shall be deemed not to have been duly given, unless the Company is able to produce a registered slip, or electronic confirmation verifying that the notice was duly despatched. Any notice sent by registered post shall be deemed to have been received 5 (five) days after the letter containing the same was duly posted.

24 DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE

- 24.1 The Company may not pay remuneration to the Directors for their services as directors. Accordingly, Directors shall not be entitled to receive remuneration as such for their services as Directors; or but may be entitled to reasonable remuneration as determined by the Company in general meeting from time to time, for any extra services actually rendered to the Company.
- 24.2 A Director, who is a director representing a group and category of

Members, shall be entitled to appoint any person from such group and category of Members to act as alternate in his/her place.

- 24.3 As contemplated in item 5(3) in Schedule 1 to the Act, the Company may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or of a related or inter-related company, or to a person related to any such Director.
- 24.4 Notwithstanding the provisions of clause 24.3, a transaction shall not be prohibited if it –
- 24.4.1 is in the ordinary course of the Company's business and for fair value;
- 24.4.2 constitutes an accountable advance to meet –
- 24.4.2.1 legal expenses in relation to a matter concerning the Company; or
- 24.4.2.2 anticipated expenses to be incurred by the person on behalf of the Company; or
- 24.4.3 is to defray the person's expenses for removal at the Company's request; or
- 24.4.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

25 PERSONAL FINANCIAL INTERESTS OF DIRECTORS

- 25.1 For the purposes of this clause 25 (*Personal Financial Interests of Directors*), "Director" includes an Alternate Director, a Prescribed Officer, and a person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 25.2 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board, a notice in writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further written notice from that Director.

- 25.3 If a Director, has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director -
- 25.3.1 must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;
 - 25.3.2 must disclose to the meeting any Material information relating to the matter, and Known to the Director;
 - 25.3.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
 - 25.3.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 25.3.2 or 25.3.3;
 - 25.3.5 must not take part in the consideration of the matter, except to the extent contemplated in clauses 25.3.2 or 25.3.3;
 - 25.3.6 while absent from the meeting in terms of this clause 25.3:
 - 25.3.6.1 is to be regarded as being Present at the Meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
 - 25.3.6.2 is not to be regarded as being Present at the Meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
 - 25.3.7 must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.
- 25.4 If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, or Knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board, the nature and extent of that Personal Financial Interest, and the Material circumstances relating to

the Director or Related Person's acquisition of that Personal Financial Interest.

25.5 A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if -

25.5.1 it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 25; or

25.5.2 despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.

26 CHIEF EXECUTIVE OFFICER

26.1 The Directors may from time to time appoint a person to the office of Chief Executive Officer.

26.2

26.3 The Directors may from time to time entrust to and confer upon the Chief Executive Officer such of the powers exercisable in terms of this Memorandum of Incorporation by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

27 INDEMNIFICATION OF DIRECTORS

27.1 The Company may –

27.1.1 advance expenses to a Director or directly or indirectly indemnify a Director in respect of the defence of legal proceedings, as set out in section 78(4);

27.1.2 indemnify a Director in respect of liability as set out except to the extent that this Memorandum of Incorporation provides otherwise, the Company may indemnify a Director in respect of any liability arising other than (6) A company may not indemnify a director in respect of—

27.1.2.1 any liability arising—

27.1.2.1.1 in terms of section 77(3)(a), (b) or (c); or

27.1.2.1.2 from willful misconduct or willful breach of trust on the part of the director; or

27.1.2.2 any that may be imposed on a Director, or of a related company, who has been convicted of an offence in terms of any national legislation; and/or

27.1.3 purchase insurance to protect the Company or a Director as set out in section 78(7),

and the power of the Company in this regard is not limited, restricted or extended by this Memorandum of Incorporation.

27.2 The provisions of clause 27.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee, if any.

28 COMMITTEES OF THE BOARD

28.1 The Board may –

28.1.1 appoint committees of Directors and delegate to any such committee any of the authority of the Board as set out in section 72(1); and/or

28.1.2 include in any such committee persons who are not Directors, as set out in section 72(2)(a),

and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

28.2 The authority of a committee appointed by the Board as set out in section

72(2)(b) and (c) is not limited or restricted by this Memorandum of Incorporation.

29 FUNDAMENTAL TRANSACTIONS

As contemplated in item 2(1) of Schedule 1 to the Act, the Company may not —

- 29.1 amalgamate or merge with, or convert to, a profit company; or
- 29.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

30 ANNUAL FINANCIAL STATEMENTS

- 30.1 Notwithstanding the provisions of clause 9 –
 - 30.1.1 the Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –
 - 30.1.1.1 the Act;
 - 30.1.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;
 - 30.1.1.3 the Regulations; and
 - 30.1.1.4 this Memorandum of Incorporation; and
 - 30.1.2 the Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).
- 30.2 The Company shall in particular, in order to satisfy its obligations in Regulation 27(4), maintain a register of revenue received from donations, grants or in terms of any other funding contracts or arrangements with any

party, to the extent applicable.

- 30.3 The Company shall appoint an auditor upon, or as soon as reasonably possible after, its incorporation and each year at its annual general meeting. If the Company appoints a firm as its auditor, any change in the composition of the members of that firm shall not by itself create a vacancy in the office of auditor.
- 30.4 For purposes of the affairs of the Company, with regard to and/or relating to the auditor of the Company, the provisions of sections 90(1), 90(1A), 90(2)(a) and (b), 90(3), 90(5), 90(6)(a)(i) to (iii), 90(6)(b) and (c), 91(1), 91(2), and 93(1) are incorporated, *mutatis mutandis*, into this Memorandum of Incorporation.
- 30.5 In the event that the annual financial statements of the Company –
- 30.5.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; and
- 30.5.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 30.6 Subject to clause 30.5, and notwithstanding any contrary provision in the Act, the annual financial statements shall be audited as set out in clause 30.7.
- 30.7 In the event that the annual financial statements are to be audited pursuant to the provisions of clause 30.6, the annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –
- 30.7.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
- 30.7.2 subject to and in accordance with IFRS –

- 30.7.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 30.7.2.2 show the Company's assets and liabilities, as well as its income and expenses;
- 30.7.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 30.7.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

31 ACCESS TO COMPANY RECORDS

- 31.1 Each Member is entitled to inspect and copy, upon payment of the prescribed maximum charge for any such copy, the information contained in the records of the Company referred to in section 26(1), being –
 - 31.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof, and any Rules of the Company;
 - 31.1.2 a record of the Directors, including the details of any person who has served as a Director, for a period of 7 (seven) years after that person has ceased to serve as a Director, and any information relating to such persons referred to in section 24(5);
 - 31.1.3 all –
 - 31.1.3.1 reports presented at an annual general meeting of the Company for a period of 7 (seven) years after the date of any such meeting, provided that no such inspection right shall exist if and to the extent that the Company is not required to, and does not, in fact, hold an annual general meeting; and
 - 31.1.3.2 annual financial statements required by the Act for a period of 7 (seven) years after the date on which each such particular statements were issued;

- 31.1.4 notice and minutes of all meetings of Members, including –
 - 31.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
 - 31.1.4.2 any document that was made available by the Company to Members in relation to each such resolution;
 - 31.1.5 any written communications sent generally by the Company to all Members (or all members of any class of Members, if any), for a period of 7 (seven) years after the date on which each of such communications was issued; and
 - 31.1.6 the Members' register of the Company.
- 31.2 A person not contemplated in clause 31.1 has a right to inspect the Members' register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

32 NOTICES

- 32.1 All notices intended or required to be given by the Company to any Member of the Company shall be given in writing in any manner authorised by the Regulations and particularly Table CR 3 annexed to the Regulations and annexed hereto marked Annexure "1".
- 32.2 Each Member of the Company –
- 32.2.1 shall notify in writing to the Company an address, which address shall be his registered address for the purposes of receiving written notices from the Company by post; and
 - 32.2.2 may notify in writing to the Company an email address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 32.3 Any Member whose address is an address not within South Africa, and who shall from time to time furnish the Company with an address within South Africa at which notices can be served upon him, shall be entitled to have

notices served upon him at such address.

- 32.4 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in such Table.

33 AMENDMENT OF MEMORANDUM OF INCORPORATION

- 33.1 This Memorandum of Incorporation may, subject to clauses 3.1 and 7.8, only be altered or amended in the manner set out in sections 16, 17 or 152(6)(b).

- 33.2 As contemplated in section 17, the Board, or any individual authorised by the Board, may alter this Memorandum of Incorporation in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

- 33.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail; and

- 33.2.2 filing a notice of the alteration.

- 33.3 An amendment of this Memorandum of Incorporation will take effect from the later of –

- 33.3.1 the date on, and time at, which the CIPC accepts the filing of the notice of amendment contemplated in section 16(7); or

- 33.3.2 the date, if any, set out in the said notice of amendment.

34 COMPANY RULES

- 34.1 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this Memorandum of Incorporation by -

- 34.1.1 publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) by delivering a copy of such Rules or amendments to each Member by ordinary mail; and

- 34.1.2 filing a copy of those Rules.
- 34.2 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4).
- 34.3 The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –
 - 34.3.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Member by ordinary mail; and
 - 34.3.2 filing a notice of the alteration.

TABLE CR 3 A



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