

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION
OF

CENTURY CITY PROPERTY OWNERS' ASSOCIATION (NPC)

(An Association incorporated as a Non-Profit Company)

Registration Number 1997/001905/08

which is referred to in the rest of this Memorandum of Incorporation as "the Company"

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

To promote, advance and protect the communal interests of all the owners, lessees, occupiers and visitors to **Remainder of Erf 1609 Montague Gardens in the City of Cape Town, together with adjacent Erven, in the Province of the Western Cape, in extent 192 (One Hundred and Ninety Two) Hectares, and any portion thereof which has been alienated after 1st October 1996** and in particular in so promoting such communal interests to ensure acceptable aesthetic, architectural and environmental standards on the land, and to promote and maintain all essential and community services, amenities and activities on the land, the main object being to manage the collective interests common to all members, lessees and occupiers, including expenditure applicable to the Common property and the collection of levies for which such members, lessees and occupiers are liable.

In this Memorandum of Incorporation:-

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008 as amended from time to time;
- (b) words that are defined in the Companies Act, 2008 bear the same meaning in this Memorandum as in that Act; and

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

MEMORANDUM OF INCORPORATION AND NATURE OF COMPANY

1. INCORPORATION

- 1.1 The Company is incorporated as a Non Profit Company, as defined in the Companies Act, 2008.
- 1.2 The Company is incorporated in accordance with, and governed by:-
 - 1.2.1 the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit Companies;
 - 1.2.2 the alterable provisions of the Companies Act, 2008 that are applicable to Non Profit Companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
 - 1.2.3 The provisions of this Memorandum of Incorporation.
- 1.3 **Objects and powers of the Company**
 - 1.3.1 The Objects of the Company are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in Section 19(1)(b)(ii).
 - 1.3.2 The Company is not subject to any provision contemplated in Section 15(2)(b) or (c).
 - 1.3.3 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with item 1(4)(b) of Schedule 1 of the Companies Act, 2008.

1.4 Memorandum of Incorporation and Company Rules

- 1.4.1 This Memorandum of Incorporation of the Company may be altered or amended in the manner set out in Section 16, 17 or 152(6)(b), subject to the provisions contemplated in Section 16(1)(c), and set out in Part D of Schedule 1.
- 1.4.2 The authority of the Company's Board of Directors to make rules for the Company, as contemplated in Section 15(3) to 15(5) is not limited or restricted in any manner by this Memorandum of Incorporation.
- 1.4.3 The Board must publish any rules made in terms of Section 15(3) to 15(5) by publishing a copy of those rules on the Company's website.
- 1.4.4 The Company must publish a notice of any alteration of the Memorandum of Incorporation or the Rules, made in terms of Section 17(1) by publishing a copy of the alteration on the Company's website.

1.5 Conditions

The special conditions which apply to the Company and the requirements additional to those prescribed in the Act for their alteration are as follows:-

- 1.5.1 The income and property of the Company whencesoever derived shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise howsoever, to the members of the Company or any person other than to a similar association for persons; provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any member thereof in return for any services actually rendered to the Company.
- 1.5.2 The Company shall be entitled to bind members to contribute by way of subscriptions and levies towards the funds of the Company and to enforce payment of and collect and receive from members such contributions and levies.
- 1.5.3 The Company shall be entitled to enforce compliance with this Memorandum of Incorporation in such manner as it may deem fit and in particular by means of a system of fines or such other penalties as it may deem fit to prescribe.
- 1.5.4 Upon its winding-up, deregistration or dissolution the assets of the association 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 its main object, to be determined by the members of the association at or before the time of its dissolution or, failing such determination, by the Court.

1.6 Guarantee

1.6.1 The liability of members is limited to the amount referred to in sub-paragraph 1.6.2.

1.6.2 Each member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before he ceases to be a member, and of the costs, charges and expenses of the winding up, and for adjustment of the rights of the contributories among themselves such amount as may be required not exceeding R2.00 (Two Rand).

2. DEFINITIONS AND INTERPRETATION

2.1 In this Memorandum, the following words shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:-

2.1.1 "**alienate**" means the alienation of any Erf or unit or part thereof and includes alienation by way of sale, exchange, donation, partition deed, intestate succession, will, cession, assignment, lease, court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolute condition, and alienation shall have a corresponding meaning;

2.1.2 "**auditors**" means the auditors of the Company appointed by the Directors from time to time;

2.1.3 "**Board of Directors**" means all the Directors of the Company duly appointed in terms of the Act;

2.1.4 "**Bulk ratio**" means the ratio that the useable floor area of an Erf bears to such an Erf's extent as agreed between the owner of such Erf and the Developer and detailed in the deed of sale or any other agreement between them;

2.1.5 "**Bulk**" means the area in square metres obtained by multiplying an Erf's extent by the Bulk ratio applicable to such Erf;

2.1.6 "**Chairperson**" means The Chairperson of the Board of Directors;

2.1.7 "**Common property**" means:-

2.1.7.1 all such property as may be registered in the name of the Company;

2.1.7.2 any land which may be designated in any manner or in terms of any law or condition or authority for use in common by members and/or the public;

- 2.1.7.3 land designated by the Company for the purposes of Common property.
- 2.1.8 "**Company**" means The Century City Property Owners' Association and any reference to the Company/Association will likewise be a reference to the Century City Property Owners' Association;
- 2.1.9 "**Developer's Directors**" means Directors appointed by the Developer;
- 2.1.10 "**Developer**" means the Rabie Property Group or its successors in title;
- 2.1.11 "**Development**" means the development of the land into retail, residential, hotel, leisure, commercial and mixed use components known as "Century City";
- 2.1.12 "**Erf**" means any Erf created by the subdivision of the land and any two or more Erven which are notarially tied shall be regarded as one Erf;
- 2.1.13 "**facilities**" means any facilities of whatsoever nature which may be provided on the land;
- 2.1.14 "**financial year**" means the financial year of the Company which shall run from the first day of January in any year until the last day of December in that same year;
- 2.1.15 "**Home Owners' Association**" means a Home Owners' Association constituted in terms of Section 29(1) of the Land Use and Planning Ordinance No 15 of 1985 or any ordinance succeeding the above existing ordinance;
- 2.1.16 "**Hotel Room**" means a room in a hotel building used for short to medium term accommodation;
- 2.1.17 "**land**" means:-
- 2.1.17.1 Remainder of Erf 1609 Montague Gardens, in the City of Cape Town, in the Province of the Western Cape, in extent 192 Hectares; as it stood prior to any deductions on the 1st March 1996;
- 2.1.17.2 Erf 5027 Montague Gardens then known as Century Gate;
- 2.1.17.3 Erf 5030 Montague Gardens being the portion situate North West from Ratanga Road;
- 2.1.17.4 Remainder Erf 18001 Cape Town at Rugby;
- 2.1.17.5 Any further land to be acquired by the Developer from time to time unless specifically excluded by the Developer by resolution;
- 2.1.18 "**levy**" means the levy referred to in Clause 7;
- 2.1.19 "**local authority**" means the City of Cape Town or its successors in title;

- 2.1.20 "**managing agent**" means any person or body appointed by the Company as an independent contractor to undertake any of the management functions of the Company;
- 2.1.21 "**member**" means a member of the Company as defined in clause 4;
- 2.1.22 "**Precincts**" means the various areas to be designated by the Developer from time to time which in the opinion of the Developer have particular common geographical interests and presently as reflected in Annexure A, provided that there shall be a maximum of 12 precincts at any time;
- 2.1.23 "**Residential Unit**" means a free standing Erf in a Group Housing Development;
- 2.1.24 "**roads**" means all the roads on the land, whether public or private;
- 2.1.25 "**rules**" means the management and conduct rules as constituted by the Company from time to time;
- 2.1.26 "**sectional title bodies corporate**" means any body corporate constituted in terms of the Sectional Titles Act;
- 2.1.27 "**Sectional Titles Act**" means the Sectional Titles Act No 95/1986 as amended;
- 2.1.28 "**services**" means such infrastructural utilities and amenities to be provided and/or installed on the land by the Developer, the Company or the local authority;
- 2.1.29 "**the Act**" means the Companies Act No. 71 of 2008, as amended;
- 2.1.30 "**the Ordinance**" means the Land Use and Planning Ordinance No 15/1985 (Cape);
- 2.1.31 "**unit**" means any sectional title unit (including its exclusive use area) as defined in the Sectional Titles Act;
- 2.1.32 "**wetland**" means the 16 hectare environmentally sensitive area designated for use as a wetland known as Intaka Island as well as the canal system which runs through the Development;
- 2.1.33 "**useable floor area**" means the floor area of any improvement on any Erf excluding the area reserved for parking in such improvement;
- 2.1.34 "**an Erf's extent**" means the extent of an Erf as detailed in the approved survey diagram framed for such Erf;
- 2.2 Unless the context otherwise indicates, any words importing the singular shall also include the plural and *vice versa* , words importing any one gender shall include the other and words importing persons shall include corporations.
- 2.3 The headings to the respective clauses are for reference purposes only and shall not be taken into account in the interpretation of these clauses.

2.4 Where consent or approval is required for any act by a member, such consent or approval shall be in writing and duly signed by the Company, and shall be given prior to the member taking action.

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

3. RECORDAL

3.1 The Developer has, for the promotion, advancement and protection of the communal interests of all the owners, lessees, occupiers and visitors to the land, formed a Non Profit Company, to administer and control the use of the land in perpetuity.

3.2 The provisions of regulating such Non Profit Company shall be as contained herein, as well as the rules and regulations as may be formulated by the Directors as contemplated in clause 10 hereafter.

4. MEMBERSHIP

4.1 Membership of the Company shall be limited to:-

4.1.1 the Developer in its capacity as such and for as long as it is the owner of land in its Development company and/or still holds Development rights;

4.1.2 any person who is a registered owner of an Erf other than:-

4.1.2.1 those persons who are the registered owners of units in a Sectional Title Scheme on a portion of the land;

4.1.2.2 those persons who are registered owners of Erven in a Group Housing Development in respect of which a Home Owners' Association has been formed in terms of the Ordinance;

4.1.2.3 those persons who are registered owners of Erven in a residential Development.

4.1.3 each individual Body Corporate constituted in terms of the Sectional Title Act on the land.

4.1.4 each individual Home Owners Association constituted in terms of the Ordinance in respect of each group housing development.

4.2 The Developer shall, in its sole discretion, designate the various precincts on the land and classify each member according to the precinct in which each members' Erf is located.

4.3 Where an Erf is owned by more than one person, all the registered owners shall together be deemed to be one member of the Company and shall have the rights and obligations of one member of the Company, subject to the provisions of clause 22.

5. TERMINATION OF MEMBERSHIP

5.1 When a member, including the Developer, ceases to be a registered owner of an Erf on the land, he shall *ipso facto* cease to be a member of the Company on with effect from the date upon which such owner so ceases to be a registered owner.

5.2 The Developer shall be entitled to cede all of its rights in terms of this Memorandum of Incorporation and the transferee shall be entitled to exercise all such rights.

5.3 The Developer may at any time abandon, in writing, in whole or in part, any rights conferred upon it in terms of this Memorandum of Incorporation.

6. ALIENATION

6.1 A member shall not in any manner alienate an Erf unless it is a condition of any agreement of alienation that:-

6.1.1 the proposed transferee has bound himself to become a member of the Company for the duration of his ownership of the Erf or unit, and a clearance certificate has been issued by the Company to the effect that the member has complied fully with this Memorandum of Incorporation in all respects;

6.1.2 the registration of an Erf into the name of the transferee shall *ipso facto* constitute the transferee as a member of the Company.

6.2 The provisions of clause 6.1 shall apply *mutatis mutandis* to any alienation of an undivided share in an Erf.

6.3 The registered owner of any Erf may not at any time resign as a member of the Company.

7. LEVIES

- 7.1 The Directors may, from time to time, impose levies upon the members for the purpose of meeting all the expenses which the Directors have incurred, or which the Directors reasonably anticipate the Company will be put to by way of payment of all charges payable by the Company, and/or the services rendered to it, and/or for payment of all expenses necessarily or reasonably incurred in connection with the management of the Company, as well as by way of maintenance, repair, improvement and keeping in good order and condition such facilities as it is obliged to maintain and/or provide, and any other expenses reasonably incurred by the Company in the fulfilment of its duties. In calculating levies the Directors shall take into account income, if any, earned by the Company. The Developer shall not be obliged to pay levies on any undeveloped land.
- 7.2 It is specifically recorded herein that the levy structure imposed shall comprise three components, being:-
- 7.2.1 the general expenses incurred on the land relating to all owners;
 - 7.2.2 the specific expenses relating to a particular Erf, unit or group or Erven on the land;
 - 7.2.3 a special levy imposed for extraordinary items in terms of this Memorandum of Incorporation and the Rules.
- 7.3 Any amount due by a member by way of a levy shall be a debt due by him to the Company, which shall be paid monthly in advance on or before the 1st day of each month. Any levy not paid on the due date thereof shall bear interest at a rate as determined by the Directors from time to time. The obligation of a member to pay a levy shall, without prejudice to the Company's right to recover arrear levies and interest as may be due thereon, cease upon his ceasing to be a member of the Company. No levies paid by a member shall under any circumstances be repayable by the Company upon his ceasing to be a member. A member's successor in title to an Erf shall be liable, as from the date upon which he becomes a member pursuant to the transfer of that Erf into his name, to pay the levy attributable to that Erf. No member shall be entitled to transfer his Erf until the Company has certified that the member has as at the date of transfer fulfilled all his financial and other obligations to the Company.
- 7.4 In calculating the specific or special levy payable by each member, the Directors shall, as far as reasonably practical, and in their sole discretion assign those costs arising directly out of or directly attributable to the Erf, unit or group of Erven itself to the

member owning such Erf or unit or group of Erven, provided that the Directors shall be entitled to grant rebates or to add premiums to members levies as they may deem fit.

7.5 In calculating the general levy payable by each member, the Directors may, in their sole discretion, take the following factors into account:-

7.5.1 the proportion that the floor area of the particular Erf bears to the total floor area of the Development;

7.5.2 the purpose for which the particular Erf shall be used;

7.5.3 the proportion that the land area of the particular Erf or unit bears to the total land area of the Development;

7.5.4 the traffic flow generated by the particular Erf;

7.5.5 the proximity of the particular Erf to the wetland or canal;

provided however that the Directors may consider any other factors which they in their sole discretion may deem relevant.

7.6 The Directors' decision in calculating, assigning and/or allocating the levy shall be final and binding on all members of the Company.

7.7 No member shall be entitled to any of the privileges of membership unless and until:-

7.7.1 he shall have paid all outstanding levies, of whatever nature, and other sum (if any) including interest thereon, which shall be due and payable to the Company in respect of his membership thereof; and

7.7.2 he shall have complied in every other aspect with all his obligations as imposed in the Agreement of Sale in terms of which the property was acquired, as well as by the Company in terms of this Memorandum or any other rules, regulations and/or guidelines issued by the Company.

8. COSTS

A member shall, upon request, be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the Company in obtaining the recovery of any arrear levy or other amounts due and owing to the Company. This includes enforcing compliance with any rules/regulations issued by the Company from time to time.

9. SPECIAL PROVISIONS

- 9.1 The Common property in the case of the sectional title land shall vest in the bodies corporate of the sectional title schemes which in their capacity as members of the Company, shall be subject to the functions, powers and control of the Company.
- 9.2 The Company shall be obliged to maintain the canal, the wetland and all such Common property as defined in clause 2.1.5 and shall have the right to supplement the function of the local authority in respect of the maintenance of existing services or the provision of additional services.
- 9.3 For the purposes of Clause 9.2 above, the Company shall be entitled to employ the services of independent contractors.

10. RULES / REGULATIONS

- 10.1 Subject to any restriction imposed or direction given at a general meeting of the Company and subject to the conditions imposed by the local authority in approving the rezoning and subdivision of the land, the Directors may from time to time make house rules/regulations in regard to:-
- 10.1.1 the standards and guidelines for the architectural design of all buildings and out-buildings, structures of any nature, swimming pools, tennis courts and all additions, signage and alterations to any such buildings, out-buildings or structures, including fencing erected or to be erected on the land, and in particular to control the design of the exterior of such buildings, out-buildings or structures and the materials used on such exteriors to ensure an attractive, aesthetically pleasing and co-ordinated character to all buildings on the property;
 - 10.1.2 the siting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts, signage and all additions and alterations to any thereof;
 - 10.1.3 the preservation of the built and general environment;
 - 10.1.4 the right to prohibit, restrict or control the keeping of any animal;
 - 10.1.5 the conduct of any persons, including the public (which may be allowed access, on such conditions as the Company shall regulate, to all amenities on the land) , on the land for the prevention of nuisance of any nature to any member;

- 10.1.6 the preservation of the natural environment on the land;
 - 10.1.7 the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;
 - 10.1.8 for the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of the members and/or the residents on the land;
 - 10.1.9 for the maintenance of all buildings, out buildings, structures, improvements of any nature, signage and landscaping on the land;
 - 10.1.10 the controlling of the number of occupiers permitted on any one Erf;
 - 10.1.11 control of traffic and parking on the land.
 - 10.1.12 the rate of interest applicable to amounts owing by members to the Company in terms of clause 7 above.
- 10.2 Any condition imposed by the Developer upon any member or purchaser of an Erf in terms of the Deed of Sale whereby the member acquires an Erf, shall be deemed to be incorporated in the Rules of the Company as it relates to that member or purchaser.
- 10.3 For the enforcement of any of the rules made by the Directors in terms of this clause, or of any of the provisions of this Memorandum generally, and further subject to the provisions of clauses 7.3 and 7.7 the Directors may:-
- 10.3.1 give notice to the member concerned requiring him to remedy such breach within such period as the Directors may determine;
 - 10.3.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be the debt owing by the member concerned to the Company; and/or
 - 10.3.3 take such action including proceedings in court, as they may deem fit;
 - 10.3.4 impose, in their sole discretion, spot fines, other charge or impost on the member concerned which the Directors may deem appropriate.
- 10.4 In the event of the Directors instituting any legal proceedings against any member or resident on the land for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.

- 10.5 In the event of any breach of the rules or provisions by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 10.6 In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of three Directors appointed by The Chairman for the purpose shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as The Chairman may direct.
- 10.7 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 10.8 The Company may in general meeting itself make any rules which the Directors may make and may in general meeting vary or modify any rule made by it or by the Directors from time to time.
- 10.9 In the event of the member being a body corporate or Homeowner's Association, then it shall formulate its own rules relating to its members, provided that, in the event of such rules being in conflict with the rules of this Memorandum, then the rules of this Memorandum shall prevail.

11. DIRECTORS

- 11.1 There shall be not less than five (5) and not more than fifteen (15) Directors of the Company who shall be appointed as follows:-
- 11.1.1 The Developer shall be entitled to appoint three (3) Directors, until the Developer has disposed of the last property and/or Development rights owned by the Developer in its Development company;
- 11.1.2 Other members shall be entitled to appoint up to twelve (12) Directors, one for each precinct in accordance with Annexure "A".
- 11.2 The Directors shall appoint one of their number to act as The Chairperson for such term as they think fit, but not for longer than such person's tenure as Director.

12. POWERS OF DIRECTORS

- 12.1 Subject to the express provisions of this Memorandum, the Directors shall manage and control the business and affairs of the Company, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of managing agents , may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by this Memorandum required to be exercised or done by the Company in general meeting, subject however to such rules as may have been made by the Company in general meeting or as may be made by the Directors from time to time.
- 12.2 Save as specifically provided in this Memorandum, the Directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors on such terms as the Directors shall decide.
- 12.3 The Directors shall further have the power:-
- 12.3.1 to issue an architectural and environmental design and maintenance manual in respect of the land, and ensure that such manual is complied with at all times by all members;
- 12.3.2 to require that any construction of any sort on the land shall be supervised to ensure that the provisions of this Memorandum architectural, environmental design and maintenance manual including any other Rules and Regulations issued by the Company are complied with and that all such construction is performed in a proper and workmanlike manner.
- 12.4 The Board of Directors shall have the right to vary, cancel or modify its decisions and resolutions from time to time.
- 12.5 The Directors shall be entitled to appoint committees consisting of such number of their members, employees or such outsiders, including a managing agent, as they deem fit and to delegate to such committees and/or employees or outsiders such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 12.6 The Directors shall appoint a design review committee to exercise the powers set out above in clause 12.3 which shall consist of:-

- 12.6.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
- 12.6.2 Directors;
- 12.6.3 such other members or employees as the Directors may determine.
- 12.7 Members of the design review committee shall not necessarily be required to be members of the Company.
- 12.8 All plans for buildings, out-buildings, structures, signage, additions and alterations, with specific reference to the design of the stormwater outlets, shall be approved by the Directors who shall first submit such plans to the design review committee. The Directors shall not approve any such plan unless such plan shall first have been reviewed by the design review committee. These provisions shall apply to all members of the Company including the Developer. The design review committee shall not act contrary to the provisions which the Developer may stipulate in any agreement of sale between the Developer and the purchaser of an Erf on the land, regarding the siting, design and construction of a dwelling on such an Erf. Once the design review committee has approved the plans, the Directors may delegate their authority to finally approve the plans to a suitably qualified employee of the Company.

13. REMOVAL AND ROTATION OF DIRECTORS

- 13.1 Save as set out in clause 13.2 below, each Director shall continue to hold office from the date of his appointment in terms of clause 11 above until the second annual general meeting following his appointment, at which meeting each Director shall be deemed to have retired from office but will be eligible for re-election.
- 13.2 Notwithstanding the foregoing and in order to ensure the continuity of tenure and rotation of Directors, at the first annual general meeting held after the adoption of this Memorandum of Incorporation, Directors representing 50% of the Precincts shall be appointed until the 2013 annual general meeting only and Directors representing the remaining 50% of the Precincts shall be appointed until the 2014 annual general meeting. Upon their retirement, all Directors shall be replaced by Directors appointed for the period referred to in clause 13.1 above.
- 13.3 A Director shall be deemed to have vacated his office in the event of:-
 - 13.3.1 his becoming disqualified to act as a Director in terms of the provisions of the Act;

- 13.3.2 his being removed from office as provided in Section 71 of the Act;
- 13.3.3 his being a member of the Company, and being disentitled to exercise a vote in terms of clause 22.3;
- 13.3.4 his estate being sequestrated, whether provisionally or finally;
- 13.3.5 the commission by him of any action of insolvency;
- 13.3.6 his conviction for any offence involving dishonesty;
- 13.3.7 his becoming of unsound mind ;
- 13.3.8 his resigning from such office in writing;

provided that anything done in the capacity of a Director in good faith by a person who ceases to be a Director, shall be valid until the fact that he is no longer a Director has been recorded in the minute book of the Company.

- 13.4 Upon any vacancy occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors.
- 13.5 Each Director shall have the power to nominate any person possessing the necessary qualifications of a Director to act as alternate Director in his place during his absence or inability to act as such Director, provided the appointment of an alternate Director shall be approved by the board and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms, qualifications, and conditions existing with reference to the other Directors of the Company. Directors who are frequently unavailable for meetings or absent from Cape Town, will be obliged to appoint an alternate Director to act in their stead during such period of absence.
- 13.6 The alternate Directors, whilst acting in the stead of the Directors who appointed them, shall exercise and discharge all the powers, duties and functions of the Director they represent. The appointment of an alternate Director shall be revoked and an alternate Director shall cease to hold office whenever the Director who appointed him ceases to be a Director or gives notice to the secretary of the company that the alternate Director representing him has ceased to do so, and in the event of a disqualification or resignation of an alternate Director during the absence or inability to act of the Director whom he represents, the vacancy so arising shall be filled by the chairman of the Directors who shall nominate a person who is a member of the company, subject to approval by the board.

14. DIRECTORS EXPENSES AND REMUNERATION

- 14.1 Directors shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Directors.
- 14.2 Directors shall be entitled to remuneration in respect of the performance of their duties as determined by the Company in a general meeting.

15. PROCEEDINGS OF DIRECTORS

- 15.1 The Directors shall, at their first meeting or thereafter, as they may determine, elect a Chairperson and such deputy Chairperson(s) as they shall consider necessary or appropriate and determine the period for which he or she or they are to hold office.
- 15.2 In addition to such other powers and duties as may be delegated to him or her by the Board from time to time, the Chairperson shall:-
- 15.2.1 preside and maintain order at all meetings of the Board, provided that if, on the date and place appointed for a meeting, the Chairperson is not present within 30 minutes after the time appointed for the commencement of that meeting, a deputy Chairperson shall so preside or if he or she is similarly absent, then the Directors then present shall elect one of their number to act as Chairperson for that meeting;
- 15.2.2 appoint the time and place of each meeting of the Board and, subject to these regulations, may convene the Board for the dispatch of business, or adjourn or otherwise regulate the meetings of the Board as he or she may deem fit;
- 15.2.3 ensure that each meeting of the Board is duly convened and constituted and that the provisions of these regulations and any rules made by the Board for the conduct of meetings are adhered to and that the proper procedure is duly followed;
- 15.2.4 convene a meeting of Directors, on not less than 5 (five) days notice, upon the request of any 3 (three) or more Directors.
- 15.3 In the event of the Chairperson being absent or otherwise unable to perform his or her duties in terms hereof, any deputy Chairperson and, failing him or her, any other Director appointed by the Board for such purpose, shall exercise the powers and perform the functions of the Chairperson for so long as the Chairperson remains absent or unable to perform his or her duties and for this purpose such deputy

Chairperson or other Director shall be deemed to have all such powers and functions of the Chairperson as the Chairperson himself or herself might have.

- 15.4 The Chairperson shall have the power to delegate any of his or her powers and duties to the deputy Chairperson or a suitably qualified employee of the Company as he or she may deem desirable or necessary and may add to, vary or revoke any such delegation of powers or duties as he or she may deem fit.
- 15.5 The quorum necessary for the holding of any meetings of the Directors shall be five Directors or alternate Directors present personally, provided that at least three of the Directors shall be a Developer's Director.
- 15.6 Each Director shall have the following number of votes:-
- 15.6.1 A Developer's Director, five votes;
- 15.6.2 all other classes of Director, one vote.
- 15.7 Any resolution of the Board of Directors shall be carried on a simple majority of all votes cast. In the case of an equality of votes for and against a resolution, the Chairman of the meeting shall have a second or casting vote.
- 15.8 The Directors shall cause minutes to be kept of every Directors' meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing for approval by the next board meeting. All minutes of Directors' meetings shall be placed in a Directors' minute book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of companies. The Directors' minute book shall be open for inspection at all reasonable times by any Director, the auditors, and the members.
- 15.9 A resolution signed by all the necessary Directors in terms of the above article, shall be valid in all respects as if it had been duly passed at a meeting of the Board of Directors.

16. GENERAL MEETINGS OF THE COMPANY

- 16.1 The Company shall within 6 (six) months after the end of each financial year hold a general meeting as its annual general meeting in addition to any other general meetings during that year, and shall specify the meeting as such in the notices in terms of Section 61 of the Act.
- 16.2 Such annual general meeting shall be held at such time and place as the Directors shall decide from time to time.

- 16.3 All general meetings other than annual general meetings shall be called special general meetings.
- 16.4 The Directors may, whenever they think fit, convene a special general meeting. A special general meeting may also be convened by the members on a requisition made in terms of Section 61 of the Act, or should the Directors not do so, may be convened by the requisitionists as provided for by and subject to the provisions of that Section.

17. NOTICES OF MEETINGS

- 17.1 An annual general meeting and a meeting called for the passing of a special resolution shall be called by not less than twenty-one days' notice in writing and any other general meeting shall be called by not less than fourteen clear days' notice in writing. The notice shall be exclusive of the day on which it is served or deemed to be served and of the day for which it is given, and shall specify the place, the day and the hour of the meeting and shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under this Memorandum, entitled to receive such notices from the Company.
- 17.2 The annual general meeting shall deal with and dispose of, in addition to all matters prescribed by the Act, the following matters:-
- 17.2.1 acceptance of the minutes of the previous meeting;
 - 17.2.2 the consideration of The Chairman's report;
 - 17.2.3 the consideration of the annual financial statements;
 - 17.2.4 the election of Directors in terms of clause 18;
 - 17.2.5 the noting of the general levy for the financial year during which such annual general meeting takes place;
 - 17.2.6 the appointment of an auditor; and
 - 17.2.7 any other business laid before it.

18. ELECTION OF DIRECTORS

- 18.1 A member of a precinct shall be entitled to vote, in accordance with his voting rights as set out in clause 22.1.1 below, for one Director to represent the precinct within which the member's Erf is located.

- 18.2 The Director representing each precinct shall be elected by the majority of votes of members of such precinct calculated in accordance with their voting rights as set out in clause 22.1.1 below.
- 18.3 The Developer's Directors shall be appointed by the Developer.

19. PROXIES

- 19.1 A member may be represented at a general meeting by a proxy, who need not be a member of the Company.
- 19.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the Company at least twenty-four hours before the commencement of the meeting or adjourned meeting concerned but the Board may from time to time determine that such documents:-
- 19.2.1 are to be lodged at a particular place; or
 - 19.2.2 are to be lodged a certain number of hours, not exceeding forty-eight in all, before the meeting; or
 - 19.2.3 may be lodged at any time before or during the meeting.
- Notwithstanding the foregoing the Chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.
- 19.3 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only to be valid for a shorter period.
- 19.4 The instrument appointing a proxy shall be in the following form or as near thereto as circumstances permit:-

P R O X Y

CENTURY CITY PROPERTY OWNERS ASSOCIATION (NPC)

(Non Profit Company)

.....of

being a member of the Company hereby appoint of..... or failing him,of.....or failing him....., ofas my proxy to vote for me on my behalf at the annual general meeting (as the case may be) of the Company to be held on the day ofand at any adjournment thereof as follows:-

IN FAVOUR OF AGAINST ABSTAIN

Resolution to

Resolution to

Resolution to

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

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

SIGNED this day of 20....

.....

SIGNATURE

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

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

20. QUORUM

- 20.1 No business shall be transacted at a general meeting unless a quorum is present both when the meeting proceeds to business and when any resolution is to be passed. A quorum shall be constituted when members representing 25% of the total votes, calculated in accordance with clause 22.1.1 below, are present either in person or by proxy.
- 20.2 If within fifteen minutes after the time appointed for the commencement of a general meeting or within such extended period as The Chairman of the board or, in his absence, the deputy chairman, may allow, a quorum is not present, the meeting shall be dissolved if it was convened on requisition. In all other cases the meeting shall stand adjourned to the same place at the same time on the same day plus one day of the next week (or if that day is not a business day, the first business day following that non-business day) If a quorum is not present at such adjourned meeting, the members present in person or by valid proxy, shall constitute a quorum.
- 20.3 A general meeting at which a special resolution is required to be adopted and at which a quorum is not present, shall be adjourned in accordance with the provisions of Section 64 of the Act.

21. ADJOURNMENT BY THE CHAIRMAN WITH CONSENT OF MEETING

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

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

22. VOTING RIGHTS OF MEMBERS

- 22.1 At every general meeting:

- 22.1.1 each member, (other than the Developer) in person or by proxy and entitled to vote, shall be entitled to one vote for each square metre of Bulk purchased by such member provided that each member shall not have less than one vote;
- 22.1.2 in respect of a Residential Body Corporate, every apartment/unit (including any exclusive right thereto) shall be deemed to be 100 square metres of Bulk for purposes of determining the Body Corporate's Bulk and number of votes;
- 22.1.3 in respect of each Home Owners' Association of a Group Housing Scheme, each residential unit shall be deemed to be 100 square metres of Bulk for purposes of determining the Home Owners' Association's Bulk and number of votes;
- 22.1.4 in respect of a Hotel building comprising Hotel Rooms, each such Hotel Room shall be deemed to be 55 square metres of Bulk for purposes of determining the Hotel's Bulk and number of votes;
- 22.1.5 in respect of a mixed use commercial building comprising commercial space, offices, apartments and/or Hotel Rooms, the aggregate Bulk shall be calculated as set out in clause 22.1.1 above plus such additional Bulk in respect of apartments/units at 100 square metres of Bulk per apartment/unit and 55 square metres of Bulk per Hotel Room;
- 22.1.6 if an Erf is registered in the name of more than one person, then all such co-owners shall be deemed to be a single owner of the Erf for the purposes of exercising the vote referred to in 22.1.1;
- 22.1.7 the Developer shall have one vote for each square metre of Bulk allotted to the aggregate of the Developers Erven, provided that, the Developer shall have not less than 26 % of the total votes available to all of the members of the Company.

22.2 For the purposes of this clause:-

22.2.1 "Developers Erven" shall include:-

22.2.1.1 any portion or remainder of the land currently held by the Developer in its Development company and shall include all the remaining Bulk/Development rights;

22.2.1.2 Erven to be acquired from time to time by the Developer, its subsidiaries or associated companies which in the Developer's discretion shall form part of the Development;

22.2.2 The Erven held by the Developer until sold to a third party, shall be allotted the following bulk:-

- 22.2.2.1 where the Erven concerned has a Bulk ratio greater than one, then the Bulk shall be the product of such Bulk ratio and the extent of such land;
 - 22.2.2.2 where the land concerned has a Bulk ratio less than one, the Bulk shall be equal to the extent of such land.
- 22.3 Save as expressly provided for in this Memorandum, no person other than a member duly registered and who shall have paid every levy and other sum, if any, which shall be due and payable to the Company in respect of or ensuing out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.
- 22.4 Voting at general meetings shall take place by way of show of hands unless on or before the declaration of the result of the show of hands a poll is demanded according to law.
- 22.5 Resolutions shall be passed by simple majority vote, save with respect to amendments of this Memorandum, which shall be capable of amendment on the same basis *mutatis mutandis* as a special resolution in accordance with Sections 16 and 65, of the Act.
- 22.6 If a poll is duly demanded it shall be taken in such manner as The Chairman of the meeting may direct either at once or after an interval or adjournment.
- 22.7 If any difficulty or dispute arises regarding the admission or rejection of a vote or regarding any other matter such difficulty or dispute is to be determined by The Chairman whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 22.8 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:-
 - 22.8.1 written notice of the revocation is received by the Company prior to the meeting concerned; or
 - 22.8.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 22.9 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to The Chairman of the meeting whose decision shall be final and conclusive.
- 22.10 A declaration made in good faith by The Chairman of a general meeting to the effect that, either on a show of hands or a poll, a resolution has or has not been passed

(whether by a simply majority, a specific majority or unanimously) shall be final and conclusive and the resolution shall be deemed to have been so passed or not passed.

- 22.11 Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a Director or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.

23. ACCOUNTING RECORDS

- 23.1 The Directors shall cause such accounting records as are prescribed by Section 28 of the Act to be kept. Proper accounting records shall be deemed to be kept if such accounting records as are necessary fairly present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.
- 23.2 The accounting records shall be kept at the registered office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors.
- 23.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by members not being Directors, and no member (not being a Director) shall have any right of inspecting any accounting records or documents of the Company except as conferred by the Act or authorised by the Directors.
- 23.4 The Directors shall from time to time, in accordance with Sections 29 and 30 of the Act, cause to be prepared and laid before the Company in general meeting such financial statements as are referred to in those sections.
- 23.5 A copy of the annual financial statements which are to be laid before the Company in annual general meeting shall, not less than twenty-one days before the date of the meeting, be sent to every member of the Company and the Registrar provided that this Memorandum shall not require a copy of those documents to be sent to any person of whose address the Company is not aware.
- 23.6 An auditor shall be appointed in accordance with Section 90 of the Act.

24. SERVICE OF NOTICES

- 24.1 Notice may be given by the Company to any member either personally, by facsimile or electronic mail or by sending it by post in a prepaid registered letter addressed to such member at his registered address or at the address (if any) within the Republic supplied by him to the Company for the giving of notices to him, or
- 24.2 Notice of every general meeting shall be given:-
- 24.2.1 to every member of the Company;
- 24.2.2 to auditor for the time being of the Company.
- No other person shall be entitled to receive a notice of general meetings.
- 24.3 Any notice by registered post shall be deemed to have been served on the 7th day after the date when the letter containing the same was posted, and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 24.4 Any notice given by facsimile or electronic mail shall be deemed to have been served on the day following the day the notice was transmitted.
- 24.5 The signature to any notice given by the Company may be written or printed, or partly written and partly printed.
- 24.6 When a given number of days' notice or notice extending over any other period is required to be given, the days of service shall not be counted in such number of days or period.

25. INDEMNITY

- 25.1 All Directors and the auditors shall be indemnified against any liabilities *bona fide* incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a Court.
- 25.2 Every Director, servant, agent and employee of the Company, and the auditors, shall be indemnified by the Company against (and it shall be the duty of the Directors out of the funds of the Company to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.

26. GENERAL

- 26.1 Whenever they consider that the appearance of any land or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the Directors may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Company.
- 26.2 The Directors shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the Directors acted unreasonably.
- 26.3 The Company may enter into agreements with members for the provision of amenities and service to the members and to levy a reasonable charge in respect of the provision thereof.
- 26.4 No member ceasing to be a member of the Company for any reasons shall (nor shall such member's, executors, curators, Directors or liquidators) have any claim upon or interest in or right to the funds or any land of the Company.
- 26.5 The Company may claim from any member or his estate any levy arrears, and interest or other sums due from him to the Company at the time of his ceasing to be a member.
- 26.6 Any person using any of the services, land or facilities of the Company does so entirely at his own risk.

27. DISPUTES

- 27.1 Any dispute arising out of or in connection with this Memorandum, including the cancellation thereof, must be determined in terms of this Memorandum, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 27.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in terms of this article.

- 27.3 If a party exercises his right in terms of clause 27.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (ten) years experience in their field:-
- 27.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
 - 27.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
 - 27.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
 - 27.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
 - 27.3.5 if the dispute is primarily one relating to the aesthetics of a building, on an Erf, a practising architect;
- 27.4 If the parties are unable to agree either on the person referred to in clause 27.3 or on the classification of the dispute within a period of 3 (three) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person shall be nominated by the President for the time being of the Law Society of the Cape of Good Hope.
- 27.5 Any person agreed upon and nominated as aforesaid (“the expert”), shall in all respects act as an expert and not as an arbitrator.
- 27.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 27.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty-one) days or so soon thereafter as possible, after it has been demanded.
- 27.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 27.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between “party and party” or as between “attorney and client”.
- 27.10 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.

Annexe "A"

