

**THE COMPANIES ACT NO. 71 OF 2008**  
(as amended)

**MEMORANDUM OF INCORPORATION**

of

**PREMIUM PROPERTIES LIMITED**

**A PUBLIC COMPANY**

**REGISTRATION NUMBER: 1994/003601/06**

**REGISTRATION DATE: 26 MAY 1994**

**TABLE OF CONTENTS**

1	<b>INTERPRETATION .....</b>	<b>3</b>
2	<b>JURISTIC PERSONALITY .....</b>	<b>8</b>
3	<b>NAME OF COMPANY .....</b>	<b>9</b>
4	<b>POWERS OF THE COMPANY .....</b>	<b>9</b>
5	<b>RESTRICTIVE CONDITIONS .....</b>	<b>9</b>
6	<b>SHARES AND VARIATION OF RIGHTS .....</b>	<b>9</b>
7	<b>CERTIFICATED AND UNCERTIFICATED SECURITIES .....</b>	<b>12</b>
8	<b>TRANSFER OF SECURITIES.....</b>	<b>13</b>
9	<b>SECURITIES REGISTER .....</b>	<b>15</b>
10	<b>TRANSMISSION OF SECURITIES .....</b>	<b>17</b>
11	<b>NO LIEN .....</b>	<b>18</b>
12	<b>DEBT INSTRUMENTS .....</b>	<b>18</b>
13	<b>CAPITALISATION SHARES .....</b>	<b>19</b>
14	<b>BENEFICIAL INTERESTS IN SECURITIES.....</b>	<b>19</b>
15	<b>FINANCIAL ASSISTANCE.....</b>	<b>19</b>
16	<b>ACQUISITION BY THE COMPANY OF ITS OWN SHARES.....</b>	<b>19</b>
17	<b>RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS.....</b>	<b>21</b>
18	<b>SHAREHOLDERS' MEETINGS.....</b>	<b>22</b>
19	<b>VOTES OF SHAREHOLDERS .....</b>	<b>28</b>
20	<b>PROXIES AND REPRESENTATIVES .....</b>	<b>30</b>
21	<b>SHAREHOLDERS' RESOLUTIONS .....</b>	<b>34</b>
22	<b>SHAREHOLDERS ACTING OTHER THAN AT A MEETING .....</b>	<b>35</b>
23	<b>COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS .....</b>	<b>35</b>
24	<b>DIRECTORS' MEETINGS.....</b>	<b>41</b>
25	<b>DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE .....</b>	<b>44</b>
26	<b>MANAGING DIRECTORS .....</b>	<b>45</b>
27	<b>EXECUTIVE DIRECTORS .....</b>	<b>46</b>
28	<b>BORROWING POWERS .....</b>	<b>47</b>
29	<b>INDEMNIFICATION OF DIRECTORS.....</b>	<b>48</b>
30	<b>COMMITTEES OF THE BOARD .....</b>	<b>48</b>
31	<b>ANNUAL FINANCIAL STATEMENTS .....</b>	<b>49</b>
32	<b>DISTRIBUTIONS .....</b>	<b>50</b>
33	<b>RESERVES .....</b>	<b>52</b>
34	<b>ACCESS TO COMPANY RECORDS.....</b>	<b>53</b>
35	<b>PAYMENT OF COMMISSION.....</b>	<b>54</b>
36	<b>NOTICES .....</b>	<b>55</b>
37	<b>WINDING-UP .....</b>	<b>57</b>
38	<b>AMENDMENT OF MEMORANDUM OF INCORPORATION .....</b>	<b>57</b>
39	<b>COMPANY RULES.....</b>	<b>58</b>

## 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 "**Act**" means the Companies Act, No 71 of 2008, as amended, consolidated or re-enacted from time to time, including all Schedules to such Act and the Regulations;

1.1.2 "**Board**" means the board of Directors from time to time of the Company;

1.1.3 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;

1.1.4 "**Central Securities Depository**" has the meaning set out in section 1 of the Securities Services Act;

1.1.5 "**Commission**" means the Companies and Intellectual Property Commission established by section 185;

1.1.6 "**Company**" means the company named on the first page of this document, 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 "**Disposal**" or "**disposal**" means, in the context of a disposal of a Share -

1.1.8.1 the transfer of all or any rights making up such Share to any other person for his benefit and/or for the benefit of others, whether such transfer is effected pursuant to a sale, exchange, donation, distribution *in specie* or otherwise; or

1.1.8.2 any other transaction or event whereby such Share

becomes beneficially owned by someone other than the person who was the beneficial holder thereof immediately prior to such transaction or event taking place; or

1.1.8.3 granting, creating or allowing the Encumbrance of such Share,

and "**dispose**" means to bring about a disposal within the meaning of this definition;

1.1.9 "**Electronic Communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;

1.1.10 "**Encumbrance**" means any right of first refusal, purchase right, option or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest;

1.1.11 "**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 the Republic from time to time by the Financial Reporting Standards Council established in terms of section 203;

1.1.12 "**JSE**" means the exchange, licensed under the Securities Services Act, operated by JSE Limited (registration number 2005/022939/06), a public company duly incorporated in the Republic;

1.1.13 "**JSE Listings Requirements**" means the Listings Requirements of the JSE applicable from time to time;

1.1.14 "**Participant**" has the meaning set out in section 1 of the Securities Services Act;

1.1.15 "**Regulations**" means the regulations published in terms of the Act from time to time;

1.1.16 "**Republic**" means the Republic of South Africa;

- 1.1.17                    **"Rules"** means any rules as contemplated in section 15(3) to (5);
- 1.1.18                    **"Securities"** means any Shares, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by the Company;
- 1.1.19                    **"Securities Register"** means the register contemplated in section 50(1);
- 1.1.20                    **"Securities Services Act"** means the Securities Services Act, No 36 of 2004, including any amendment, consolidation or re-enactment thereof;
- 1.1.21                    **"SENS"** means the Stock Exchange News Service established and operated by the JSE;
- 1.1.22                    **"Share"** means one of the units into which the proprietary interest in the Company is divided;
- 1.1.23                    **"Shareholder"** means the holder of a Share and who is entered as such in the Securities Register, subject to the provisions of section 57;
- 1.1.24                    **"Solvency and Liquidity Test"** has the meaning attributed thereto in section 4;
- 1.1.25                    **"Uncertificated Securities"** means any **"securities"** defined as such in section 29 of the Securities Services Act;
- 1.1.26                    **"Uncertificated Securities Register"** means the record of uncertificated securities administered and maintained by a Participant or Central Securities Depository, as determined in accordance with the rules of the Central Securities Depository, and which forms part of the Securities Register.
- 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 the Act shall include reference to the

## Regulations;

- 1.2.3 a reference to a section by number refers to the corresponding section of the Act;
- 1.2.4 a reference to an article by number refers to a corresponding provision of this Memorandum of Incorporation;
- 1.2.5 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this Memorandum of Incorporation and -
- 1.2.5.1 a provision of any agreement entered into between Shareholders as contemplated in section 15(7), the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.5.2 an alterable provision of the Act, the provision of this Memorandum of Incorporation shall prevail to the extent of the conflict;
- 1.2.5.3 an unalterable provision of the Act, subject to the provisions of article 1.2.5.4, the unalterable 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;
- 1.2.5.4 an unalterable provision of the Act amended after the date of adoption of this Memorandum of Incorporation or any amendment of the relevant provision of this Memorandum of Incorporation, the amended unalterable provision of the Act shall prevail to the extent of the conflict;
- 1.2.5.5 an exemption granted by the Companies Tribunal to the Company in terms of section 6(2) from any prohibition or requirement established by or in terms of an unalterable provision of the Act, the exemption shall prevail to the extent of the conflict;

- 1.2.6 clause headings are for convenience only and are not to be used in its interpretation;
- 1.2.7 an expression which denotes -
- 1.2.7.1 any gender includes the other genders;
- 1.2.7.2 a natural person includes a juristic person and *vice versa*; and
- 1.2.7.3 the singular includes the plural and *vice versa*;
- 1.2.8 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;
- 1.2.9 any words or expressions defined in any article shall, unless the application of any such word or expression is specifically limited to that article, bear the meaning assigned to such word or expression throughout the whole of this Memorandum of Incorporation;
- 1.2.10 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, as amended and re-enacted from time to time, 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

- 1.3.3 **"writing"** means legible writing and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a 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, defined terms appearing in this Memorandum of Incorporation in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.6 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 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 public 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 (and registration to the extent applicable) with the Commission.
- 2.2 The Company is incorporated in accordance with and governed by -



- 2.2.1 the unalterable provisions of the Act, save to the extent that this Memorandum of Incorporation does not impose on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement;
- 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.

### 3 **NAME OF COMPANY**

The name of the Company is "Premium Properties Limited".

### 4 **POWERS OF THE COMPANY**

- 4.1 The Company has all of the legal powers and capacity contemplated in the Act, 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.
- 4.2 Except to the extent that this Memorandum of Incorporation provides otherwise, 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).

### 5 **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).

### 6 **SHARES AND VARIATION OF RIGHTS**

The Company is authorised to issue -

- 6.1 200 000 000 (two hundred million) ordinary Shares with a par value of 1 cent each, of the same class, each of which ranks *pari passu* in respect of all rights and entitles the holder to - **[LR 10.5(a)]**
- 6.1.1 vote on any matter to be decided by the Shareholders of the Company and to 1 (one) vote in the case of a vote by means of a poll; **[LR 10.5(b)]**

- 6.1.2 participate proportionally in any distribution made by the Company in respect of its holding of Shares; and
- 6.1.3 receive proportionally the net assets of the Company upon its liquidation.
- 6.2 The creation, authorisation and classification of Shares, the subdivision or consolidation of Shares, amendments to the numbers of authorised Shares of each class, the conversion of one class of Shares into one or more other classes of Shares, the conversion of Shares from par value to no par value and variations to the preferences, rights, limitations and other terms associated with any class of Shares as set out in this Memorandum of Incorporation may be changed only by an amendment of this Memorandum of Incorporation by special resolution and in accordance with the JSE Listings Requirements. **[LR 10.5(d) & LR 10.5(e)]**
- 6.3 All allocations of Shares will be rounded up or down based on the standard rounding convention (i.e. allocations will be rounded down to the nearest whole number if they are less than 0.5 and will be rounded up to the nearest whole number if they are equal to or greater than 0.5) resulting in such allocations of whole Shares and no fractional Shares.
- 6.4 Each Share issued by the Company has associated with it an irrevocable right of the Shareholder to vote on any proposal to amend the preferences, rights, limitations and other terms associated with that Share as contemplated in article 19.2. If any amendment to this Memorandum of Incorporation relates to the variation of any preferences, rights, limitation and other terms associated with any class of Shares already in issue, such amendments shall not be implemented without a special resolution adopted by the holders of Shares of that class at a separate meeting. The holders of Shares of that class will, subject to the further provisions of article 19.2, also be entitled to vote at the meeting of ordinary Shareholders where the amendment is tabled for approval. **[LR 10.5(e) & LR 10.9(c)]**
- 6.5 No Shares may be authorised in respect of which the preferences, rights, limitations or any other terms of any class of Shares may be varied in response to any objectively ascertainable external fact or facts as provided for in sections 37(6) and 37(7). **[LR 10.5(g)]**

- 6.6 The Board may, subject to article 6.10 and the further provisions of this article 6.6, resolve to issue Shares of the Company at any time, but only -
- 6.6.1 within the classes and to the extent that those Shares have been authorised by or in terms of this Memorandum of Incorporation; and
- 6.6.2 only to the extent that such issue has been approved by the Shareholders in general meeting in accordance with article 6.10, either by way of a general authority (which may be either conditional or unconditional) to issue Shares in its discretion or a specific authority in respect of any particular issue of Shares, provided that, if such approval is in the form of a general authority to the Directors, it shall be valid only until the next annual general meeting of the Company and it may be varied or revoked by any general meeting of the Shareholders prior to such annual general meeting.
- 6.7 All issues of Shares for cash and all issues of options and convertible securities granted or issued for cash must, in addition, be in accordance with the JSE Listings Requirements. **[LR 10.9(a)]**
- 6.8 All Securities of the Company for which a listing is sought on the JSE and all Securities of the same class as Securities of the Company which are listed on the JSE must, notwithstanding the provisions of section 40(5) but unless otherwise required by the Act, only be issued after the Company has received the consideration approved by the Board for the issuance of such Securities. **[LR 10.2(a)]**
- 6.9 Subject to what may be authorised by the Act, the JSE Listings Requirements and at meetings of Shareholders in accordance with article 6.10, and subject further to article 6.12, the Board may only issue unissued Shares if such Shares have first been offered to existing ordinary Shareholders in proportion to their shareholding on such terms and in accordance with such procedures as the Board may determine, unless such Shares are issued for the acquisition of assets by the Company. **[LR 10.1]**
- 6.10 Notwithstanding the provisions of article 6.9, the Shareholders may at a general meeting authorise the Directors to issue Shares of the Company at any time and/or grant options to subscribe for Shares as

the Directors in their discretion think fit, provided that such transaction(s) has/have been approved by the JSE and comply with the JSE Listings Requirements. **[LR 10.1]**

6.11 Notwithstanding the provisions of articles 6.2, 6.9 and 6.10, any issue of Shares, Securities convertible into Shares, or rights exercisable for Shares in a transaction, or a series of integrated transactions shall, in accordance with the provisions of section 41(3), require the approval of the Shareholders by special resolution if the voting power of the class of Shares that are issued or are issuable as a result of the transaction or series of integrated transactions will be equal to or exceed 30% (thirty percent) of the voting power of all the Shares of that class held by Shareholders immediately before that transaction or series of integrated transactions.

6.12 Except to the extent that any such right is specifically included as one of the rights, preferences or other terms upon which any class of Shares is issued or as may otherwise be provided in this Memorandum of Incorporation, no Shareholder shall have any pre-emptive or other similar preferential right to be offered or to subscribe for any additional Shares issued by the Company.

## 7 **CERTIFICATED AND UNCERTIFICATED SECURITIES**

7.1 Securities of the Company are to be issued in certificated or uncertificated form, as shall be determined by the Board from time to time. Except to the extent otherwise provided in the Companies Act, the rights and obligations of Security holders shall not be different solely on the basis of their Securities being Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Uncertificated Securities in the same manner as it applies to Certificated Securities, unless otherwise stated or indicated by the context.

7.2 Any Certificated Securities may cease to be evidenced by certificates, and thereafter become Uncertificated Securities, if so determined by the Board.

7.3 Any Uncertificated Securities may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Securities at the election of the holder of those Uncertificated Securities. A holder of Uncertificated Securities who elects to withdraw all or part of the

Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Securities, may so notify the relevant Participant or Central Securities Depository as required by the rules of the Central Securities Depository.

7.4 After receiving notice from a Participant or Central Securities Depository, as the case may be, that the holder of Uncertificated Securities wishes to withdraw all or part of the Uncertificated Securities held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall –

7.4.1 immediately enter the relevant Security holder's name and details of its holding of Securities in the Securities Register and indicate on the Securities Register that the securities so withdrawn are no longer held in uncertificated form; and

7.4.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a holder of Securities who is not resident within the Republic) prepare and notify the Central Securities Depository that the Securities are no longer held in uncertificated form.

7.5 The Company may charge a holder of its Securities a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this article 7.

## **8 TRANSFER OF SECURITIES**

8.1 The instrument of transfer of any Certificated Securities which are not listed on the JSE shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of such Certificated Securities until the name of the transferee is entered in the Securities Register. The Directors may, however, in their discretion in such cases as they deem fit, dispense with requiring the signature of the transferee on the instrument of transfer.

8.2 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Securities in question), any Shareholder or holder of other Securities may transfer all or any of its Certificated Securities by instrument in

writing in any usual or common form or any other form which the Directors may approve.

- 8.3 Every instrument of transfer shall be delivered to the principal place of business of the Company, accompanied by -
- 8.3.1 the certificate issued in respect of the Certificated Securities to be transferred; and/or
- 8.3.2 such other evidence as the Company may require to prove the title of the transferor, or his or her right to transfer the Certificated Securities.
- 8.4 All authorities to sign transfer deeds or other instruments of transfer granted by holders of Securities for the purpose of transferring Certificated Securities which may be lodged, produced or exhibited with or to the Company at its registered office or at its transfer office shall, as between the Company and the grantor of such authorities, be taken and deemed to continue and remain in full force and effect, and the Company may allow the same to be acted upon until such time as express notice in writing of the revocation of the same shall have been given and lodged at the Company's registered office or transfer office at which the authority was first lodged, produced or exhibited. Even after the giving and lodging of such notice, the Company shall be entitled to give effect to any instruments signed under the authority to sign and certified by any officer of the Company as being in order before the giving and lodging of such notice. **[LR 10.2(b)]**
- 8.5 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Directors shall from time to time decide.
- 8.6 The transfer of Uncertificated Securities may be effected only -
- 8.6.1 by a Participant or Central Securities Depository;
- 8.6.2 on receipt of an instruction to transfer sent and properly authenticated in terms of the rules of the Central Securities Depository or an order of a Court; and
- 8.6.3 in accordance with section 53 and the rules of the Central Securities Depository.

- 8.7 Transfer of ownership in any Uncertificated Securities must be effected by debiting the account in the Uncertificated Securities Register from which the transfer is effected and crediting the account in the Uncertificated Securities Register to which the transfer is effected, in accordance with the rules of the Central Securities Depository.
- 8.8 Securities transfer tax and other legal costs payable in respect of any transfer of Securities pursuant to this Memorandum of Incorporation will be paid by the Company to the extent that the Company is liable therefor in law, but shall, to that extent, be recoverable from the person acquiring such Securities.

## 9 **SECURITIES REGISTER**

- 9.1 The Company must establish or cause to be established a Securities Register in the form prescribed by the Act and the Regulations and maintain the Securities Register in accordance with the prescribed standards.
- 9.2 As soon as practicable after issuing any Securities the Company must enter or cause to be entered in the Securities Register, in respect of every class of Securities it has issued –
- 9.2.1 the total number of Uncertificated Securities;
- 9.2.2 with respect to Certificated Securities –
- 9.2.2.1 the names and addresses of the persons to whom the Certificated Securities were issued;
- 9.2.2.2 the number of Certificated Securities issued to each of them;
- 9.2.2.3 in the case of Securities other than Shares as contemplated in section 43, the number of those Securities issued and outstanding and the names and addresses of the registered holders of the Securities and any holders of beneficial interests therein; and
- 9.2.2.4 any other prescribed information.
- 9.3 If the Company has issued Uncertificated Securities, or has issued Securities that have ceased to be Certificated Securities as

contemplated in article 7.2, a record must be administered and maintained by a Participant or Central Securities Depository, in the prescribed form, as the Uncertificated Securities Register, which –

- 9.3.1 forms part of the Securities Register; and
- 9.3.2 must contain, with respect to all Uncertificated Securities contemplated in this article 9, any details referred to in article 9.2.2, read with the changes required by the context or as determined by the rules of the Central Securities Depository.
- 9.4 The Securities Register or Uncertificated Securities 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.
- 9.5 Unless all the Shares rank equally for all purposes, the Shares, or each class of Shares, and any other Securities, must be distinguished by an appropriate numbering system.
- 9.6 A certificate evidencing any Certificated Securities of the Company –
  - 9.6.1 must state on its face –
    - 9.6.1.1 the name of the Company;
    - 9.6.1.2 the name of the person to whom the Securities were issued; and
    - 9.6.1.3 the number and class of Shares and designation of the series, if any, evidenced by that certificate;
  - 9.6.2 must be signed by 2 (two) persons authorised by the Board, which signatures may be affixed or placed on the certificate by autographic, mechanical or electronic means; and
  - 9.6.3 is proof that the named Security holder owns the Securities, in the absence of evidence to the contrary.
- 9.7 A certificate remains valid despite the subsequent departure from office of any person who signed it.
- 9.8 If, as contemplated in article 9.5, all of the Shares rank equally for all purposes, and are therefore not distinguished by a numbering



system –

9.8.1 each certificate issued in respect of those Shares must be distinguished by a numbering system; and

9.8.2 if the Share has been transferred, the certificate must be endorsed with a reference number or similar device that will enable each preceding holder of the Share in succession to be identified,

provided that in terms of Schedule 5 of the Act, if the Company is a pre-existing company (as defined in the Act), the failure of any Share certificate to satisfy the provisions of articles 9.6 to 9.8 is not a contravention of the Act and does not invalidate that certificate.

9.9 If a Share certificate is defaced, lost or destroyed, it may be replaced –

9.9.1 free of charge by the Company; and

9.9.2 in case of defacement, on delivery of the old certificate to the Company.

9.10 The Directors may, as they deem fit, determine such terms (if any) as to evidence and indemnity and payment of the out-of-pocket expenses of the Company of investigating such evidence and, in the case of loss or destruction, of advertising the same.

## 10 **TRANSMISSION OF SECURITIES**

10.1 Subject to the provisions of this Memorandum of Incorporation dealing with restrictions on the transfer of Securities, the executor of the estate of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title to the Security. In the case of a Security registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of any deceased Shareholder shall be the only person recognised by the Company as having any title to the Security. Any person who submits proof of his appointment as the executor, administrator, trustee, curator, or guardian in respect of the estate of a deceased Shareholder or holder of other Securities ("**Security Holder**") of the Company, or of a Security Holder whose estate has been sequestrated or of a Security Holder who is otherwise under a disability or as the liquidator of any body corporate which is a Security Holder of the Company, shall be entered in the Securities

Register of the Company *nomine officij*, and shall thereafter, for all purposes, be deemed to be a Security Holder of the Company.

**[LR 10.13]**

10.2 Subject to the provisions of article 10.1, any person becoming entitled to any Security by virtue of the death of a Security Holder shall, upon producing such evidence that he has such title or rights as the Directors think sufficient, have the right either to have such Security transferred to himself or to make such other transfer of the Security as such Security Holder could have made: provided that in respect of a transfer other than to himself -

10.2.1 the Directors shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Security by such Security Holder before his death; and

10.2.2 a person becoming entitled to any Security shall not, unless and until he is himself registered as a Security Holder in respect of such Security, be entitled to exercise any voting or other right attaching to such Security or any other right relating to meetings of the Company.

11 **NO LIEN**

It is recorded for the avoidance of doubt that Securities shall not be subject to any lien in favour of the Company and shall be freely transferable. **[LR 10.2(a) & LR 10.12]**

12 **DEBT INSTRUMENTS**

12.1 The Board may authorise the Company to issue secured or unsecured debt instruments as set out in section 43(2), but no special privileges associated with any such debt instruments as contemplated in section 43(3) may be granted, and the authority of the Board in such regard is limited by this Memorandum of Incorporation. **[LR 10.10]**

12.2 Secured or unsecured debentures, debenture stock, bonds or other Securities may be made assignable free from any equities between the Company and the person to whom the same may be issued. Any debentures, debenture stock, bond or other Securities may be issued at a discount premium or otherwise, and generally as the Directors deem fit but subject to the provisions of the Act and the JSE Listings

Requirements.

### 13 **CAPITALISATION SHARES**

Subject to articles 6.9 and 6.10, the Board shall, in accordance with the provisions of section 47, save to the extent authorised by the Shareholders by means of ordinary resolution, have the power or authority to -

- 13.1 approve the issuing of any authorised Shares as capitalisation Shares;  
or
- 13.2 to issue Shares of one class as capitalisation Shares in respect of Shares of another class; or
- 13.3 to resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation Share, subject to the provisions of section 47(2).  
**[LR 10.6]**

### 14 **BENEFICIAL INTERESTS IN SECURITIES**

The Company's issued Securities may be held by, and registered in the name of, one person for the beneficial interest of another person as set out in section 56(1).

### 15 **FINANCIAL ASSISTANCE**

The Board may, subject to any additional provisions in the Act, authorise the Company to provide financial assistance by way of loan, guarantee, the provision of security or otherwise to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a related or inter-related company, or for the purchase of any such Securities, as set out in section 44, and the authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

### 16 **ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

- 16.1 In accordance with, and subject to, the JSE Listings Requirements, the provisions of section 48, and subject to the further provisions of this article 16 -
  - 16.1.1 the Board may determine that the Company acquire a number of its own Shares; and

- 16.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares, but -
- 16.1.2.1 not more than 10% (ten percent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all of the subsidiaries of the Company, taken together; and
- 16.1.2.2 no voting rights attached to those Shares may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.
- 16.2 Any decision by the Company to acquire its own Shares must satisfy the requirements of section 46 and, accordingly, the Company may not acquire its own Shares unless -
- 16.2.1 the acquisition -
- 16.2.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 16.2.1.2 the Board, by resolution, has authorised the acquisition;
- 16.2.2 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition; and
- 16.2.3 the Board, by resolution, has acknowledged that it has applied the Solvency and Liquidity Test and reasonably concluded that the Company will satisfy the Solvency and Liquidity Test immediately after completing the said acquisition.
- 16.3 Any decision by the Company to acquire its own Shares must satisfy the JSE Listings Requirements and the requirements of the Act and, accordingly, for as long as it is required in terms of the JSE Listings Requirements, the acquisition shall be approved by a special resolution of the Shareholders, whether in respect of a specific repurchase or general approved by Shareholders and such acquisition shall otherwise comply with sections 5.67 to 5.69 of the JSE Listings Requirements (or such other sections as may be applicable from time to time), provided

that no such approval of Shareholders shall be required in respect of a *pro rata* acquisition by the Company from all its Shareholders.  
**[LR 10.9(b)]**

17 **RECORD DATE FOR EXERCISE OF SHAREHOLDER RIGHTS**

17.1 The Board may set a record date for the purpose of determining which Shareholders are entitled to -

17.1.1 receive notice of a Shareholders' meeting;

17.1.2 participate in and vote at a Shareholders' meeting;

17.1.3 decide any matter by written consent or by Electronic Communication;

17.1.4 receive a distribution;

17.1.5 be allotted or exercise other rights; or

17.1.6 participate in any other transaction,

provided that for so long as the JSE Listings Requirements apply to the Company and prescribe a record date, such prescribed record date as set out in the JSE Listings Requirements shall be the record date.

**[LR 10.15]**

17.2 A record date determined by the Board -

17.2.1 may not be earlier than the date on which the record date is determined or more than 10 (ten) business days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and

17.2.2 must be published to the Shareholders in a manner that satisfies any prescribed requirements.

17.3 If, at any time, the Board fails to determine a record date for any action or event, the record date shall be -

17.3.1 in the case of a meeting, the latest date by which the Company is required to give Shareholders notice of that meeting; or

17.3.2 in any other case, the date of the relevant action or event.

## 18 **SHAREHOLDERS' MEETINGS**

18.1 The Board, or any prescribed officer of the Company authorised by the Board, is entitled to call a Shareholders' meeting at any time.

18.2 Subject to the provisions of section 60 dealing with the passing of resolutions of Shareholders otherwise than at a meeting of Shareholders, the Company shall hold a Shareholders' meeting -

18.2.1 at any time that the Board is required by the Act, the JSE Listings Requirements or this Memorandum of Incorporation to refer a matter to Shareholders for decision; or **[LR 10.11(d)]**

18.2.2 whenever required in terms of the Act to fill a vacancy on the Board; or **[LR 10.16(d)]**

18.2.3 when required in terms of article 18.3 or by any other provision of this Memorandum of Incorporation.

18.3 The Board shall call a meeting of Shareholders if 1 (one) or more written and signed demands calling for such a meeting are delivered to the Company and -

18.3.1 each such demand describes the specific purpose for which the meeting is proposed; and

18.3.2 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.

### **Annual General Meetings**

18.4 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 Shareholders once every 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.

- 18.5 Each annual general meeting of the Company contemplated in article 18.4 shall provide for at least the following business to be transacted –
- 18.5.1 the presentation of the directors' report, financial statements for the immediately preceding financial year of the Company and audit committee report;
- 18.5.2 the election of Directors, to the extent required by the Act or by this Memorandum of Incorporation;
- 18.5.3 the appointment of an auditor for the ensuing financial year and appointment of an audit committee; and
- 18.5.4 any matters raised by the Shareholders, with or without notice to the Company.
- 18.6 Save as otherwise provided herein, the Company is not required to hold any other Shareholders' meetings other than those specifically required by the Act or the JSE Listings Requirements. **[LR 10.11(c) and LR 10.11(d)]**

**Location of and notices of meetings**

- 18.7 The Board may determine the location of any Shareholders' meeting, 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.
- 18.8 The minimum number of days for the Company to deliver a notice of a Shareholders' meeting to the Shareholders as required by section 62 is as provided for in section 62(1) and, accordingly, any such notice shall be delivered to all Shareholders as of the record date for the meeting at least 15 (fifteen) business days before the meeting is to begin. **[LR 10.11(a)]**

**Quorum and adjournment of meetings**

- 18.9 The quorum requirement for a Shareholders' meeting to begin or for a matter to be considered are as set out in section 64(1) without variation and, accordingly -
- 18.9.1 a Shareholders' meeting may not begin until sufficient

persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five 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 **[LR 10.11(h) and LR 10.24]**

18.9.2 a matter to be decided at a Shareholders' meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% (twenty five 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) Shareholders, a meeting may not begin, or a matter begin to be debated, unless -

18.9.2.1 at least 3 (three) Shareholders are present at the meeting; and

18.9.2.2 the requirements of articles 18.9.1 and 18.9.2 are satisfied.

18.10 The time periods allowed in section 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 article 18.9 -

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

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

18.10.2.1 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

18.10.2.2 if there is no other business on the agenda of the meeting, the meeting is 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 article 18.9 may extend the 1 (one) hour limit allowed in article 18.10 for a reasonable period on the grounds that -

- 18.10.3 exceptional circumstances affecting weather, transportation or Electronic Communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or
- 18.10.4 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the requirements of article 18.9.
- 18.11 The accidental omission to give notice of any meeting to any particular Shareholder or Shareholders shall not invalidate any resolution passed at any such meeting.
- 18.12 Subject to article 18.13, the Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of article 18.10 unless the location for the meeting is different from -
- 18.12.1 the location of the postponed or adjourned meeting; or
- 18.12.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 18.13 Notwithstanding the provisions of article 18.12, for so long as the Company's Securities are listed on the JSE, the Company shall release notice on SENS of any shareholders' meetings and any postponed or adjourned meeting (whether postponed or adjourned in terms of article 18.10 or otherwise). **[LR 10.10(f)]**
- 18.14 If at the time appointed in terms of article 18.10 for a postponed meeting to begin, or for an adjourned meeting to resume, the requirements of article 18.9 have not been satisfied, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 18.15 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 3 (three) Shareholders 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.

**[LR 10.11(h)]**

- 18.16 The maximum period allowable for an adjournment of a Shareholders' meeting is as set out in section 64(12).

**Conduct of meetings**

- 18.17 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.

- 18.18 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 Shareholders present shall choose one of their number to be chairperson of the meeting.

- 18.19 The chairperson of a Shareholders' meeting may -

- 18.19.1 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;

- 18.19.2 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.

- 18.20 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 -

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

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

- 18.21 Any objection to the admissibility of any vote (whether on a show of

hands or on a poll) shall be raised -

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

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

and every vote not then disallowed in terms of article 18.21.1 or 18.21.2 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.

18.22 Even if he is not a member -

18.22.1 any director; or

18.22.2 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 Shareholder.

#### **Shareholders' meetings by electronic communication**

18.23 The Company may conduct a Shareholders' meeting 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 -

18.23.1 any Shareholders' meeting may be conducted entirely by Electronic Communication; or

18.23.2 one or more Shareholders, or proxies for Shareholders, may participate by Electronic Communication in all or part of any Shareholders' meeting 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.

18.24 Any notice of any meeting of Shareholders at which it will be possible

for Shareholders to participate by way of Electronic Communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of Electronic Communication, provided that such access shall be at the expense of the Shareholder or proxy concerned.

## 19 **VOTES OF SHAREHOLDERS**

19.1 Subject to any special rights or restrictions as to voting attached to any Shares by or in accordance with this Memorandum of Incorporation, at a meeting of the Company -

19.1.1 every person present and entitled to exercise voting rights shall be entitled to 1 (one) vote on a show of hands, irrespective of the number of voting rights that person would otherwise be entitled to exercise; and

19.1.2 on a poll any person who is present at the meeting, whether as a Shareholder or as proxy for a Shareholder, has the number of votes determined in accordance with the voting rights associated with the Securities held by that Shareholder; and **[LR 10.5(b)]**

19.1.3 the holders of Securities other than ordinary Shares and any special shares created for the purposes of black economic empowerment in terms of the Broad Based Black Economic Empowerment Act No.53 of 2003 and the corresponding Codes of Good Practice gazetted on 09 February 2007, shall not be entitled to vote on any resolution at a meeting of Shareholders, except as provided in article 19.2. **[LR 10.5(c)]**

19.2 If any resolution is proposed as contemplated in article 6.4, the holders of such Shares ("**Affected Shareholders**") shall be entitled to vote at the meeting of ordinary Shareholders as contemplated in article 19.1, provided that -

19.2.1 the votes of the Shares of that class held by the Affected Shareholders ("**Affected Shares**") shall not carry any special rights or privileges and the Affected Shareholder shall be entitled to 1 (one) vote for every Affected Share held; and

- 19.2.2 the total voting rights of the Affected Shareholders in respect of the Affected Shares shall not be more than 24.99% (twenty four point nine nine percent) of the total votes (including the votes of the ordinary Shareholders) exercisable at that meeting. **[LR 10.5(c) & (e)]**
- 19.3 Voting shall be conducted by means of a polled vote in respect of any matter to be voted on at a meeting of Shareholders if a demand is made for a polled vote by -
- 19.3.1 at least 5 (five) persons having the right to vote on that matter, either as Shareholders or as proxies representing Shareholders; or
- 19.3.2 a person who is, or persons who together are, entitled, as Shareholders or proxies representing Shareholders, to exercise at least 10% (ten percent) of the voting rights entitled to be voted on that matter; or
- 19.3.3 the chairperson of the meeting.
- 19.4 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the provisions of article 19.2, and unless a poll is so demanded, a declaration by the chairperson that a resolution has, on a show of hands, 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. The demand for a poll may be withdrawn.
- 19.5 If a poll is duly demanded, it shall be taken in such manner as the chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. In computing the majority on the poll, regard shall be had to the number of votes to which each Shareholder is entitled.
- 19.6 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

- 19.7 A poll demanded on the election of a chairperson (as contemplated in article 18.18) or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question upon which the poll has been demanded.

**Joint holders**

- 19.8 Where there are joint registered holders of any Share, any 1 (one) of such persons may exercise all of the voting rights attached to that Share at any meeting, either personally or by proxy, as if he or she were solely entitled thereto. If more than 1 (one) of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Securities Register in respect of such Share shall alone be entitled to vote in respect thereof.

- 19.9 The board of any company or the controlling body of any other entity or person that holds any Securities of the Company may authorise any person to act as its representative at any meeting of Shareholders of the Company, in which event the following provisions will apply -

- 19.9.1 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 holder of Shares; and

- 19.9.2 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 Shareholders' meeting at which such person intends to exercise any rights of such Shareholder, unless excused from doing so by the chairperson of such meeting.

20 **PROXIES AND REPRESENTATIVES**

- 20.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to -

20.1.1 participate in, and speak and vote at, a Shareholders' meeting on behalf of that Shareholder; or

20.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60.

provided that a Shareholder may appoint more than 1 (one) proxy to exercise voting rights attached to different Securities held by the Shareholder.

20.2 A proxy appointment -

20.2.1 must be in writing, dated and signed by the Shareholder; and

20.2.2 remains valid for -

20.2.2.1 1 (one) year after the date on which it was signed;  
or

20.2.2.2 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.

20.3 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 -

20.3.1 a Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies as set out in section 58(3)(a);

20.3.2 a Shareholder's proxy may delegate the proxy's powers to another person as set out in section 58(3)(b);

20.3.3 a Shareholder or his proxy must deliver to the Company's registered office or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting, a copy of the instrument appointing a proxy before the commencement of the meeting at which the proxy intends

to exercise that Shareholder's rights;

20.3.4 unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder, as set out in section 58(7);

20.3.5 the instrument or power of attorney appointing a proxy which is not received by or on behalf of the Company by or through an electronic medium and the power of attorney or other authority (if any) under which the instrument or power of attorney is signed (or notarially certified copy of such power or authority) shall be deposited at the Company's registered office or at such other place within the Republic as is specified for that purpose in the notice convening the meeting, not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting. In default, the instrument or power of attorney shall not be treated as valid, provided that if the Shareholder appointing a proxy is registered on a branch register kept in any foreign country any instrument or power of attorney appointing a proxy and the power of attorney or other authority (if any) under which it is signed may be deposited as aforesaid at any such branch or other office of the Company outside the Republic at which he is registered. The transfer secretary of the Company in that place shall communicate to the Company in the Republic by such means as the Directors may from time to time direct, a summary of all the votes for and against each resolution represented by valid proxies duly accepted by them, so that such communication shall be received by the Company before the time appointed for the meeting to commence;

20.3.6 the instrument or power of attorney appointing a proxy which is received by or on behalf of the Company by or through an electronic medium (where an address has been specified for that purpose in the notice of meeting or in the instrument itself), subject to any applicable law for the time being in force and to any terms and conditions decided on by the Directors from time to time, and the power of attorney or other authority (if any) under which the instrument or power



of attorney is signed (or notarially certified copy of such power or authority) shall be received at that specified address, not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting and in default the instrument or power of attorney shall not be treated as valid;

20.3.7

a vote given in accordance with the terms of an instrument or power of attorney appointing a proxy shall be valid notwithstanding the previous legal incapacity of the Shareholder or revocation of the instrument or power of attorney or the transfer of the Share in respect of which the vote is given, unless notice in writing of such legal incapacity, revocation or transfer shall have been received by or on behalf of the Company at the Office or by or through an electronic medium (where an address has been specified for the purpose of receiving instruments of proxy or powers of attorney in the notice of meeting or in the instrument itself) not less than 48 (forty eight) hours (or such lesser period as the Directors may determine in relation to any particular meeting) before the time appointed for holding the meeting,

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

20.4

In determining any period of 48 (forty eight) hours referred to in article 20.3, only business days shall be taken into account.

20.5

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 shareholder of Premium Properties Limited 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:-

In favour of	Against	Abstain
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 \_\_\_\_\_ .

\_\_\_\_\_  
SHAREHOLDER'S SIGNATURE

(Note - A shareholder 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 shareholder of the Company)."

## 21 **SHAREHOLDERS' RESOLUTIONS**

- 21.1 For an ordinary resolution to be approved it must be supported by more than 50% (fifty percent) of the voting rights of Shareholders exercised on the resolution, as provided in section 65(7).
- 21.2 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).  
**[LR 10.11(a)]**
- 21.3 No matters, except those matters set out in section 65(11), those relating to the change of the name of the Company and any other matter required by the Act, the JSE Listings Requirements, or by this Memorandum of Incorporation to be resolved by means of a special resolution, require a special resolution adopted at a Shareholders' meeting of the Company. **[LR 10.5(d)(vii)]**
- 21.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder 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.

## 22 **SHAREHOLDERS ACTING OTHER THAN AT A MEETING**

22.1 In accordance with the provisions of section 60, but subject to article 22.4, a resolution that could be voted on at a Shareholders' meeting (including in respect of the election of Directors) may instead be - **[LR 10.16(b)]**

22.1.1 submitted by the Board for consideration to the Shareholders entitled to exercise the voting rights in relation to the resolution; and

22.1.2 voted on in writing by such Shareholders within a period of 20 (twenty) business days after the resolution was submitted to them.

22.2 A resolution contemplated in article 22.1 -

22.2.1 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 Shareholders' meeting; and

22.2.2 if adopted, will have the same effect as if it had been approved by voting at a meeting.

22.3 Within the period prescribed by the Act after adopting a resolution, or conducting an election of Directors in terms of the provisions of this article 22, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

22.4 The provisions of this article 22 shall not apply to any Shareholder meetings that are called for in terms of the JSE Listings Requirements or the passing of any resolution in terms of article 23.5.4 or to any annual general meeting of the Company. **[LR 10.11(c) & LR 10.16(b)]**

## 23 **COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS**

### 23.1 **Number of Directors**

23.1.1 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 any committee which it is obliged to appoint in terms of the Act or this Memorandum of Incorporation, the number of Directors shall, unless otherwise determined by a unanimous resolution of all the Shareholders, be not less than 4 (four) nor more than 12 (twelve).

23.1.2 No person shall be appointed or elected as a Director if such person is in terms of the Act or in terms of this Memorandum of Incorporation ineligible to serve or is disqualified from serving as a Director. **[LR 10.16(a)]**

23.1.3 The Directors shall be elected in terms of section 68(1) by the persons entitled to exercise voting rights in such an election, being the Shareholders of the Company and the holders of any other Securities of the Company to the extent that the terms on which such Securities were issued confer such rights. No appointment of a Director shall be valid if passed by resolutions in accordance with section 60.

23.1.4 Every person holding office as a Director, prescribed officer, company secretary or auditor of the Company immediately before the effective date will, as contemplated in item 7(1) of Schedule 5 to the Act, continue to hold that office.

23.2 **Appointment and nomination of Directors**

23.2.1 If the number of Directors falls below the minimum number fixed in accordance with this Memorandum of Incorporation, the remaining Directors must as soon as possible and in any event not later than 3 (three) months from the date that the number falls below such minimum, fill the vacancy/ies in accordance with article 23.1.3 or convene a general meeting for the purpose of filling the vacancies, and the failure by the Company to have the minimum number of Directors during the said 3 (three) month period does not limit or negate the authority of the Board or invalidate anything done by the Board while their number is below the minimum number fixed in accordance with this Memorandum of Incorporation. **[LR10.16(d)]**

23.2.2 The Directors in office may act notwithstanding any vacancy

in their body, but if after the expiry of the 3 (three) month period contemplated in article 23.2.1, their number remains below the minimum number fixed in accordance with this Memorandum of Incorporation, they may, for as long as their number is reduced below such minimum, act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose. **[LR10.16(d)]**

- 23.2.3 In any election of Directors -
- 23.2.3.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board have been filled; and
- 23.2.3.2 in each vote to fill a vacancy -
- 23.2.3.2.1 each vote entitled to be exercised may be exercised once; and
- 23.2.3.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate.
- 23.2.4 The Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in section 66(4).

23.3 **Eligibility, resignation and retirement of Directors**

- 23.3.1 In addition to satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any further eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company.
- 23.3.2 No Director shall be appointed for life or for an indefinite period and the Directors shall rotate in accordance with the following provisions of this article 23.3.2 -
- 23.3.2.1 at each annual general meeting referred to in article 18.4, 1/3 (one third) of the Directors for the time being, or if their number is not 3 (three) or a

multiple of 3 (three), the number nearest to 1/3 (one third), but not less than 1/3 (one third), shall retire from office, provided that if a Director is appointed as an executive Director or as an employee of the Company in any other capacity, he or she shall not, while he or she continues to hold that position or office, be subject to retirement by rotation and he or she shall not, in such case, be taken into account in determining the rotation or retirement of Directors; **[LR 10.16(g) & LR 10.16(j)]**

23.3.2.2 the Directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who were elected as Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot;

23.3.2.3 a retiring Director shall be eligible for re-election;

23.3.2.4 the Company, at the general meeting at which a Director retires in the above manner, or at any other general meeting, may fill the vacancy by electing a person thereto, provided that the Company shall not be entitled to fill the vacancy by means of a resolution passed in accordance with section 60; **[LR 10.16(g)]**

23.3.2.5 if at any meeting at which an election of Directors ought to take place the offices of the retiring Directors are not filled, unless it is expressly resolved not to fill such vacancies, the meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation, including articles 18.2 to 18.6 (inclusive) will apply *mutatis mutandis* to such adjournment.

23.3.3 The Board shall, through its nomination committee (if such nomination committee has been constituted in terms of article 30), provide the Shareholders with a recommendation in the notice of the meeting at which the re-election of a

retiring Director is proposed, as to which retiring Directors are eligible for re-election, taking into account that Director's past performance and contribution. Sufficient time shall be allowed between the date of such notice and the date of the general meeting or annual general meeting at which the re-election of the Director is to be proposed to allow nominations to reach the Company's office from any part in the Republic.

**[LR 10.16(g) & (k)]**

- 23.3.4 A vacancy in the number of Directors shall only arise in the event of -
- 23.3.4.1 any elected Director ceasing to hold office or becoming disqualified from holding office as such for any reason; and/or
- 23.3.4.2 the Shareholders resolving to increase the number of elected Directors; and/or
- 23.3.4.3 any of the other circumstances contemplated in section 70(1) arising.

23.4 **Powers of the Board**

- 23.4.1 The Board has the power to -
- 23.4.1.1 appoint or co-opt any person as Director, whether to fill any vacancy on the Board on a temporary basis, as set out in section 68(3), or as an additional Director provided that such appointment must be confirmed by the Shareholders, in accordance with article 23.1.3, at the next annual general meeting of the Company, as required in terms of section 70(3)(b)(i); and **[LR 10.16(c)]**
- 23.4.1.2 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.

- 23.4.2 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, the members, 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.

23.4.3 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.

23.4.4 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.

## 23.5 **Directors' Interest**

23.5.1 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, and, in such event, his appointment and remuneration (in addition to



the remuneration to which he is entitled to as Director) of such other office shall be determined by a disinterested quorum of the Directors. **[LR 10.16(e) and LR 10.16(f)]**

- 23.5.2 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any company 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.
- 23.5.3 Each Director and each alternate Director, prescribed officer and member of any committee of the Board (whether or not such latter persons are also members of the Board) shall, subject to the exemptions contained in section 75(2) and the qualifications contained in section 75(3), comply with all of the provisions of section 75 in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the Board.
- 23.5.4 All Directors shall be elected by an ordinary resolution of the Shareholders, in accordance with article 23.1.3, at a general or annual general meeting of the Company and no appointment of a Director in accordance with the resolution passed in terms of section 60 of the Act shall be competent. **[LR 10.16(b)]**
- 23.5.5 Notwithstanding anything to the contrary in this Memorandum of Incorporation, any resolution proposed to the Shareholders in terms of Section 20(2) and Section 20(6) is prohibited in the event that such a resolution would lead to ratification of an act that is contrary to the JSE Listings Requirements, unless otherwise agreed with the JSE,

## 24 **DIRECTORS' MEETINGS**

- 24.1 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.
- 24.2 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. 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. **[LR 10.16(i)]**

- 24.3 In addition to the provisions of section 73(1), any Director shall at any time be entitled to call a meeting of the Directors.
- 24.4 The Board has the power to -
- 24.4.1 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. Such resolution inserted into the minute book shall be as valid and effective as if it had been passed at a meeting of directors. Any such resolution may consist of several documents and shall be deemed to have been passed on the date on which it was signed by the last director who signed it (unless a statement to the contrary is made in that resolution); **[LR 10.16(j)]**
- 24.4.2 conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73(3), 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;
- 24.4.3 determine the manner and form of providing notice of its meetings as set out in section 73(4), provided that -
- 24.4.3.1 the notice period for the convening of any meeting of the Board will be at least 7 (seven) days unless the decision of the Directors is required on an urgent

basis which justifies a shorter period of notice, in which event the meeting may be called on shorter notice. The decision of the chairperson of the Board, or failing the chairperson for any reason, the decision of any (two) directors as to whether a matter should be decided on an urgent basis, and the period of notice to be given, shall be final and binding on the directors; and

24.4.3.2 an agenda of the matters to be discussed at the meeting shall be given to each Director, together with the notice referred to in article 24.4.3.1;

24.4.4 proceed with a meeting despite a failure or defect in giving notice of the meeting, as provided 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.

24.5 The quorum requirement for a Directors' meeting (including an adjourned meeting) to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as set out in section 73(5), subject only to this article 24.5, and accordingly -

24.5.1 if all of the Directors of the Company -

24.5.1.1 acknowledge actual receipt of the notice convening a meeting; or

24.5.1.2 are present at a meeting; or

24.5.1.3 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;

24.5.2 at least 2 (two) of the Directors must be present at a meeting before a vote may be called at any meeting of the Directors, provided that if within half an hour (or such longer period as those present may agree) after the time appointed for the meeting a quorum is not present, the meeting will stand adjourned to the same day of the next week (or if

that day is not a business day, the following business day) at the same time and place. Written notice of such adjourned meeting (incorporating an agenda) shall be given to all Directors not less than 48 (forty eight) hours before such adjourned meeting is to be held and if at such adjourned meeting a quorum is not present within half an hour (or such longer period as those present may agree) after the time appointed for the meeting, a majority of the Directors present will constitute a quorum. No business may be conducted at the adjourned meeting save for business specified on the agenda;

- 24.5.3 each Director has 1 (one) vote on a matter before the Board;
- 24.5.4 a majority of the votes cast in favour of a resolution is sufficient to approve that resolution;
- 24.5.5 in the case of a tied vote -
  - 24.5.5.1 the chairperson may not cast a second or deciding vote; and  
**[LR 10.16(i)]**
  - 24.5.5.2 the matter being voted on fails.
- 24.6 Resolutions adopted by the Board –
  - 24.6.1 must be dated and sequentially numbered; and
  - 24.6.2 are effective as of the date of the resolution, unless any resolution states otherwise.
- 24.7 Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, are evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

## 25 **DIRECTORS' COMPENSATION AND FINANCIAL ASSISTANCE**

- 25.1 The Company may pay remuneration to the Directors for their services as Directors in accordance with a special resolution approved by the Shareholders within the previous 2 (two) years, as set out in section 66(8) and (9), and the power of the Company in this regard is not limited or restricted by this Memorandum of Incorporation.
- 25.2 Any Director who –

- 25.2.1 serves on any executive or other committee; or
- 25.2.2 devotes special attention to the business of the Company; or
- 25.2.3 goes or resides outside the Republic for the purpose of the Company; or
- 25.2.4 otherwise performs or binds himself to perform services which, in the opinion of the Directors, are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration or allowances in addition to or in substitution of the remuneration to which he may be entitled as a Director, as a disinterested quorum of the Directors may from time to time determine. **[LR 10.16(f)]**
- 25.3 The Directors may also be paid all their travelling and other expenses necessarily incurred by them in connection with –
- 25.3.1 the business of the Company; and
- 25.3.2 attending meetings of the Directors or of committees of the Directors of the Company. **[LR 10.16(f)]**
- 25.4 The Board may, as contemplated in and subject to the requirements of section 45, authorise the Company to provide financial assistance to a Director, Prescribed Officer or other person referred to in section 45(2), and the power of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

## 26 **MANAGING DIRECTOR**

- 26.1 The Directors may from time to time appoint 1 (one) or more of their body to the office of managing Director for such term and at such remuneration as they may think fit (subject only to the requirements of section 66(8) and (9)), and may revoke such appointment subject to the terms of any agreement entered into in any particular case, provided that the period of office of a managing Director appointed in terms of an agreement shall be for a maximum period of 5 (five) years at any one time. A Director so appointed shall be subject to retirement in the same manner as the other Directors except during the period of his agreement, and his appointment shall terminate if he ceases for any reason to be a Director.

- 26.2 Subject to the provisions of any contract between himself and the Company, a managing Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 26.3 The Directors may from time to time entrust to and confer upon a managing Director for the time being 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 **EXECUTIVE DIRECTORS**

- 27.1 The Directors may from time to time appoint 1 (one) or more executive Directors for such term and at such remuneration as they may think fit, and may revoke such appointment subject to the terms of any agreement entered into in any particular case. A Director so appointed shall not be subject to retirement in the same manner as the other Directors, but his or her appointment shall terminate if he or she ceases for any reason to be a Director.
- 27.2 Subject to the provisions of any contract between himself or herself and the Company, an executive Director shall be subject to the same provisions as to disqualification and removal as the other Directors of the Company.
- 27.3 The Directors may from time to time entrust to and confer upon an executive Director for the time being 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.

28        **BORROWING POWERS**

28.1                Subject to the provisions of article 28.2 and the other provisions of this Memorandum of Incorporation, the Directors may from time to time –

28.1.1                borrow for the purposes of the Company such sums as they think fit; and

28.1.2                secure the payment or repayment of any such sums, or any other sum, as they think fit, whether by the creation and issue of Securities, mortgage or charge upon all or any of the property or assets of the Company,

provided that the aggregate of all borrowings of the Company and its subsidiaries, at all times and from time to time, not exceed 66.7% of the directors' *bona fide* valuation of the consolidated property portfolio of the Company and its subsidiaries, and for the purposes of calculating the borrowings in terms of this article 28 shall not include the unsecured variable rate debentures allotted and issued by the Company.

28.2                The Directors shall procure (but as regards subsidiaries of the Company only insofar as by the exercise of voting and other rights or powers of control exercisable by the Company they can so procure) that the aggregate principal amount at any one time outstanding in respect of moneys so borrowed or raised by –

28.2.1                the Company; and

28.2.2                all the subsidiaries for the time being of the Company (excluding moneys borrowed or raised by any of such companies from any other of such companies but including the principal amount secured by any outstanding guarantees or suretyships given by the Company or any of its subsidiaries for the time being for the indebtedness of any other company or companies whatsoever and not already included in the aggregate amount of the moneys so borrowed or raised), shall not exceed, to the extent applicable, the aggregate amount at that time authorised to be borrowed or secured by the Company or the subsidiaries for the time being of the Company (as the case may be).

## 29 **INDEMNIFICATION OF DIRECTORS**

29.1 The Company may -

29.1.1 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);

29.1.2 indemnify a Director in respect of liability as set out in section 78(5); and/or

29.1.3 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.

29.2 The provisions of article 29.1 shall apply *mutatis mutandis* in respect of any former Director, prescribed officer or member of any committee of the Board, including the audit committee.

## 30 **COMMITTEES OF THE BOARD**

30.1 The Board may -

30.1.1 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

30.1.2 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.

30.2 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.

30.3 The Board shall further appoint such committees as it is obliged to do in terms of the Act and, for as long as the Company's Securities are listed on the JSE, such committees as are required by the JSE Listings Requirements, having such functions and powers as are prescribed by the Act and/or the JSE Listings Requirements, as the case may be.



31 **ANNUAL FINANCIAL STATEMENTS**

31.1 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 -

31.1.1 the Act;

31.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;

31.1.3 the Regulations; and

31.1.4 this Memorandum of Incorporation.

31.2 The Company shall each year, after the end of its financial year, prepare annual financial statements within the period prescribed by the Act, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).

31.3 The Company shall appoint an auditor 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.

31.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30.

31.5 A copy of the annual financial statements must be delivered to Shareholders at least 15 (fifteen) business days before the date of the annual general meeting of the Company at which such annual financial statements will be considered. **[LR 10.19]**

31.6 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable provision of the Act and shall –

31.6.1 satisfy, as to form and content, -

31.6.1.1 the JSE Listings Requirements; and

31.6.1.2 the financial reporting standards of IFRS; and

31.6.2 subject to and in accordance with IFRS –

31.6.2.1 present fairly the state of affairs and business of the

- Company and explain the transactions and financial position of the business of the Company;
- 31.6.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses;
- 31.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 31.6.2.4 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.

## 32 **DISTRIBUTIONS**

- 32.1 Subject to the provisions of the Act, and particularly section 46, the Company may make a proposed distribution if such distribution -
- 32.1.1 is pursuant to an existing legal obligation of the Company, or a court order; or
- 32.1.2 is authorised by resolution of the Board in compliance with the JSE Listings Requirements. **[LR 10.8]**
- 32.2 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of the Shares in respect of which such distribution is payable.
- 32.3 Distributions may be declared either free of or subject to the deduction of income tax and any other tax or duty in respect of which the Company may be chargeable.
- 32.4 The Directors may from time to time declare and pay to the Shareholders such interim distributions as the Directors consider to be appropriate.
- 32.5 No larger distribution shall be declared by the Company in general meeting than is recommended by the Directors, but the Company in general meeting may declare a smaller dividend. **[LR 10.17(a)]**
- 32.6 All unclaimed distributions may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed, provided

that distributions unclaimed for a period of 3 (three) years from the date on which they were declared may be declared forfeited by the Directors for the benefit of the Company. The Directors may at any time annul such forfeiture upon such conditions (if any) as they think fit. All unclaimed monies, other than distributions, that are due to any Shareholder/s shall be held by the Company in trust for an indefinite period until lawfully claimed by such Shareholder/s. **[LR 10.17(c)]**

- 32.7 Any distribution, interest or other sum payable in cash to the holder of a Share may be paid by cheque or warrant sent by post and addressed to -
- 32.7.1 the holder at his registered address; or
- 32.7.2 in the case of joint holders, the holder whose name appears first in the Securities Register in respect of the share, at his registered address; or
- 32.7.3 such person and at such address as the holder or joint holders may in writing direct.
- 32.8 Every such cheque or warrant shall -
- 32.8.1 be made payable to the order of the person to whom it is addressed; and
- 32.8.2 be sent at the risk of the holder or joint holders.
- 32.9 The Company shall not be responsible for the loss in transmission of any cheque or warrant or of any document (whether similar to a cheque or warrant or not) sent by post as aforesaid.
- 32.10 A holder or any one of two or more joint holders, or his or their agent duly appointed in writing, may give valid receipts for any distributions or other moneys paid in respect of a Share held by such holder or joint holders.
- 32.11 When such cheque or warrant is paid, it shall discharge the Company of any further liability in respect of the amount concerned.
- 32.12 A distribution may also be paid in any other way determined by the Directors, and if the directives of the Directors in that regard are complied with, the Company shall not be liable for any loss or damage which a Shareholder may suffer as a result thereof.

- 32.13 Without detracting from the ability of the Company to issue capitalisation Shares and subject to the JSE Listings Requirements, any distribution may be paid wholly or in part -
- 32.13.1 by the distribution of specific assets; or
- 32.13.2 by the issue of Shares, debentures or securities of the Company or of any other company; or
- 32.13.3 in cash; or
- 32.13.4 in any other way which the Directors may at the time of declaring the distribution determine.
- 32.14 Where any difficulty arises in regard to such distribution, the Directors may settle that difficulty as they think expedient, and in particular may fix the value which shall be placed on such specific assets on distribution.
- 32.15 The Directors may -
- 32.15.1 determine that cash payments shall be made to any Shareholder on the basis of the value so fixed in order to secure equality of distribution; and
- 32.15.2 vest any such assets in trustees upon such trusts for the benefit of the persons entitled to the distribution as the Directors deem expedient.
- 32.16 Any distribution must be made payable to Shareholders registered as at a date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date. **[LR 10.17(b)]**
- 32.17 Without limiting the provisions of article 32.1.2 above, all payments made to holders of Securities listed on the JSE ("**Listed Securities**") must be in accordance with the JSE Listings Requirements and capital payments to holders of Listed Securities may not be made on the basis that it can be called up again. **[LR 10.8]**

### 33 **RESERVES**

- 33.1 The Board may, before recommending any preference or other dividend or other distribution, set aside such amounts from the profits of the Company as reserves as it deems fit.

33.2 Such reserves may in the discretion of the Board be used for any admissible purpose and pending such use, the Board may in its discretion –

33.2.1 use them for the business of the Company without them being separated from the other assets of the Company; or

33.2.2 invest it.

33.3 The Board may in its discretion transfer any profits which should not be distributed in its opinion, without putting them to reserve.

33.4 The Board may –

33.4.1 distribute any such reserve funds as it deems fit;

33.4.2 consolidate such funds or any part thereof in one fund.

#### 34 **ACCESS TO COMPANY RECORDS**

34.1 Each person who holds or has a beneficial interest in any Securities issued by the Company 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 –

34.1.1 this Memorandum of Incorporation, and any amendments or alterations thereof;

34.1.2 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);

34.1.3 all –

34.1.3.1 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

- 34.1.3.2 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;
- 34.1.4 notice and minutes of all Shareholders' meetings, including -
- 34.1.4.1 all resolutions adopted by them, for 7 (seven) years after the date each such resolution was adopted; and
- 34.1.4.2 any document that was made available by the Company to the holders of Securities in relation to each such resolution;
- 34.1.5 any written communications sent generally by the Company to all holders of any class of the Company's Securities, for a period of 7 (seven) years after the date on which each of such communications was issued; and
- 34.1.6 the Securities Register of the Company.
- 34.2 A person not contemplated in article 34.1 has a right to inspect the Securities Register and the register of Directors of the Company upon payment of the prescribed maximum fee for any such inspection.

## 35 **PAYMENT OF COMMISSION**

- 35.1 The Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Securities of the Company or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Securities of the Company, provided that for as long as the Securities of the Company is listed on the JSE, such commission may not exceed a rate of 10% (ten percent) of the issue price of the relevant Security. **[LR 10.14]**
- 35.2 Commission may be paid out of capital or profits, whether current or accumulated, or partly out of the one and partly out of the other.
- 35.3 Such commission may be paid in cash or, if authorised by the Shareholders by ordinary resolution, by the allotment of fully or partly paid-up Securities, or partly in one way and partly in the other.
- 35.4 The Company may, on any issue of Securities, pay such brokerage as

may be lawful.

36 **NOTICES**

36.1 All notices shall be given by the Company to each Shareholder of the Company who has elected to receive such notices and simultaneously to the JSE, and shall be given in writing in any manner authorised by the JSE Listings Requirements and/or the Act, as may be applicable. All notices shall, in addition to the above, be released through SENS provided that, in the event that the Shares or other Securities of the Company are not listed on the JSE, all the provisions of this Memorandum of Incorporation relating to the publication of notices via SENS shall no longer apply and such notices shall thereafter only be delivered in accordance with the provisions of the Act. **[LR 10.11(f)]**

36.2 Each Shareholder of the Company -

36.2.1 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 if he has not named such an address he shall be deemed to have waived his right to be so served with notices until such time that he actually notifies the Company in writing of such address; and

36.2.2 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,

provided that a Shareholder who fails to notify the Company of an address as set out in this article 36.2 above, will be deemed to have elected not to receive notices and documents, from the Company.

36.3 Any Shareholder whose address in the Securities Register is an address not within the Republic, shall be entitled to have notices served upon him at such address. **[LR 10.18]**

36.4 In the case of joint holders of a Share, all notices shall, unless such holders otherwise in writing request and the Directors agree, be given to that Shareholder whose name appears first in the Securities Register and a notice so given shall be deemed sufficient notice to all the joint holders.

- 36.5 Save to the extent that any of the following provisions of this article 36.5 may be in conflict with any provision contained in the Act or the Regulations, any notice sent by -
- 36.5.1 registered post to the last-known address of a Shareholder shall be deemed to have been delivered on the 7<sup>th</sup> (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day;
- 36.5.2 faxing the notice to a Shareholder, if the Shareholder has a fax number, shall be deemed to have been delivered on the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time;
- 36.5.3 sending the notice to a Shareholder by electronic mail, if the Shareholder has an address for the receiving of electronic mail, shall be deemed to have been delivered on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time,
- any other means permitted in the said Table CR 3 shall be deemed to have been delivered as provided for that method of delivery in such Table.
- 36.6 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Share, shall be bound by every notice in respect of that Share which, previously to his name and address being entered in the Securities Register, was given to the person from whom he derives his title to such Share.
- 36.7 Any notice or document delivered or sent by post to or left at the registered address of any Shareholder in pursuance of this Memorandum of Incorporation shall, notwithstanding that such Shareholder was then deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person be registered in his stead as the sole or joint holder thereof, and such service shall for all purposes of this Memorandum of Incorporation be deemed a sufficient service of



such notice or document on his heirs, executors or administrators, and all persons (if any) jointly interested with him in any such Shares.

### 37 **WINDING-UP**

37.1 If the Company is wound-up the liquidator may, with the sanction of a special resolution of the Shareholders, divide among the Shareholders in specie or kind the whole or any part of the assets of the Company and may for such purpose –

37.1.1 set a value which he deems fair upon any asset; and

37.1.2 determine how the division shall be carried out as between the Shareholders or holders of different classes of Shares.

37.2 The liquidator may, with the sanction of a special resolution of the Shareholders, vest the whole or any part of the assets in trustees upon trusts for the benefit of the Shareholders or any of them.

37.3 Any such resolution may provide for and sanction a distribution of specific assets amongst the holders of different classes of Shares contrary to their existing rights, but each Shareholder shall in that event have a right of dissent and other ancillary rights in the same manner as if such resolution were a special resolution passed pursuant to the provisions of the Act.

### 38 **AMENDMENT OF MEMORANDUM OF INCORPORATION**

38.1 Save for the amendments contemplated in article 38.2, this Memorandum of Incorporation may only be altered or amended in the manner set out in sections 16 (other than 16(1)(b), 17 or 152(6)(b)).  
**[LR 10.5(d)]**

38.2 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 -

38.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail; and

38.2.2 filing a notice of the alteration.

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

38.3.1 the date on, and time at, which the Commission accepts the Filing of the notice of amendment contemplated in section 16(7); and

38.3.2 the date, if any, set out in the said notice of amendment,  
  
save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

39 **COMPANY RULES**

The Board is prohibited from making, amending or appealing any rules as contemplated in section 15(3) and the Board's capacity to make such rules is hereby excluded. **[LR 10.4]**

**ADOPTION**

This Memorandum of Incorporation was adopted by special resolution of the Shareholders on 17 May 2013.