
MEMORANDUM OF INCORPORATION

OF

GROWTHPOINT PROPERTIES LIMITED

A PUBLIC COMPANY

(Registration Number 1987/004988/06)

Registration Date: 12 October 1987

Signed for purposes of identification, by the Chairman of the Annual General Meeting of Growthpoint Properties Limited held on **13 November 2018**.



J.F. Marais – Chairman
Chairman of the Board of Directors

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1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Memorandum of Incorporation, unless clearly inconsistent with or otherwise indicated by the context -

- 1.1.1 "**Act**" means the Companies Act, No. 71 of 2008, as amended, re-enacted or replaced from time to time, and includes all schedules and the Regulations to such Act;
- 1.1.2 "**Board**" means the board of directors from time to time of the Company;
- 1.1.3 "**Central Securities Depository Participant**" has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.4 "**Certificated Securities**" means Securities issued by the Company that are not Uncertificated Securities;
- 1.1.5 "**CIPC**" means the Companies and Intellectual Property Commission established by section 185 of the Act;
- 1.1.6 "**Company**" means the company named on the first page of this Memorandum of Incorporation, duly incorporated under the registration number endorsed thereon;
- 1.1.7 "**BEE Act**" means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended, re-enacted or replaced from time to time;
- 1.1.8 "**BEE Codes**" means the Broad-Based Black Economic Empowerment Codes of Good Practice gazetted from time to time under the BEE Act in terms of Code 100 - the Measurement of the Ownership Element of Broad-Based Black Economic Empowerment;
- 1.1.9 "**Debt Instruments**" means commercial paper, bond market and mortgage backed securitisation issues;

- 1.1.10 "Director" means a member of the Board as contemplated in section 66 of the Act, or an alternate director and includes any person occupying the position of a director or alternate director, by whatever name designated;
- 1.1.11 "ECT Act" means the Electronic Communications and Transactions Act, No. 25 of 2002, as amended, re-enacted or replaced from time to time;
- 1.1.12 "EFT" means electronic funds transfer;
- 1.1.13 "Electronic Communication" has the meaning set out in section 1 of the ECT Act;
- 1.1.14 "Financial Markets Act" means the Financial Markets Act, No. 19 of 2012, as amended, re-enacted or replaced from time to time;
- 1.1.15 "Financial Statements" includes the annual financial statements of the Company unless the context indicates otherwise;
- 1.1.16 "General Meeting" includes the annual general meeting, any general meeting and any special general meeting of the Company unless the context indicates otherwise;
- 1.1.17 "Gross Income" has the meaning set out in section 1 of the Income Tax Act;
- 1.1.18 "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 of the Act;
- 1.1.19 "Income Tax Act" means the Income Tax Act, No. 58 of 1962, as amended, re-enacted or replaced from time to time, or any legislation replacing the Income Tax Act, or in addition to the Income Tax Act, in so far as such legislation regulates REITs;

- 1.1.20 "JSE" means the securities exchange operated by the JSE Limited (Registration Number 2005/022939/06), a public company registered and incorporated in accordance with the laws of the Republic and licensed as an exchange under the Financial Markets Act, or any other licenced exchange in the Republic on which the Company may be listed and which regulates REIT listings;
- 1.1.21 "**Listings Requirements**" means the JSE Listings Requirements, as applicable, amended or replaced from time to time;
- 1.1.22 "**Memorandum of Incorporation**" means this memorandum of incorporation as may be amended from time to time;
- 1.1.23 "**Participant**" has the meaning set out in section 1 of the Financial Markets Act;
- 1.1.24 "**Regulations**" means the regulations published in terms of the Act, from time to time;
- 1.1.25 "**REIT**" means a company resident in the Republic, the shares of which are listed on the JSE as shares in a REIT, as defined in the Listings Requirements and which qualifies for tax deduction in respect of distributions under the provisions of the Income Tax Act;
- 1.1.26 "**Rental Income**" rental income has the meaning set out in the Income Tax Act;
- 1.1.27 "**Republic**" means the Republic of South Africa;
- 1.1.28 "**Securities**" means -
- 1.1.28.1 any Shares, notes or other instruments, irrespective of their form or title, issued, or authorised to be issued, by the Company;
- 1.1.28.2 anything falling within the meaning of "securities" as set out in section 1 of the Financial Markets Act, and
- 1.1.28.3 Securities in each class for which application is made for listing on the JSE which shall rank *pari passu* in respect of all rights;

- 1.1.29 "**Securities Register**" means the register of issued Securities of the Company required to be established in terms of section 50(1) of the Act;
- 1.1.30 "**SENS**" means the Stock Exchange News Service established and operated by the Issuer Regulation Division of the JSE, and any successor to SENS;
- 1.1.31 "**Share**" means one of the units into which the proprietary interest in the Company is divided, being no par value shares, and "**Shares**" means more than one Share;
- 1.1.32 "**Shareholder**" means the holder of a Share who is entered as such in the Securities Register, subject to the provisions of section 57 of the Act and "**Shareholders**" means more than one Shareholder;
- 1.1.33 "**Solvency and Liquidity Test**" has the meaning attributed thereto in section 4 of the Act;
- 1.1.34 "**STRATE Regulations**" means all regulations relating to Uncertified Securities, from time to time published by Strate Limited;
- 1.1.35 "**Tribunal**" has the meaning set out in section 1 of the Act;
- 1.1.36 "**Uncertificated Securities**" means any "securities" defined as such in section 1 of the Financial Markets Act;
- 1.1.37 "**Uncertificated Securities Register**" means the record of Uncertificated Securities administered and maintained by a Participant or Central Securities Depository Participant, as determined in accordance with the rules of the Central Securities Depository Participant; and
- 1.1.38 "**Year of Assessment**" has the meaning set out in section 1 of the Income Tax Act.

1.2 Interpretation

1.2.1 In this Memorandum of Incorporation, unless clearly inconsistent with or otherwise indicated by the context -

1.2.1.1 words and expressions defined in the Act and which are not defined herein, shall have the meanings given to them in the Act;

1.2.1.2 a reference to a clause by number refers to a corresponding provision of this Memorandum of Incorporation;

1.2.1.3 a reference to a section by number refers to the corresponding section of the Act, as amended, re-enacted or replaced from time to time; and

1.2.1.4 any reference to the singular includes the plural and *vice versa*, any reference to natural persons includes legal persons and *vice versa* and any reference to a gender includes the other gender.

1.2.2 The headings in this Memorandum of Incorporation have been inserted for convenience only and shall not be taken into account in its interpretation.

1.2.3 Words and expressions defined in any clause shall, for the purposes of the clause, bear the meanings assigned to such words and expressions in that clause.

1.2.4 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 or form permitted in terms of the Act and/or the ECT Act.

1.2.5 Any reference in this Memorandum of Incorporation to -

1.2.5.1 "**days**" means calendar days, unless qualified by the word "**business**", in which instance a "business day" will be as defined in the Act;

- 1.2.5.2 "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
- 1.2.5.3 "writing" means legible writing and in English and includes printing, typewriting, lithography or 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, and/or the ECT Act.
- 1.2.6 References to Shareholders entitled to vote present at a meeting or acting in person shall include juristic persons represented by a duly authorised representative or acting in the manner prescribed in the Act.
- 1.2.7 The use of the words "include" and "including" in this Memorandum of Incorporation followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording and/or such specific example or examples and the words "other" or "otherwise" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

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 hereof.
- 2.2 The Company's Shares are listed on the JSE. The Company will obtain REIT status from the JSE in accordance with the provisions of the Listings Requirements.

- 2.3 The Company is incorporated in accordance with and governed by the -
- 2.3.1 unalterable provisions of the Act;
- 2.3.2 alterable provisions of the Act, subject to the limitation, extensions, variations or substitutions set out in this Memorandum of Incorporation;
- 2.3.3 Listings Requirements; and
- 2.3.4 provisions of this Memorandum of Incorporation.

3 POWERS OF THE COMPANY AND SPECIAL CONDITIONS

- 3.1 The Company will conduct its business in such manner as to ensure that it, at all times, complies with the provisions of the Income Tax Act and the requirements set by the JSE, for the Company to qualify as a REIT. The provisions of this 3.1 can only be altered by a special resolution approved by a 90% (ninety per cent) majority of those Shareholders present and voting, for as long as the REIT requirements as contemplated in the Income Tax Act and the Listings Requirements are in existence.
- 3.2 Save for the provisions of 3.1, 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.
- 3.3 Save for the provisions of 3.1, 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) of the Act.
- 3.4 This Memorandum of Incorporation does not contain any special conditions applicable to the Company, as contemplated in sections 15(2)(b) or (c) of the Act.

4 ISSUE OF SHARES AND VARIATION OF RIGHTS

4.1 The Company has -

4.1.1 5 000 000 000 (four billion) authorised ordinary Shares; and

4.1.2 1 891 558 328 (one billion eight hundred and ninety one million five hundred and fifty eight thousand three hundred and twenty eight) issued ordinary Shares at the date of adoption of this Memorandum of Incorporation.

4.2 Shares in each class for which application is made for listing on the JSE, shall rank *pari passu* in respect of all rights.

4.3 The Board shall have the power, subject to the limitations contained in 4.4, 39 and elsewhere in this Memorandum of Incorporation, to -

4.3.1 increase or decrease the number of authorised Shares of any class of the Company's Shares;

4.3.2 consolidate and reduce the number of the Company's issued and authorised Shares of any class;

4.3.3 subdivide its Shares of any class by increasing the number of its issued and authorised Shares of that class, without an increase of its capital;

4.3.4 reclassify any classified Shares that have been authorised but not issued; or

4.3.5 classify any unclassified Shares that have been authorised but not issued.

4.4 Subject to the provisions of the Listings Requirements, the Shareholders may, from time to time in a General Meeting, authorise the Board by way of a resolution passed by a 75% (seventy five per cent) majority to allot and issue Shares for cash (and options and convertible Securities for cash). All allotment and issues of Shares for cash and all allotments and issues of options and convertible Shares granted or issued for cash must, in addition, be in accordance with the Listings Requirements.

- 4.5 All Shares for which a listing is sought on the JSE and all Shares of the same class as Shares which are listed on the JSE must, notwithstanding the provisions of section 40(5) of the Act, but unless otherwise required by statute, only be allotted and issued after the Company has received the consideration approved by the Board for the allotment and issue of such Shares.
- 4.6 The Shareholders have a common pre-emptive right to be offered and to subscribe for additional Shares, unless such Shares are to be allotted and issued for an acquisition of assets, as an issue of Shares for cash, subject to the Listings Requirements, and under an approved Share incentive scheme/s. Shareholders may, in a General Meeting, authorise the Directors to allot and issue unissued Securities and/or grant options to subscribers for unissued Securities as Directors deem fit, provided such actions have been approved by the JSE in accordance with the Listings Requirements.
- 4.7 Should there be any issued preference Shares in the share capital of the Company-
- 4.7.1 the allotment and issue of further Shares ranking in priority to, or *pari passu* with those preference Shares, shall be deemed to be a variation of the rights attached to those preference Shares, which will adversely affect those rights. No further Shares ranking in priority to, or *pari passu* with, existing preference Shares of any class shall be created without a special resolution passed at a separate General Meeting of such Shareholders;
- 4.7.2 subject to the provisions of 18.17.2, holders of preference Shares shall have the right to vote at any general/annual general meeting of the Company-
- 4.7.2.1 during any special period, as provided for in 4.7.3, during which any dividend, any part of any dividend on such preference Shares or any redemption payment thereon remains in arrears and unpaid; and/or
- 4.7.2.2 in regard to any resolution proposed for the winding-up of the Company or the reduction of its capital;

- 4.7.3 the period referred to in 4.7.2.1 above shall be the period commencing on a day specified in this Memorandum of Incorporation, not being more than 6 (six) months after the due date of the dividend or redemption payment in question or, where no due date is specified, after the end of the financial year of the Company in respect of which such dividend accrued or such redemption payment became due.
- 4.8 Subject to any right or restriction under which Shares are held, the rights or restrictions attached to all or any Shares of any class may be amended, varied, cancelled or expanded by a special resolution of holders of that class at a separate General Meeting. In such instances, the holders of such Shares may be allowed to vote at the meeting of ordinary Shareholders, subject to 18.17.2. Without limiting the generality of the foregoing, the rights attaching to Shares (unless the terms attaching to the Shares specifically otherwise provide) shall be deemed to be amended by the creation or allotment and issue of any other Shares ranking *pari passu* or in priority to any Shares already allotted and issued by the Company. No such amendment, variation, cancellation or expansion which directly or indirectly adversely affects those special rights or restrictions shall be effected without the approval thereof by a special resolution passed at a separate General Meeting of the holders of the Shares in question in the same manner, *mutatis mutandis*, as a special resolution of the Shareholders, and the provisions of the Act and this Memorandum of Incorporation relating to General Meetings shall apply to any such separate General Meeting, except that a quorum at any such General Meeting shall be three (3) persons present in person or by proxy and holding at least 25% (twenty five per cent) of the issued Shares of the class in question provided that if a quorum is not so present, the meeting shall be adjourned to the fifth (5th) business day thereafter and the members present or represented at the meeting to which the adjournment takes place, shall constitute a quorum.
- 4.9 The preferences, rights, limitations or other terms of any Shares may not be varied and no resolution may be proposed to the Shareholders for rights to include such variation in response to any objectively ascertainable external fact or facts as provided for in section 37(6) and 37(7) of the Act.

- 4.10 The alteration of share capital, authorised Shares and those rights attaching to a class or classes of Shares must be in accordance with the Listings Requirements.

5 CERTIFICATED AND UNCERTIFICATED SHARES

- 5.1 Shares are to be issued in certificated or uncertificated form, as the Board may determine from time to time, subject to the rules as defined in the STRATE Regulations, in respect of Shares in uncertificated form.
- 5.2 If a Share certificate is lost or destroyed, it may be replaced on such terms as the Board may determine.
- 5.3 Except to the extent otherwise provided in the Act or in this Memorandum of Incorporation, the rights and obligations of Shareholders shall not be different solely on the basis of their Shares falling under the ambit of Certificated Securities or Uncertificated Securities and each provision of this Memorandum of Incorporation applies with respect to any Shares held in uncertificated form in the same manner as it applies to Shares held in certificated form, unless otherwise stated or indicated by the context.
- 5.4 Any Shares held in certificated form may cease to be evidenced by certificates, and thereafter become uncertificated.
- 5.5 Any Shares held in uncertificated form may be withdrawn from the Uncertificated Securities Register, and certificates issued evidencing those Shares at the election of the holder of those Shares. A holder of uncertificated Shares who elects to withdraw all or part of the Shares held by it in an Uncertificated Securities Register, and obtain a certificate in respect of those withdrawn Shares, may so notify the relevant Participant or Central Securities Depository Participant as required by the rules of the Central Securities Depository Participant.
- 5.6 After receiving notice from a Participant or Central Securities Depository Participant, as the case may be, that the holder of uncertificated Shares wishes to withdraw all or part of the Shares held by it in an Uncertificated Securities Register, and obtain a certificate in respect thereof, the Company shall -

- 5.6.1 immediately enter the relevant Shareholder's name and details of its holding of Shares in the Securities Register and indicate on the Securities Register that the Shares so withdrawn are no longer held in uncertificated form; and
- 5.6.2 within 10 (ten) business days (or 20 (twenty) business days in the case of a Shareholder who is not resident within the Republic) prepare and deliver to the relevant person, a certificate in respect of the Shares and notify the Central Securities Depository Participant that the Securities are no longer held in uncertificated form.
- 5.7 All signatures on certificates shall be autographic or be affixed to such certificates by mechanical means.
- 5.8 The Company may charge a Shareholder a reasonable fee to cover the actual cost of issuing any certificate as contemplated in this 5.

6 TRANSFER OF SHARES

6.1 Transfer of Uncertificated Shares

- 6.1.1 Transfer of ownership in any uncertificated Shares 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 Participant.
- 6.1.2 The transfer of uncertificated Shares may be effected only -
- 6.1.2.1 by a Participant or Central Securities Depository Participant;
- 6.1.2.2 on receipt of an instruction to transfer, sent and properly authenticated in terms of the rules of a Central Securities Depository Participant or an order of court; and
- 6.1.2.3 in accordance with section 53 of the Act and the rules of the Central Securities Depository Participant.

6.2 **Transfer of Certificated Shares**

- 6.2.1 The instrument of transfer of any certificated Shares shall be signed by both the transferor and the transferee. The Board 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.
- 6.2.2 Securities transfer tax and other legal costs payable in respect of any transfer of Shares 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 Shares.
- 6.2.3 Subject to such restrictions as may be applicable, (whether by virtue of the preferences, rights, limitations or other terms associated with the Shares in question, including as set out in 4, any Shareholder may transfer all or any of its certificated Shares by instrument in writing in any usual or common form or any other form which the Board may approve.
- 6.2.4 Every instrument of transfer of a Share shall be left at the offices of the transfer secretaries of the Company or such other place as the Company may designate from time to time.
- 6.2.5 Every instrument of transfer of a Share shall be accompanied by -
- 6.2.5.1 the certificate issued in respect of the certificated Shares to be transferred; and/or
- 6.2.5.2 such other proof as the Company may require to evidence the title of the transferor of his right to transfer the Shares.
- 6.2.6 Any authority to sign transfer deeds or other instruments of transfer granted by a Shareholder for the purpose of transferring Shares, when lodged, produced or exhibited to or with the Company, shall be deemed to remain in full force and effect, and the Company may allow it to be acted upon, until such time as written notice of the revocation thereof is lodged at the offices of the transfer secretaries of the Company.

Even after the lodging of such notice of revocation, the Company may give effect to any instrument of transfer signed under the authority to sign and certified (before the lodging of such notice) by any officer of the Company, as being in order.

- 6.2.7 All instruments of transfer, when registered, shall either be retained by the Company or disposed of in such manner as the Board shall from time to time decide. Any instrument of transfer which the Board may decline to register shall (unless the Board shall resolve otherwise) be returned on demand to the person who lodged it.
- 6.2.8 The transferor shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Securities Register in respect thereof.
- 6.2.9 The Board, upon evidence of good cause, may, in its sole discretion, record in the Securities Register that any Share is held in trust or by a nominee, and the name of the beneficial Shareholder.
- 6.2.10 The Board may decline to register any transfer of Shares to a minor or to a person of unsound mind.
- 6.2.11 The Company shall not be bound to allow the exercise of any act or matter by any agent of a Shareholder unless a duly certified copy of such agent's authority is produced to and filed with the transfer secretaries of the Company.

7 TRANSMISSION OF SHARES

- 7.1 The executor of the estate of a deceased Shareholder or the trustee of an insolvent estate, or the curator or administrator of any insane or prodigal Shareholder, or any person appointed by a competent authority to represent or act on behalf of a Shareholder, shall be the only person recognised by the Company as having title to such Share. In the case of a Share registered in the names of 2 (two) or more holders, the survivor or survivors, or the executor of the estate of any deceased Shareholders, as determined by the Board, shall be the person recognised by the Company as having title to the Share.

7.2 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 of a Shareholder whose estate has been sequestrated or of a Shareholder who is otherwise under a disability, or as the liquidator of any body corporate which is a Shareholder, shall be entered in the Securities Register *nomine officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder.

7.3 Subject to the provisions of 7.1 and 7.2, any person becoming entitled to any Share by virtue of death of a Shareholder shall, upon producing such evidence that he has such title or rights as the Board thinks sufficient, have the right either to have such Share transferred to himself or to make such other transfer of the Share as such Shareholder could have made, provided that in respect of a transfer other than to himself -

7.3.1 the Board shall have the same right to refuse or suspend registration as they would have had in the case of a proposed transfer of such Share by such Shareholder before his death; and

7.3.2 a person becoming entitled to any Share shall not, unless and until he is himself registered as a Shareholder in respect of such Share, be entitled to exercise any voting or other right attaching to such Share or any other right relating to dividends and/or General Meetings of the Company.

8 FRACTIONS OF SHARES

To the extent that a fractional entitlement arises, all allocations of Securities will be dealt with in accordance with the provisions of the Listing Requirements from time to time and for the time being or such other law, statute, regulation, directive or guideline as may be applicable from time to time.

9 JOINT HOLDERS OF SHARES

Where 2 (two) or more persons are registered as the holders of any Shares, they shall be deemed to hold those Shares jointly, and -

- 9.1 notwithstanding anything to the contrary in this Memorandum of Incorporation, on the death, sequestration, liquidation or legal disability of any one of such joint holders, the remaining joint holders may be recognised, at the discretion of the Board, as the only person/s having title to such Share;
- 9.2 any one of such joint holders may give effectual receipts for any distributions, bonuses or returns of Share capital or other accruals or distributions payable to such joint holders;
- 9.3 only the joint holder whose name has been entered first into the Securities Register shall be entitled to delivery of the Share certificate relating to that Share, or to receive any notices from the Company (and each notice shall be deemed to be notice to all such joint holders); and
- 9.4 any one of the joint holders of any Share conferring a right to vote may vote either personally or by proxy at any General Meeting in respect of such Shares as if he were solely entitled thereto, and if more than 1 (one) of such joint holders are present at the General Meeting, either personally or by proxy, the joint holder who tenders a vote and whose name has been entered in the Securities Register before the other joint holders who are present in person or by proxy, shall be entitled to vote in respect of that Share.

10 NO LIEN UPON SHARES

The Company does not have the power to claim a lien upon any of its issued Shares which shall be freely transferable.

11 REGISTRATION OF BENEFICIAL INTERESTS IN SHARES

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

12 FINANCIAL ASSISTANCE

The Board may authorise the Company to provide financial assistance including, without limitation, 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 Shares, issued or to be issued by the Company or a related or inter-related company, or for the purchase of such Shares, on the basis as set out in section 44 of the Act, and the authority of the Board in this regard, is not limited or restricted by this Memorandum of Incorporation.

13 CAPITALISATION SHARES

13.1 The Board shall have the power and authority, in terms of section 47 of the Act, to -

13.1.1 approve the issuing of any authorised Shares, as capitalisation Shares on a *pro rata* basis to the Shareholders of one or more classes of Shares;

13.1.2 issue Shares of one class as capitalisation Shares in respect of Shares of another class; or

13.1.3 resolve to permit Shareholders to elect to receive a cash payment *in lieu* of a capitalisation Share,

provided that such -

13.1.4 power or authority has been authorised by the Shareholders by means of an ordinary resolution; and

13.1.5 transaction(s), to the extent necessary, has/have been approved by the JSE and the Listings Requirements have been complied with.

13.2 The Board may not resolve to offer a cash payment *in lieu* of capitalisation Shares, unless the Board -

13.2.1 has considered the Solvency and Liquidity Test, as required by section 46 of the Act, on the assumption that every Shareholder would elect to receive cash; and

13.2.2 is satisfied that the Company would satisfy the Solvency and Liquidity Test immediately upon the completion of the distribution.

14 DEBT INSTRUMENTS

14.1 Subject to the Listings Requirements, the authority of the Board to authorise the Company to issue secured or unsecured Debt Instruments, as set out in section 43(2) of the Act is not limited or restricted by this Memorandum of Incorporation.

14.2 Save with the prior consent of the Shareholders in General Meeting, the Board shall not be entitled to issue Debt Instruments convertible into ordinary Shares.

14.3 The Board shall not be entitled to grant special privileges regarding -

14.3.1 attending and voting at General Meetings and the appointment of Directors; or

14.3.2 allotment of Shares, redemption by the Company, or substitution of the Debt Instrument for Shares.

15 RECORD DATE FOR THE EXERCISE OF SHAREHOLDER RIGHTS

15.1 The record date for the purpose of determining which Shareholders are entitled to -

15.1.1 receive notice of a General Meeting;

15.1.2 participate and vote at a General Meeting;

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

15.1.4 receive a distribution; or

15.1.5 be allotted or exercise other rights,

shall be determined by the Board in accordance with the Act, provided that, for as long as the Listings Requirements apply to the Company, such record date shall be the record date as required by the Listings Requirements, to the extent determined by the Listings Requirements.

15.2 Such record date must be published to the Shareholders in a manner that satisfies the Listings Requirements and any other prescribed requirements.

16 DISTRIBUTIONS

16.1 The Company must conduct its business in such a way that more than 75% (seventy five per cent) of the Gross Income received by or accrued to the Company in each Year of Assessment will consist of Rental Income for as long as the REIT regime as contemplated in the Income Tax Act and the Listings Requirements, in whatever form, is in existence.

16.2 The provisions of 16.1, for as long as they apply, can only be amended by special resolution approved by a 90% (ninety per cent) majority of those Shareholders present and voting for as long as the REIT regime as contemplated in the Income Tax Act, and the Listings Requirements, in whatever form, is in existence.

16.3 Subject to the provisions of this Memorandum of Incorporation and the Act and particularly section 46 of the Act, the Company may make a proposed distribution if such distribution –

16.3.1 is pursuant to an existing legal obligation of the Company or a court order; or

16.3.2 is authorised by resolution of the Board, in compliance with the Listings Requirements, provided that capital shall not be repaid upon the basis that it may be called up again.

16.4 No distribution shall bear interest against the Company, except as otherwise provided under the conditions of issue of Shares in respect of which such distribution is payable.

- 16.5 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.
- 16.6 The Board may from time to time, and in accordance with the Act, declare and pay to the Shareholders such interim distributions which may occur before the end of a financial year, as the Board considers to be appropriate.
- 16.7 No larger distribution shall be declared by the Company in General Meeting than is recommended by the Board in accordance with the Act.
- 16.8 All unclaimed monies, including but not limited to dividends, that are due to any shareholder/s shall be held by the Company in trust subject to the laws of prescription, whereafter such unclaimed monies may be declared forfeited by the Board for the benefit of the Company. The Board may at any time annul such forfeiture upon such conditions (if any) as it thinks 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.
- 16.9 Any distribution, interest or other sum payable to the holder of a Share shall be paid by EFT and shall not be paid by cheque, unless otherwise requested by a Shareholder in writing. Any unclaimed distribution or distributions shall be retained in the Company's unclaimed distribution account, whereafter it may be claimed by a Shareholder upon written request to the Company in a form prescribed by the Board from time to time.
- 16.10 Every EFT or cheque, if so requested in terms of 16.9, shall be paid at the risk of the Shareholder or joint holders.
- 16.11 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.
- 16.12 When such EFT or cheque is paid, it shall discharge the Company of any further liability in respect of the amount concerned.

- 16.13 A distribution may also be paid in any other way determined by the Board, and if the directives of the Board 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.
- 16.14 Without detracting from the ability of the Company to issue capitalisation Shares, any distribution may be paid wholly or in part –
- 16.14.1 by the distribution of specific assets; or
- 16.14.2 by the issue of Shares of the Company, or securities of any other company; or
- 16.14.3 in cash; or
- 16.14.4 in any other way which the Board or the Company in General Meeting may at the time of declaring the distribution determine.
- 16.15 The Board may fix the value which shall be placed on specific assets distributed in terms of 16.14.1.
- 16.16 Any distribution must be made payable to Shareholders registered as at a record date subsequent to the date of declaration thereof or the date of confirmation thereof, whichever is the later date.
- 16.17 The Board shall at the time of declaring any distribution be entitled to put forward a distribution reinvestment plan pursuant to which Shareholders may elect to reinvest the distribution in return for Shares.
- 16.18 Where any difficulty arises in regard to a distribution, the Board may settle that difficulty as it thinks appropriate.

17 ACCESS TO COMPANY RECORDS

Each person who holds or has a beneficial interest in any Shares issued by the Company is entitled, for a reasonable period during business hours, to inspect and copy, without any charge for such inspection or upon payment of no more than the prescribed minimum charge for any such copy, the information contained in section 26(1) of the Act, being -

- 17.1 this Memorandum of Incorporation, and any amendments or alterations thereof;
- 17.2 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) of the Act;
- 17.3 all -
 - 17.3.1 reports presented at the annual general meeting of the Company, for a period of 7 (seven) years after the date of any such annual general meeting; and
 - 17.3.2 Financial Statements required by the Act, for a period of 7 (seven) years after the date on which each particular statement was issued;
- 17.4 notices and minutes of General Meetings, including -
 - 17.4.1 all resolutions adopted at a General Meeting, for 7 (seven) years after the date each such resolution was adopted; and
 - 17.4.2 any document that was made available by the Company to the holders of Shares in relation to each such resolution;
- 17.5 any written communications sent generally by the Company to all holders of any class of the Company's Shares, for a period of 7 (seven) years after the date on which each of such communications were issued; and
- 17.6 the Securities Register.

18 GENERAL MEETINGS OF SHAREHOLDERS

- 18.1 The Company is not required to hold any General Meetings other than those specifically required by the Act and the Listings Requirements. The Company is not prohibited or restricted from calling any meeting for the purposes of adhering to the Listings Requirements.

- 18.2 The right of Shareholders to requisition a General Meeting, as set out in section 61(3) of the Act, may be exercised by the holders of at least 10% (ten per cent) of the voting rights in relation to the matter to be considered at the General Meeting, as provided for in section 61(3) of the Act.
- 18.3 Subject to the provisions of section 60 of the Act, dealing with the passing of resolutions of Shareholders otherwise than at General Meetings, the Company shall hold a General Meeting -
- 18.3.1 at any time that the Board is required by the Act, the Listings Requirements or this Memorandum of Incorporation to refer a matter to Shareholders for decision;
- 18.3.2 whenever required in terms of the Act to fill a vacancy on the Board; or
- 18.3.3 when required in terms of 18.2.
- 18.4 The authority of the Board to determine the location of any General Meeting, and the authority of the Company to hold any such General Meeting in the Republic or in any foreign country, as set out in section 61(9) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 18.5 The minimum number of days for the Company to deliver a notice of a General Meeting to Shareholders as required by section 62 of the Act is as provided for in section 62(1) of the Act and the Regulations, being 15 (fifteen) business days before the General Meeting is to begin.
- 18.6 Every General Meeting shall be reasonably accessible within the Republic for electronic participation by Shareholders, irrespective of whether the General Meeting itself is held in the Republic or elsewhere.
- 18.7 The quorum for a General Meeting to begin or for a matter to be considered, shall be at least 3 (three) Shareholders entitled to attend and vote and present in person. In addition -

- 18.7.1 a General Meeting may not begin until sufficient persons are present at the General Meeting in person or represented by proxy to exercise, in aggregate, at least 25% (twenty five per cent) of all of the voting rights; and
- 18.7.2 a matter to be decided at a General Meeting may not be considered unless sufficient persons are present at the General Meeting in person or represented by proxy to exercise, in aggregate 25% (twenty five per cent) of all of the voting rights;
- 18.7.3 after a quorum has been established for a General Meeting, or for a matter to be considered at a General Meeting, all the Shareholders forming part of the quorum must be present at the General Meeting for the matter to be considered at the General Meeting.
- 18.8 The time periods allowed in section 64(4) of the Act and section 64(5) of the Act, which relate to the postponement and/or adjournment of the General Meeting, apply to the Company without variation.
- 18.9 A General Meeting may not be adjourned beyond the date as set out in section 64(12) of the Act, being the earlier of the date that is -
- 18.9.1 120 (one hundred and twenty) business days after the record date, as determined in accordance with 15; or
- 18.9.2 60 (sixty) Business Days after the date on which the adjournment occurred.
- 18.10 The Company shall not be required to give further notice of a General Meeting that has been postponed or adjourned unless the location for the General Meeting is different from -
- 18.10.1 the location of the postponed or adjourned General Meeting; or
- 18.10.2 the location announced at the time of adjournment, in the case of an adjourned General Meeting.

- 18.11 The accidental omission to give notice of any General Meeting to any particular Shareholder or Shareholders shall not invalidate any resolution passed at any such General Meeting.
- 18.12 The chairperson of the Board shall act as the chairperson of each General Meeting, provided that if no chairperson is present and willing to act or he/she is not present within 15 (fifteen) minutes after the time appointed for the General Meeting, the Shareholders present shall elect one of the non-executive directors or, if no non-executive director is present and willing to act, or if such non-executive director is not present within 15 (fifteen) minutes after the time appointed for the General Meeting, one of the Shareholders present, to be the chairperson of that General Meeting.
- 18.13 The chairperson of the General Meeting may -
- 18.13.1 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 General Meeting; and
- 18.13.2 act on a certificate given by any such scrutineers and declare the result of the voting at the General Meeting without requiring production at the General Meeting of the forms of proxy or himself counting the votes and such declaration shall be deemed to be the resolution of the General Meeting.
- 18.14 Each annual general meeting of the Company shall provide for at least the following business to be transacted -
- 18.14.1 the presentation of the Directors' report, audited annual financial statements for the immediately preceding financial year of the Company and an audit committee report;
- 18.14.2 the election or re-election of Directors as the case may be, to the extent required by the Act and this Memorandum of Incorporation;
- 18.14.3 the appointment of an external auditor and an audit committee for the Company for the following year;

- 18.14.4 the election of a chairperson of the audit committee; and
- 18.14.5 any other matter required from time to time by the Act and/or the Listings Requirements.
- 18.15 The business of a General Meeting shall include the power to sanction or declare dividends and any distribution to Shareholders.
- 18.16 No business shall be transacted at the resumption of any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 18.17 Subject to any special rights or restrictions as to voting attached to any Share by or in accordance with this Memorandum of Incorporation, at a General Meeting -
- 18.17.1 every Shareholder who is present at the General 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 Shares held by that Shareholder; and
- 18.17.2 the holders of any Securities, other than ordinary Shares, and any special Shares created for the purposes of black economic empowerment in terms of the BEE Act and BEE Codes, shall not be entitled to vote on any resolution taken by the Company, save for as permitted by 4.7.2. In instances that such Shareholders are permitted to vote at General Meetings, their votes may not carry any special rights or privileges and they shall be entitled to one vote for each Share that they hold, provided that their total voting right at such a General Meeting may not exceed 24,99% (twenty four comma nine nine per cent) of the total voting rights of all Shareholders at such General Meeting.
- 18.18 At any General Meeting a resolution put to vote shall be decided by a poll in accordance with the provisions of the Act and this Memorandum of Incorporation, and –

18.18.1 the voting, if for the election or re-election of a chairperson, as the case may be, or an adjournment, shall take place immediately and in such manner as the General Meeting determines and, if for any other matter, shall take place at such time and in such manner as the chairperson of the General Meeting directs;

18.18.2 only votes exercised by Shareholders shall be counted and abstentions shall be ignored for the purposes of determining the result of the poll; and

18.18.3 the chairperson shall appoint scrutineers to count the votes and shall himself declare the result of the poll and such declaration shall be deemed to be the resolution of the General Meeting.

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

18.19.1 it is brought to the attention of the chairperson at the General Meeting; and

18.19.2 in the opinion of the chairperson of the General Meeting, it is of sufficient magnitude to vitiate the resolution.

18.20 Any objection to the admissibility of any vote shall be raised -

18.20.1 at the General Meeting or adjourned General Meeting at which the vote objected to was recorded; or

18.20.2 at the General Meeting or adjourned General Meeting at which the result of the poll was announced,

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

18.21 Even if he is not an ordinary Shareholder -

18.21.1 any Director of the Company; or

18.21.2 the Company's attorney or external auditor (or where the Company's attorney or external auditor is a firm, any partner or director thereof); or

18.21.3 any participating preference Shareholder of the Company (to the extent he/she is not entitled to vote),

may attend and speak at any General Meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder and entitled to vote thereat in accordance with the rights attaching to Shares in 4.8 of this Memorandum of Incorporation.

18.22 Any person entitled to a Share in terms of 7 by virtue of being an executor of a deceased holder of a Share, or the trustee of an insolvent estate, or the curator of any insane or prodigal Shareholder or any person appointed by a competent authority to represent or act on behalf of a Shareholder, may vote at any General Meeting in respect thereof in the same manner as if he were the registered holder of such Share, provided that (save where the Directors have already accepted his right to vote in respect of that Share) at least 48 (forty eight) hours prior to the holding of the General Meeting at which he proposes to vote, he shall have satisfied the Board that he is entitled to exercise the right referred to in 7.

18.23 Any notice of any General Meeting shall inform Shareholders of the ability to participate by way of Electronic Communication and shall provide the 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 Company. If a Shareholder/s wishes to participate in a General Meeting by way of Electronic Communication, then the Shareholder/s concerned shall notify the Company thereof in writing in the manner provided for in the notice convening a meeting, provided that the Company receives such notice by not later than 48 (forty eight) hours prior to the date of the General Meeting in question. If the Company receives no notice at least 48 (forty eight) hours prior to the date of the General Meeting in question, then access to the medium or means of Electronic Communication for purposes of participating in the General Meeting shall not be made available to the Shareholder/s or its/their proxies.

19 PROXIES

- 19.1 The right of a Shareholder of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a) of the Act is not limited, restricted or varied by this Memorandum of Incorporation.
- 19.2 A proxy may not delegate its authority to act on behalf of the Shareholder on whose behalf such proxy is held to another person, other than to the chairperson of the General Meeting.
- 19.3 A proxy is not entitled to exercise, or abstain from exercising, any voting right of the Shareholder on whose behalf such proxy is held, without direction from the Shareholder, unless the appointed proxy is the chairperson of the General Meeting.
- 19.4 The requirement that a Shareholder must deliver to the Company, a copy of the instrument appointing a proxy before that proxy may exercise the Shareholder's rights at a General Meeting, as set out in section 58(3)(c) of the Act is not limited or restricted by this Memorandum of Incorporation. Subject to the provisions of the Act, a proxy form shall be handed in at the office of the transfer secretaries of the Company not less than 24 (twenty four) hours before the time (excluding Saturdays, Sundays and public holidays) appointed for the holding of the General Meeting or resumption of an adjourned General Meeting at which the person named therein proposes to vote.

20 NOTICES AND ELECTRONIC COMMUNICATION

- 20.1 All notices and other documentation which are required to be delivered to a holder of Securities in terms of the Act and/or the Listings Requirements shall be delivered by the Company to each Shareholder and simultaneously to the Issuer Regulation Division of the JSE, and shall be given in writing in any manner authorised by the Listings Requirements and the Regulations, and particularly Table CR3 annexed to the Regulations. All notices shall, in addition to the above, be released through SENS where required by the Listings Requirements provided that, in the event that any Shares are not listed on the JSE, all 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 published in accordance with the provisions of the Act.

- 20.2 Each Shareholder of the Company -
- 20.2.1 shall notify the Company in writing of an address, which address may be a physical, postal, facsimile or e-mail address ("**Address**"), which Address shall be his registered address for the purposes of delivery of notices and other documentation and, if he has not named such an Address, he shall be deemed to have waived his right to be so served with notices and other documentation until such time as he provides an Address; and/or
- 20.2.2 may notify the Company in writing of an e-mail address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication and, having done so shall be deemed to have agreed to receiving by Electronic Communication, notices and other documents from the Company at his e-mail address or facsimile number and the Company may satisfy its obligation to send him any notice or other document by -
- 20.2.2.1 publishing such notice or other document on a website; and
- 20.2.2.2 notifying him by e-mail or fax to that e-mail or facsimile address that such notice or document has been so published, specifying the address of the website on which it has been published, the place on the website where such notice may be accessed, how it may be accessed and, if the notice relates to a General Meeting, stating -
- 20.2.2.2.1 that the notice concerns a notice of a General Meeting served in accordance with the Act;
- 20.2.2.2.2 the place, date and time of the General Meeting;
- 20.2.2.2.3 whether the meeting is to be an annual or a General Meeting; and
- 20.2.2.2.4 such other information as the Act may prescribe.

- 20.3 Any amendment or revocation of a notification given to the Company under 20.2 shall only take effect if in writing, signed by the Shareholder and on actual receipt by the transfer secretaries of the Company thereof.
- 20.4 An Electronic Communication shall not be treated as received by the Company if it is rejected by computer virus protection arrangements.
- 20.5 A document is treated as having been sent to a shareholder where the Company and the shareholder have agreed to the shareholder having access to documents on a website and the shareholder has been notified of the publication of the documents on a website, the address of that website and the place on the website where the documents may be accessed.
- 20.6 Subject to the Listings Requirements, a document is treated as having been sent to a Shareholder not less than 15 (fifteen) business days before the date of a General Meeting if the documents have been published on a website throughout the period commencing 15 (fifteen) business days before the General Meeting and ending with the conclusion of the General Meeting and notification of that publication on the website has been sent to the Shareholder not less than 15 (fifteen) business days before the date of the General Meeting. The provisions of this 20 shall apply, *mutatis mutandis*, to any other time period specified in the Act.
- 20.7 Subject to the Listings Requirements, proceedings at a meeting will not be invalidated if documents have not been published for the entire period stated in 20.6 and where failure to publish the documents throughout the entire period is attributable to circumstances which it would have been unreasonable to have expected the Company to avoid.
- 20.8 A Shareholder may give notice to the Company of the appointment of a proxy by Electronic Communication sent to such Address as notified by the Company for that purpose, provided that, notwithstanding anything to the contrary contained herein, no proxy forms shall be sent or accepted by Electronic Communication, without the prior approval of the Board, which approval, the Board may at any time, in its sole discretion withdraw.

- 20.9 Notice of annual and General Meetings shall be delivered to each Shareholder in accordance with 20.1.
- 20.10 Shareholders may register with the Company an Address in the Republic or anywhere in the world. Any Shareholder whose Address in the Securities Register, is an Address not within the Republic, shall be entitled to have notices delivered to him at such Address.
- 20.11 In the case of joint holders of Shares, all notices shall, unless such holders request otherwise in writing, and the Board agrees, 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.
- 20.12 Any notice sent by any means permitted in the Act or Table CR3 annexed to the Regulations, shall be deemed to have been delivered as provided for in that method of delivery in such Table CR3.
- 20.13 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, previous to his name and Address being entered in the Securities Register, was given to the person from which he derives his title to such Share.
- 20.14 Any notice or document delivered or sent by Electronic Communication, 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 delivered in respect of any Shares, whether held solely or jointly with other persons by such Shareholder, until some other person is registered in his stead as the sole or joint holder of such Share, and such delivery shall, for all purposes of this Memorandum of Incorporation, be deemed a sufficient delivery of such notice or document on his heirs, executors or administrators and all persons (if any) jointly interested with him in any such Shares.

21 SHAREHOLDERS' RESOLUTIONS

- 21.1 Save for where the Listings Requirements require a 75% (seventy five per cent) majority, for an ordinary resolution to be adopted at a General Meeting, it must be supported by the holders of more than 50% (fifty per cent) of the voting rights exercised on the resolution, as provided for in section 65(7) of the Act.
- 21.2 For a special resolution to be adopted at a General Meeting, it must be supported by the holders of at least 75% (seventy five per cent) of the voting rights exercised on the resolution, as provided for in section 65(9) of the Act.
- 21.3 A special resolution adopted at a General Meeting is not required for a matter to be determined, except for those matters set out in section 65(11) of the Act or elsewhere in the Act and the Listings Requirements.
- 21.4 No Shareholders' meeting that is called for in terms of the Listings Requirements may be held by means of a written resolution as is contemplated in section 60 of the Act.

22 SHAREHOLDERS ACTING OTHER THAN AT A MEETING

- 22.1 In accordance with the provisions of section 60 of the Act, but subject to 22.5, a resolution that could be voted on at a General Meeting (other than in respect of the election or re-election of Directors) may instead be -
- 22.1.1 submitted by the Board for consideration to all Shareholders entitled to exercise the voting rights in relation to the resolution;
- 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 If the Company elects to follow the procedure in 22.1, then notice of the proposed written resolutions must, in addition to being delivered to shareholders in terms of 20, be released through SENS in accordance with the provisions of the Listings Requirements.

- 22.3 A resolution contemplated in 22.1 -
- 22.3.1 will have been adopted if it is supported by Shareholders 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 General Meeting; and
- 22.3.2 if adopted, will have the same effect as if it had been approved by voting at a General Meeting.
- 22.4 In accordance with the provisions of the Listings Requirements, the Company must release an announcement on SENS providing details of the voting results in respect of the resolutions passed by written resolution. Within 10 (ten) business days after adopting a resolution in accordance with the procedures provided for in this 22, the Company shall deliver a statement describing the results of the vote, consent process or election to all Shareholders entitled to vote on or consent to the resolution.
- 22.5 For so long as is required under the Listings Requirements or unless the JSE allows otherwise, the provisions of this 22 shall not apply to any General Meetings that are called for in terms of the Listings Requirements or the passing of any resolution for the election or re-election of Directors or as provided for in this Memorandum of Incorporation or to any annual general meeting of the Company. The following matters which require a General Meeting to be convened in terms of the Listings Requirements may, that fact notwithstanding and notwithstanding anything contained in this Memorandum of Incorporation to the contrary, be proposed as written resolutions, namely –
- 22.5.1 a change of name of the Company;
- 22.5.2 odd lot offers;
- 22.5.3 an increase in the authorised share capital of the Company;
- 22.5.4 the approval of amendments to the Memorandum of Incorporation.

23 COMPOSITION AND POWERS OF THE BOARD

- 23.1 The Board shall comprise of not less than 4 (four) Directors and not more than 20 (twenty) Directors, to be elected by the Shareholders as contemplated in section 68 of the Act, and such number of alternate Directors as shall not exceed the number of Directors appointed from time to time as contemplated in 24.
- 23.2 In addition to the elected Directors, there is no Shareholder appointed or *ex officio* Directors of the Company, as contemplated in section 66(4) of the Act.
- 23.3 The manner of electing Directors is as set out in section 68(2) of the Act. All Directors shall be elected by ordinary resolutions of the Shareholders at a General Meeting and no appointment by Shareholders of a Director in accordance with a resolution passed by way of a written resolution in terms of section 60 of the Act shall be competent.
- 23.4 The authority of the Board to fill any vacancy on the Board on a temporary basis, as set out in section 68(3) of the Act is not limited or restricted by this Memorandum of Incorporation provided that any such Director so appointed must be elected by the Shareholders at the next annual general meeting of the Company.
- 23.5 In any election or re-election of Directors -
- 23.5.1 the election or re-election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill any vacancy, with a series of votes continuing until all vacancies on the Board have been filled; and
- 23.5.2 in each vote to fill a vacancy -
- 23.5.2.1 each vote entitled to be exercised may be exercised once; and
- 23.5.2.2 the vacancy is filled only if a majority of votes exercised support the candidate.

- 23.6 In addition to satisfying the qualification and eligibility requirements set out in section 69 of the Act, to become or remain a Director or a prescribed officer of the Company, the Board may, in its sole discretion, impose that in order to become or remain a Director or prescribed officer of the Company, a person must be, and remain, independent from any competitor of the Company and, in particular, without limitation, another real estate holding company listed on the JSE.
- 23.7 The Company, at the annual general meeting at which the Director retires, 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 22.
- 23.8 If the number of Directors falls below the minimum number of Directors required, the remaining Director(s) shall, as soon as possible and in any event not later than 3 (three) months from the date that the number of Directors fell below the minimum, fill the vacancies, provided that such Directors are elected by the Shareholders at the next annual general meeting or call a General Meeting for the purpose of filling the vacancy/ies.
- 23.9 The failure by the Company to have the minimum number of Directors during the 3 (three) month period referred to in 23.8 does not limit or negate the authority of the Board.
- 23.10 After the expiry of the 3 (three) month period referred to in 23.8, the remaining Directors may act only to -
- 23.10.1 increase the number of Directors to the required minimum in terms of 23.8; or
- 23.10.2 summon a General Meeting for that purpose, provided that if there is no Director able or willing to act, then any Shareholder may convene a General Meeting for that purpose.

- 23.11 The authority of the Board to consider a matter other than at a Board Meeting, as set out in section 74 of the Act is not limited or restricted by this Memorandum of Incorporation, provided that each Director has received notice of the matter to be decided, and any such resolution signed by the majority of the Directors and inserted in the minute book shall be as valid and effective as if it had been passed at a Board meeting. Any such resolution may consist of several documents and shall be deemed to have been passed on the date appearing on such resolution.
- 23.12 The chairperson of the Board may call a Board meeting at any time, and must call a Board meeting if required to do so by at least -
- 23.12.1 25% (twenty five per cent) of the Directors, if the Board is comprised of at least 12 members as provided for in section 73(1) of the Act; or
- 23.12.2 3 (three) Directors in any other case despite the provisions of section 73(1) of the Act.
- 23.13 The Board may elect a chairperson and a deputy chairperson and/or any vice chairperson who are non-executive directors of the Board and determine the period for which each is to hold office. At any Board meeting the chairperson of the Board, or if he is not present or willing to act as such, the deputy chairperson or other most senior independent non-executive Director present and willing to act as such, shall act as chairperson. If no chairperson or deputy chairperson has been elected or if the most senior independent non-executive Director is not present or willing to act as such, the Directors present at any Board meeting shall choose one of their number to be chairperson of the Board meeting.
- 23.14 In the case of a tied vote the chairperson may not have a second or deciding vote, and the resolution being voted on fails.
- 23.15 No Director shall be appointed for life or for an indefinite period.

- 23.16 With effect from the annual general meeting of the Company and subject to the provisions relating to the disqualification of Directors, at least $\frac{1}{3}$ (one-third) of the Directors or, if their number is not 3 (three) or a multiple of 3 (three), the number nearest to $\frac{1}{3}$ (one-third), but not less than $\frac{1}{3}$ (one-third) then holding that position, shall retire, provided that if a Director is appointed as executive or managing Director or chief executive officer or financial 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.
- 23.17 The Directors who are to retire are, firstly those who have been appointed to fill a casual vacancy, and secondly, those who have held their position for the longest period since their last election, but as between persons who became Directors on the same day, the determination shall be made by ballot, unless otherwise agreed amongst themselves.
- 23.18 A retiring Director shall act as a Director throughout the annual general meeting at which he retires.
- 23.19 The length of time a Director has been in office shall, save in respect of Directors elected or appointed in terms of the provisions of 23.4, be computed from the date of his last election or appointment.
- 23.20 If at any General 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 General Meeting shall stand adjourned and the further provisions of this Memorandum of Incorporation and the Act will apply, *mutatis mutandis*, to such adjournment, and if at such adjourned General Meeting the vacancies are not filled, the retiring Directors, or such of them as have not had their offices filled, shall be deemed to have been re-elected at such adjourned General Meeting.
- 23.21 A retiring Director shall be eligible for election or re-election if nominated by the Company's nomination committee. If elected or re-elected he shall be deemed not to have vacated his office.

- 23.22 The Board shall, through its nomination committee, provide the Shareholders with a recommendation in the notice of the General Meeting (which notice shall be delivered in accordance with the provisions of 18.5) or the explanatory notes at which the election or re-election of a retiring Director is proposed, as to which retiring Directors are eligible for election or re-election, taking into account that Director's past performance and contribution. Directors may be elected or re-elected at a General Meeting, provided such General Meeting is not conducted in terms of Section 60 of the Act.
- 23.23 The Board 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 Board in terms of this Memorandum of Incorporation) and for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment may, if the Board thinks fit, be made in favour of the Company, the Shareholders, 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 Board. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Board thinks fit. Any such attorneys or agents as aforesaid may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.
- 23.24 All acts performed by the Board or by a committee of the Board or by any person acting as a Director or a member of a committee, 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 one 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.
- 23.25 The proposal of any resolution to Shareholders to permit or ratify an act of the Directors that is inconsistent with any limitation or restriction imposed by this Memorandum of Incorporation, or the authority of the Directors to perform such an act on behalf of the Company, is prohibited.

- 23.26 The proposal of any resolution to Shareholders in terms of section 20(2) of the Act which would lead to the ratification of an act that is contrary to the Listings Requirements is prohibited, unless otherwise agreed with the JSE.
- 23.27 A Director may hold any other employment, office or place of profit under the Company or any subsidiary of the Company (except that of auditor, internal auditor or company secretary) in conjunction with the office of Director. The Director's appointment and remuneration in respect of such other office in addition to the remuneration to which he may be entitled as a Director shall be determined from time to time by a disinterested quorum of directors.
- 23.28 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) of the Act and the qualifications contained in section 75(3) of the Act, comply with all of the provisions of section 75 of the Act 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.
- 23.29 A Director may not vote on any resolution pertaining to any matter in which he has a personal financial interest as contemplated by section 75 of the Act. However, notwithstanding his interest in any matter, such Director may be counted for purposes of determining a quorum for a Board meeting.
- 23.30 The Board may authorise the payment of such donations by the Company to such religious, charitable, public or other bodies, clubs, funds, associations or persons as may seem desirable in the interests of the Company, provided that any donations to any political parties or associations shall require the prior approval of Shareholders in General Meeting.
- 23.31 The authority of the Board to -
- 23.31.1 manage and direct the business and affairs of the Company, as set out in section 66(1) of the Act;

- 23.31.2 conduct a Board meeting entirely by Electronic Communication, or to provide for participation in a Board meeting by Electronic Communication, as set out in section 73(3) of the Act;
- 23.31.3 determine the manner and form of providing notice of its Board meetings, as set out in section 73(4) of the Act; and
- 23.31.4 proceed with a Board meeting despite failure or defect in giving notice of the Board meeting, as set out in section 73(5) of the Act,

is not limited or restricted by this Memorandum of Incorporation.

23.32 The quorum requirement for a Board meeting to begin, the voting rights at such a Board meeting and the requirements for approval of a resolution at such a Board meeting are as set out in section 73(5) of the Act, without variation.

23.33 A Director shall cease to hold office as such if -

23.33.1 he is required to do so in terms of section 69 of the Act;

23.33.2 the Board resolves to remove him in accordance with section 71(3) of the Act; and/or

23.33.3 he is required to do so in terms of the Listings Requirements.

23.34 For the avoidance of doubt, the powers of the Board contained in this 23 are in addition to any other powers conferred on the Board in this Memorandum of Incorporation or the Act.

24 ALTERNATE DIRECTORS

24.1 Every Director, other than an executive Director, may by notice to the Company -

24.1.1 nominate any person or persons (including any of his co-Directors) to be his alternate Director to act in his place and stead subject to the approval by the majority of the other Directors of that alternate Director;

- 24.1.2 at any time terminate any such appointment.
- 24.2 The appointment of an alternate Director shall terminate when the Director to whom he is an alternate Director -
- 24.2.1 ceases to be a Director; or
- 24.2.2 terminates his appointment.
- 24.3 An alternate Director shall be entitled to vote at any Board meeting if the Director to whom he is an alternate Director is not present, provided that -
- 24.3.1 he may attend a Board meeting at which the Director to whom he is an alternate is present;
- 24.3.2 any person attending any Board meeting as a Director in his own right and/or as an alternate Director for one or more Directors shall have one vote in respect of each Director whom he represents, over and above his vote if he is a Director;
- 24.3.3 he may sign a resolution passed otherwise than at a Board meeting if the Director to whom he is an alternate is then absent from the country in which the registered office of the Company is situate or for any other reason unable to act in person;
- 24.3.4 subject to the foregoing, the alternate Director is generally entitled to exercise all the rights of the Director to whom he is alternate in the absence or incapacity of that Director; and
- 24.3.5 in all respects be subject to the terms and conditions attached to the appointment, rights, duties and the holding of office of the Director to whom he is an alternate, but shall not have any claim of any nature whatever against the Company for any remuneration of any nature whatsoever.

25 MANAGING DIRECTOR AND EXECUTIVE DIRECTORS

- 25.1 The Board may from time to time appoint one or more of the Directors as executive Directors or as managing Directors or as chief executive officer or as financial Director, on such terms and conditions as to remuneration and otherwise as may be determined from time to time by the remuneration committee or the Board.
- 25.2 The financial Director must have the appropriate expertise and experience and be a permanent resident of the Republic and remain so while serving in that capacity.
- 25.3 Any executive Director or managing Director or chief executive officer or financial Director appointed in terms of 25.1 is subject to the same provisions regarding dismissal as any other Director of the Company except for the provisions of 0 and, should he/she cease to be a Director, he/she shall *ipso facto* cease to be a managing or executive Director or chief executive officer or financial Director without prejudice to any claim he may have for damages as a result thereof.
- 25.4 The remuneration payable to an executive Director or managing Director or chief executive officer or financial Director appointed in terms of 25.1 for services as a Director -
- 25.4.1 shall be determined by the remuneration committee, which shall comprise an impartial quorum of Directors; and
- 25.4.2 accrues to him, over and above or *in lieu* of the normal remuneration he may receive as a Director of the Company, as the remuneration committee may determine.
- 25.5 The Board may -
- 25.5.1 grant from time to time to an executive Director or managing Director or chief executive officer or financial Director appointed in terms of 25.1 all or any of the powers which in terms of this Memorandum of Incorporation, may be exercised by the Directors;

- 25.5.2 grant such powers for such period to be exercised for such purposes and subject to such conditions and restrictions as the Board may deem fit;
- 25.5.3 grant such powers with retention of or with the exclusion of or *in lieu* of any of the powers of the Board; and
- 25.5.4 from time to time revoke, withdraw or amend any of such powers as they deem fit.
- 25.6 The Board must fill any vacancy in the office of financial Director as soon as possible after such vacancy arises.

26 DIRECTORS' REMUNERATION AND FINANCIAL ASSISTANCE

- 26.1 The authority of the Company to 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 sections 66(8) and (9) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 26.2 The Directors shall be paid all their travelling and other expenses properly and necessarily incurred by them in and about the business of the Company, (including in relation to attending Board meetings or committees thereof). If any Director is required to perform extra services or to reside abroad or shall be specifically occupied about the Company's business, he shall be entitled to receive such remuneration, which may be either in addition to or in substitution for any other remuneration, as is determined by a disinterested quorum of the Board.
- 26.3 The authority of the Board, as set out in section 45 of the Act, to authorise the Company to provide financial assistance to a Director, prescribed officer, company, corporation or other person referred to in section 45(2) of the Act is not limited or restricted by this Memorandum of Incorporation.

27 QUALIFYING SHARES

No Director shall be obliged to hold any qualifying Shares.

28 INDEMNIFICATION OF DIRECTORS

28.1 The Company may -

28.1.1 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) of the Act;

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

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

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

28.2 The provisions of 28.1 shall apply, *mutatis mutandis*, in respect of any former Director, prescribed officer, manager, company secretary or member of any committee of the Board, including without limitation, the audit committee.

29 BORROWING POWERS

29.1 Subject to the Listings Requirements and the Income Tax Act, the Board may from time to time and in accordance with the Act exercise all of the powers of the Company, to -

29.1.1 borrow for the purposes of the Company such sums as they think fit, and/or

29.1.2 secure the payment or repayment of any such sums or any other sum, as they think fit, whether by the creation and issue of Shares, the conclusion of letters of comfort, guarantees, the creation of a mortgage or charge upon all or any of the property or assets of the Company.

29.2 For the purposes of 29.1, the borrowing powers of the Company shall be unlimited both as to quantum and as to instrument used.

30 COMMISSION

- 30.1 The Company may pay commission at a rate not exceeding 10% (ten per cent) of the issue price of a Share to any person in consideration for his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any Shares or for procuring or agreeing to procure, whether absolutely or conditionally, subscriptions for any Shares.
- 30.2 Subject to 30.1, 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.
- 30.3 Such commission may be paid in cash or, if authorised by the Company in general meeting, by the allotment of fully paid up Shares, or partly in one way and partly in the other.
- 30.4 The Company may, on any issue of Shares, pay such brokerage as may be lawful.

31 COMMITTEES OF THE BOARD

- 31.1 The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1) of the Act, and to include in any such committee persons who are not Directors, as set out in section 72(2)(a) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 31.2 The authority of a committee appointed by the Board, as set out in sections 72(2)(b) and 72(2)(c) of the Act is not limited or restricted by this Memorandum of Incorporation.
- 31.3 If and for so long as any of the Company's Shares are listed on the JSE, the Board shall appoint such Board committees as are required by the Listings Requirements having regard to such functions and powers as are prescribed by or in terms of the Listings Requirements. In addition, the Board may appoint any number of committees and delegate to such committees any authority of the Board as provided for in section 72(1) of the Act.

- 31.4 If and for so long as it is required to do so in terms of the Act or the Regulations and, unless the Company is exempted from doing so by the Tribunal in terms of section 72(5) of the Act, the Board must appoint a social and ethics committee, having the powers and functions prescribed in section 72 of the Act.
- 31.5 The Shareholders must appoint an audit committee, in accordance with 18.14.3 and in the manner and for the purposes set out in, and subject to, Part D of Chapter 3 of the Act.
- 31.6 Subject to the Act and the Listings Requirements, the Board may appoint a nomination committee as contemplated in 23.22, a remuneration committee, a risk management committee, a property committee and any other committee or sub-committee, from time to time and for the time being, as the Board may resolve, having the powers and functions as determined by the Board from time to time.
- 31.7 Save for the audit committee and subject to the Act and the Listings Requirements, the committees of the Board shall each consist of such number of members as may be determined by the Board.

32 COMPANY RULES

The Board is prohibited from making, amending or repealing any rules as contemplated in section 15(3) of the Act and the Board's capacity to make, amend or repeal such rules is hereby excluded.

33 COMPANY SECRETARY

- 33.1 The Board must appoint a company secretary and shall be the sole body in whom is vested the power to remove and/or replace such company secretary by giving written notice to such effect to the company secretary. The company secretary may not be a director of the Company and shall at all times maintain an arm's length relationship with the Board as required by the Listings Requirements.
- 33.2 The company secretary must have the requisite knowledge of, and experience with, relevant laws and be a permanent resident of the Republic and remain so while serving in that capacity.

33.3 The Board must fill any vacancy in the office of company secretary as soon as possible after such vacancy arises.

33.4 The company secretary shall have such obligations as placed on the company secretary by the Act and the Listings Requirements. Specifically and without limiting the foregoing, the company secretary shall be entitled to convene such Board and committee meetings as agreed annually in advance with the chairman and the chief executive officer of the Company.

34 **BRANCH REGISTER**

The Company shall be entitled to cause a branch Securities Register to be kept in any foreign country and the Board may make such provisions as they see fit in respect of such branch Securities Register.

35 **ANNUAL FINANCIAL STATEMENTS**

35.1 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 –

35.1.1 the Act;

35.1.2 the Regulations;

35.1.3 the Listings Requirements;

35.1.4 any other law with respect to the preparation of Financial Statements to which the Company may be subject; and

35.1.5 this Memorandum of Incorporation.

35.2 The Company shall each year prepare annual financial statements within 6 (six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7) of the Act, and the Board shall ensure that the Company does so.

- 35.3 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.
- 35.4 The annual financial statements of the Company must be prepared and audited in accordance with the provisions of section 30 of the Act and the Listings Requirements.
- 35.5 A copy of the annual financial statements must be sent 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.
- 35.6 The Financial Statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –
- 35.6.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
- 35.6.2 subject to and in accordance with IFRS –
- 35.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
- 35.6.2.2 show the Company's assets, liabilities and equity, income and expenses, movements in cash and incorporate the notes to the Financial Statements;
- 35.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and
- 35.6.2.4 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.

- 35.7 The Company may provide any person with a summary of any particular Financial Statements, provided that -
- 35.7.1 any such summary must comply with any prescribed requirements as set out in the Act and the Regulations; and
- 35.7.2 the first page of the summary must bear a prominent notice -
- 35.7.2.1 stating that it is a summary of particular Financial Statements prepared by the Company, and setting out the date of those Financial Statements;
- 35.7.2.2 stating whether the Financial Statements that it summarises have been audited, independently reviewed, or are unaudited, as contemplated in section 29(1)(e) of the Act;
- 35.7.2.3 stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the Financial Statements that it summarises; and
- 35.7.2.4 setting out the steps required to obtain a copy of the Financial Statements that it summarises.

36 COPIES OF FINANCIAL STATEMENTS AND REPORTS TO BE SENT TO THE JSE AND OTHER STOCK EXCHANGES

The Board shall send the requisite number of copies of the Financial Statements of the Company, and if the Company has subsidiaries and associated companies, of the group Financial Statements, together with the external auditor's reports, as is required for proper submission to a General Meeting, to the Shareholders simultaneously with the notice of the General Meeting at which the Financial Statements and reports are to be considered, as well as to the JSE and any other recognised stock exchange on which the Shares are listed from time to time, in accordance with the requirements of the JSE and such stock exchange.

37 SHARE TRANSACTIONS TOTALLY ELECTRONIC (S.T.R.A.T.E.)

Notwithstanding anything contained to the contrary in the aforementioned provisions of this Memorandum of Incorporation, but subject to the Act and the Listings Requirements and any other exchange on which the Shares are quoted or listed from time to time, all Share transactions may be concluded totally electronically.

38 ACQUISITION BY THE COMPANY OR ITS SUBSIDIARIES OF THE COMPANY'S SHARES

38.1 Subject to the Listings Requirements, the provisions of section 48 of the Act and the further provisions of this 38 -

38.1.1 the Board may determine that the Company acquire a number of its own Shares; and

38.1.2 the board of any subsidiary of the Company may determine that such subsidiary acquire Shares, but -

38.1.2.1 not more than 10% (ten per cent), in aggregate, of the number of issued Shares of any class may be held by, or for the benefit of, all the subsidiaries of the Company taken together; and

38.1.2.2 no voting rights attached to those Shares acquired in terms of 38.1.2.1 may be exercised while the Shares are held by that subsidiary and it remains a subsidiary of the Company.

38.2 Any decision by the Company or its subsidiaries to acquire its or its holding company's Shares must satisfy the Listings Requirements and the requirements of section 48 of the Act and, accordingly, the Company or its subsidiaries may not acquire the aforesaid Shares unless -

38.2.1 for as long as it is required in terms of the Listings Requirements, the acquisition has been approved by a special resolution of the Shareholders, whether in respect of a particular repurchase or generally approved by Shareholders and unless such acquisition otherwise complies with the Listings Requirements;

- 38.2.2 the acquisition -
- 38.2.2.1 is pursuant to an existing legal obligation of the Company or a court order;
or
- 38.2.2.2 has been authorised by the Board;
- 38.2.3 it reasonably appears that the Company will satisfy the Solvency and Liquidity Test immediately after completing the proposed acquisition; and
- 38.2.4 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 for a period of 12 (twelve) months immediately after completing the proposed acquisition.
- 38.3 A decision of the Board referred to in 38.1.1 -
- 38.3.1 must be approved by a special resolution of the Shareholders if any Shares are to be acquired by the Company from a Director or prescribed officer of the Company, or a person related to a Director or prescribed officer of the Company; or
- 38.3.2 is subject to the requirements of sections 114 and 115 of the Act if considered alone, or together with other transactions in an integrated series of transactions, it involves the acquisition by the Company of more than 5% (five per cent) of the issued Shares of any particular class of the Company's Shares.
- 38.4 Notwithstanding any other provision of this Memorandum of Incorporation, the Company may not acquire its own Shares, and no subsidiary of the Company may acquire Shares if, as a result of that acquisition, there would no longer be any Shares in issue other than -
- 38.4.1 Shares held by one or more subsidiaries of the Company; or
- 38.4.2 convertible or redeemable Shares.

39 AMENDMENT OF MEMORANDUM OF INCORPORATION

39.1 This Memorandum of Incorporation may be altered or amended in the manner set out in sections 16, 17 or 152(6)(b) of the Act, subject to the provisions contemplated in section 16(1)(c) of the Act, provided that -

39.1.1 any amendment must be submitted to the JSE for approval before such amendments are submitted to all the Shareholders for approval; and

39.1.2 any amendment to this Memorandum of Incorporation must be approved by a special resolution of all the Shareholders, save if such an amendment is ordered by a court in terms of section 16(1)(a) of the Act. Amendment, for the avoidance of doubt shall include, but not be limited to -

39.1.2.1 the creation of any new class of Shares;

39.1.2.2 the variation of any preferences, rights, limitation and other Share terms attaching to any class of Shares;

39.1.2.3 the conversion of one class of Shares into one or more other classes;

39.1.2.4 the increase of the number of authorised Shares;

39.1.2.5 consolidation of Shares;

39.1.2.6 sub-division of Shares; or

39.1.2.7 the change of the name of the Company.

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

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

39.2.2

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 CIPC.