

MEMORANDUM OF INCORPORATION

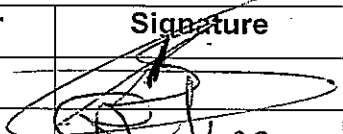
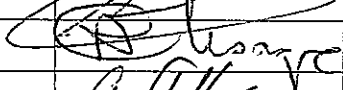
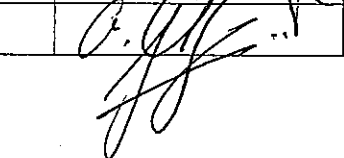
NEGESTER KLEIN-KARIBA RETIREMENT ESTATE HOME OWNERS ASSOCIATION LIMITED (RF)

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

The Company is a non-profit company with members, and the main object of *the Company* is to own, manage and administer the use and enjoyment of the common areas of the township to be known as NEGESTER KLEIN-KARIBA RETIREMENT ESTATE HOME OWNERS ASSOCIATION LIMITED (RF) for the communal good and group interests of the owners and occupants of the individual properties within the township comprising the retirement estate, and for that purpose to adopt conduct-, and management rules and architectural design guidelines for improving the properties.

Adoption of Memorandum of Incorporation

This Memorandum of Incorporation was adopted by the incorporators of *the Company*, in accordance with section 13(1), as evidenced by the following signatures made by each of them, or on their behalf.

Name of Incorporator	Identity Number	Signature	Date
Schalk Willem Cilliers	601017 5076 08 5		18 03 2013
Anton Hendrik Visagie	540215 5061 08 1		18 03 2013
Abraham Jakobus Kruger	500215 5021 08 3		18 03 2013

In this Memorandum of Incorporation:

- (a) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (b) words that are defined in *the 2008-Companies Act* bear the same meaning in this memorandum as in that *Act*;
- (c) words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option; and
- (d) a reference in an applicable section of *the 2008-Companies Act* to a "shareholder(s)" shall be a reference to a "member(s)" of *the Company*.

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

DEFINITIONS

The expressions printed in ***bold italics*** in this Memorandum of Incorporation shall have the following meanings:

- (i) "***2008-Companies Act***" means the Companies Act, 2008 (No 71 of 2008) (as amended) and the Regulations promulgated in terms thereof GN R351 of 26 April 2011;
- (ii) "***alienate***" means:
 - (a) any transaction in respect of a ***private property*** which attracts VAT at 14% or 0%, or transfer duty, or which is exempt in terms of section 11 of the Value Added Tax Act, 1991 but attracts capital gains tax in terms of the Income Tax Act, 1962; or
 - (b) to dispose of any ***private property***, or an undivided share or real right therein of an interest in a juristic person that owns a ***private property*** or undivided share or real right therein, by way of sale, exchange, donation, letting, intestate succession, testamentary disposition, sale of shares in a company or a member's interest in a close corporation or a beneficial interest in a vesting or non-discretionary trust that owns a ***private property***; or
 - (c) to mortgage; or
 - (d) to dispose thereof in terms of a court order; or
 - (e) a dispossession as a result of insolvency; or
 - (f) the granting of a limited real right in such ***private property*** by ***the owner*** to a third party,

irrespective of whether such disposal is subject to a suspensive or resolute condition, and "***alienation***" shall have a corresponding meaning;

- (iii) "***annual general meeting***" means the annual general meeting of ***the Negester HOA (RF)*** to be held in terms of clause 3 of ***this Mol***;

- (iv) "**board of directors**" mean the board of directors of **the Negester HOA (RF)** constituted in terms of clause 4;
- (v) "**chairperson**" means the chairperson of **the board of directors**;
- (vi) "**common property**" means all of **the land** comprising **the township** and all improvements thereof, including any access road and / or servitude, but excluding all **the private properties**;
- (vii) "**Company**" or "**Negester HOA (RF)**" means Negester Klein-Kariba Retirement Estate Home Owners Association Limited (RF) with shortened form name **Negester HOA (RF)**, a company incorporated as a non-profit company in terms of section 8(1) read with sections 10(1) and (3) and section 14(4) of **the 2008-Companies Act**, in terms of **this Mol**;
- (viii) "**Conduct Rules**" mean the rules to regulate the conduct of persons, and the use of **private properties** and **the common property** within **the township**, made, or amended from time to time by **the board of directors** and published in a manner specified in the said rules and to be dealt with and applied in terms of sections 15(4)(a), (b)(ii), c(i), (5A) and (5) of **the 2008-Companies Act**;
- (ix) "**Conduct Rules For Builders**" mean the rules which regulate the accreditation, access to and egress from, and the conduct in general of builders of residences according to approved plans on **private properties** in **the township**, made, or amended from time to time by **the board of directors** and published in a manner specified in the said rules and to be dealt with and applied in terms of sections 15(4)(a), (b)(ii), c(i), (5A) and (5) of **the 2008-Companies Act**;
- (x) "**Constitution of the Negester HOA (RF)**" means **this Mol** and **the Rules**;
- (xi) "**developer**" means MAJESTIC SILVER TRADING 279 (PTY) LTD, Registration Number : 2007/007499/07, and its successors-in-title;
- (xii) "**development options**" mean the approved layout- and floorplans and elevations for the improvement of **private properties** prepared by the architect appointed by **the board of directors** to achieve a holistic complimentary and visually pleasing landscape in **the township**, as amended from time to time by **the board of directors** and published in a manner specified in the said rules, and to be dealt with and applied in terms of sections 15(4)(a), (b)(ii), c(i), (5A) and (5) of **the 2008-Companies Act**;

- (xiii) "**development period**" means the period from the establishment of **the Negester HOA (RF)** until all **private properties** in **the township** have been transferred and fully developed by **the developer** or **the members** of **the Negester HOA (RF)**;
- (xiv) "**directors**", "**board of directors**" or "**board**" mean the subscribers to **this Mol**, and any natural persons thereafter appointed in terms of section 66(4)(a)(i) of **the 2008-Companies Act**, or clause 4 of **this Mol**, who serve as **the directors** of **the Negester HOA (RF)**, from time to time;
- (xv) "**general meetings**" mean a general meeting called in terms of section 73(1)(a) of **the 2008-Companies Act**, or clause 3 of **this Mol**, as the case may be;
- (xvi) "**independent reviewer**" means the person appointed by **the Negester HOA (RF)** to review and issue an independent report on the financial records, and -statements of **the Company**;
- (xvii) "**internal services**" mean:
- (a) the design, construction and maintenance of a system for supplying electricity from an internal supply point in **the township** to the boundary of every **private property** in **the township**, which includes the provision of all structures and equipment, e.g. underground cables, standards, meter boxes, sleeves, transformers, switch gear and all other necessary facilities or fixtures to achieve the foregoing;
 - (b) the design, construction and maintenance of access roads, streets, bridges, curbing, street name signs, pavements and vehicle access to each **private property** from the adjoining street, retaining walls, pitching erosion controls in accordance with the specifications to ensure convenient and safe vehicle access to, egress from and movement within **the township**;
 - (c) the design, construction and maintenance of a sewerage system in accordance with the specifications within the boundaries of **the township** necessary to convey sewerage from a connection point for each **private property** to the contracted sewerage purification plant;

(d) the design, construction and maintenance of a system in accordance with the specifications, to convey storm water safely within and from **the township** as required by GPESA, so as not to cause soil erosion and inhibit development of a **private property**, which includes all pipes, junction boxes and catch pits;

(e) the design, construction and maintenance of a system for providing water for consumption on **private properties**, and for firefighting in accordance with prescribed specifications, which includes a water purification plant, in the event of the water supply not being available, from approved external sources, which shall include everything required within **the township** to distribute water throughout **the township** at a specified pressure to **private properties**, fire hydrants and **the common property**;

(xviii) "**in writing**" means written, or printed or partly one or partly another, and any other mode of representing or producing words in a visible form;

(xix) "**Landscaping Guidelines**" means the rules which regulate the landscaping design of **the common property** and **private properties** in **the township** made, or amended from time to time by **the board of directors** and published in a manner specified in the said rules and to be dealt with and applied in terms of sections 15(4)(a), (b)(ii), c(i), (5A) and (5) of **the 2008-Companies Act**;

(xx) "**land**" means that portion of the consolidated portion constituted from the immovable properties listed below purchased from the Afrikaanse Taal- en Kultuurvereniging Limited, Registration Number : 1962/005157/08, a non-profit company ("**ATKV**"), on which **the township** is to be established and which is to be transferred to **the developer** as soon as it becomes registerable, after consolidation and subdivision:

(a) portion 1 of the farm VALENCIA 449, Registration Division : K.R., Limpopo Province, measuring 36,4648 hectares, held by Deed of Transfer T044501/2006;

(b) portion 2 of the farm VALENCIA 449, Registration Division : K.R., Limpopo Province, measuring 21,4133 hectares, held by Deed of Transfer T41107/1973;

(c) portion 3 of the farm VALENCIA 449, Registration Division : K.R., Limpopo Province, measuring 21,4133 hectares, held by Deed of Transfer T41107/1973;

(d) portion 4 of the farm VALENCIA 449, Registration Division : K.R., Limpopo Province, measuring 21,4133 hectares, held by Deed of Transfer T41107/1973;

- (e) portion 87 of the farm BUISKOP 464, Registration Division : K.R., Limpopo Province, measuring 528,6936 hectares, held by Deed of Transfer T48301/1980;
- (xxi) "**Management Rules**" mean the rules in terms of which **the board of directors** or their appointed staff or **the managing agent** shall manage **the township**, made, or amended from time to time by **the board of directors** and published in a manner specified in the said rules and to be dealt with and applied in terms of sections 15(4)(a), (b)(ii), c(i), (5A) and (5) of **the 2008-Companies Act**;
- (xxii) "**managing agent**" or "**estate manager**" means **ATKV**, or another person or legal entity appointed by **the Negester HOA (RF)** in terms of a unanimous resolution, to undertake the functions and duties, and discharge the obligations and exercise the delegated powers of **the board of directors**, and **the Negester HOA (RF)** regarding the management of **the township** in terms of **the Constitution of the Negester HOA** assigned to them in terms of a written service level agreement, as an independent contractor;
- (xxiii) "**member**" means initially **the developer** and the subscribers to **this Mol** and thereafter **owners**;
- (xxiv) "**Mol**" means the Memorandum of Incorporation of **the Negester HOA (RF)**;
- (xxv) "**owner**" means a person registered as the owner of a **private property** or a registered real right in such property in the Pretoria Deeds Office, who by virtue of such ownership or real right becomes and remains a **member**;
- (xxvi) "**private property / private properties**" means an individual erf / erven in **the township** zoned to erect a private dwelling and use it as such, being a portion of **the land** subdivided according to the general plan of **the township** approved by the Surveyor General;
- (xxvii) "**Rules**" mean:
- (a) **the Conduct Rules**;
 - (b) **the Conduct Rules For Builders**;
 - (c) **the development options**;
 - (d) **the Landscaping Guidelines**; and

(e) ***the Management Rules,***

as amended and published as provided for in this ***Mol*** and Rules themselves, and to apply them as provided for in sections 15(4)(a)(b)(ii), (c)(i), (5A) and (6) of ***the 2008-Companies Act,***

(xxviii) "***township***" means the residential township:

(a) to be proclaimed on ***the land*** by ***the developer,***

(b) to be known as ***NEGESTER KLEIN-KARIBA RETIREMENT ESTATE;***

(c) to be subdivided into ***the private properties*** according to the approved subdivisional plan;

(d) in which ***the internal services*** have to be provided by ***the developer*** and maintained by ***the Negester HOA (RF);*** and

(e) to be managed by ***the Negester HOA (RF),*** in terms of ***the Constitution of the Negester HOA (RF);***

subject to the right of ***the developer,*** or ***Negester HOA (RF)*** to extend ***the township*** on parts of ***the common property.***

Article 1 – Incorporation and Nature of the Company

1.1 Incorporation

(1) ***The Company*** is incorporated as a non-profit company as defined in ***the 2008-Companies Act.***

(2) ***The Company*** is incorporated in accordance with, and governed by-

(a) the unalterable provisions of ***the 2008-Companies Act*** that are applicable to non-profit companies;

(b) the alterable provisions of **the 2008-Companies Act** that are applicable to non-profit companies with voting members, subject to any limitation, extension, variation or substitution agreed between the incorporators and recorded in **this Mol**; and

(c) the provisions of **this Mol**, and **the Rules**.

1.2 Objects and Powers of **the Company**

(1) The objects of **the Company** are as set out on the cover sheet and, except to the extent necessarily implied by the stated objects, the purposes and powers of **the Company**-

_____ are not subject to any provisions contemplated in section 15(2)(b) or (c).

are subject to any restriction, limitation or qualification, contemplated in section 19(1)(b)(ii), as set out in Part A of Schedule 1 of **this Mol**.

(2) **The Company**-

_____ is not subject to any provision contemplated in section 15(2)(b) or (c).

is subject to the provision contemplated in section 15(2)(b) or (c), as set out in Part B of Schedule 1 to **this Mol**.

(3) Upon dissolution of **the Company**, its net assets must be distributed in the manner determined in accordance with-

(a) Item 1(4)(b) of Schedule 1 of **the 2008-Companies Act**; and

(b) the provisions, if any, set out in Part C of Schedule 1 to **this Mol**.

1.3 **Mol and the Rules**

(1) **This Mol** and **the Rules**-

_____ may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b).

may be altered or amended in the manner set out in sections 16(a) and (c)(i)(ii) by a majority of 60 % plus 1 of voting members and 17, subject to the provisions as set out in Part D of Schedule 1 to **this Mol.**

(2) The authority of **the Company's board of directors** to make rules for **the Company**, as contemplated in section 15(3) to (5)-

is not limited or restricted in any manner by **this Mol.**

is limited or restricted to the extent set out in Part D of Schedule 1 to **this Mol.**

(3) **The board** must publish **the Rules** made in terms of section 15(3) to (5)-

by delivering a copy of those rules to each director by ordinary mail.

in accordance with the requirements set out in Part D of Schedule 1 to **this Mol.**

(4) **The Company** must publish a notice of any alteration of **the Mol** or **the Rules**, made in terms of section 17(1) and-

by delivering a copy of those rules to each director by ordinary mail.

in accordance with the requirements set out in Part D of Schedule 1 to **this Mol.**

1.4 Optional provision of **the 2008-Companies Act** do not apply

The Company-

does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of **the 2008-Companies Act.**

elects, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of **the 2008-Companies Act.**

1.5 **Members of the Company**

(1) As contemplated in Item 4(1) of Schedule 2 of *the 2008-Companies Act*, *the Company* has *members*, who-

are all in a single class, being voting *members*, each of whom has an equal vote in any matter to be decided by *the members of the Company*.

are in either of two classes, being voting and non-voting *members*, respectively.

(2) The terms and conditions of membership in *the Company* are as set out in Part E of Schedule 1 to *this Mol*.

Article 2 – Rights of Members

2.1 **Members' authority to act**

The authority of *the members* to act without notice or compliance with any other internal formalities-

is not limited or restricted by *this Mol*.

is limited or restricted to the extent set out in Part A of Schedule 2.

2.2 **Members' right to Information**

In addition to the rights to access information set out in section 30 of the Promotion of Access to Information Act, 2000 or section 32 of the Constitution of the Republic of South Africa, 1996, a *member of the Company* has the further rights to information, if any, set out in Part B of Schedule 2 to *this Mol*.

2.3 **Representation by concurrent proxies**

The right of a *member of the Company* to appoint persons concurrently as proxies, as set out in section 58(3)(a)-

is not limited, restricted or varied by *this Mol*.

is limited, restricted or varied to the extent set out in Part C of Schedule 2 to **this Mol.**

2.4 **Authority of proxy to delegate**

The authority of a **member's** proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b)-

_____ is not limited or restricted by **this Mol.**

is limited or restricted to the extent set out in Part C of Schedule 2 to **this Mol.**

2.5 **Requirement to deliver proxy instrument to the Company**

The requirement that a **member** must deliver to **the Company** a copy of the instrument appointing a proxy before that proxy may exercise **the member's** rights at a **member's** meeting, as set out in section 58(3)(c)-

_____ is not varied by **this Mol.**

is varied to the extent set out in Part C of Schedule 2 to **this Mol.**

2.6 **Deliberative authority of proxy**

The authority of a **member's** proxy to decide without direction from **the member** whether to exercise, or abstain from exercising any voting right of **the member**, as set out in section 58(7)-

_____ is not limited or restricted by **this Mol.**

is limited or restricted to the extent set out in Part C of Schedule 2 to **this Mol.**

2.7 **Record date for exercise of member rights**

If, at any time, **the Company's board of directors** fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is-

as determined in accordance with section 59(3).

as determined in the manner set out in Part D of Schedule 2 to *this Mol.*

Article 3 – Members Meetings

3.1 Requirement to hold meetings

The Company-

is not required to hold any *members* meetings other than those specifically required by *the 2008-Companies Act*.

is required to hold *members'* meetings, in addition to those specifically required by *the 2008-Companies Act*, as set out in Part A of Schedule 3 to *this Mol.*

3.2 *Members'* right to requisition a meeting

The right of *members* to requisition a meeting, as set out in section 61(3), may be exercised-

by at least 25 % of the voting *members*, as provided for in that section.

by at least _____ % of the voting *members*.

3.3 Location of *members* meetings

The authority of *the Company's board of directors* to determine the location of any *members'* meeting, and the authority of *the Company* to hold any such meeting in the Republic as set out in section 61(9)-

is not limited or restricted by *this Mol.*

is limited or restricted to the extent set out in Part B of Schedule 3 to *this Mol.*

3.4 **Notice of *members* meetings**

The minimum number of days for ***the Company*** to deliver a notice of a ***members'*** meeting to ***the members***, as required by section 62-

_____ is as provided for in section 62(1).

is 15 (fifteen) business days before the meeting for purposes of a special resolution is to begin, and 7 (seven) days for purposes of an ordinary resolution.

3.5 **Electronic participation in *members* meetings**

The authority of ***the Company*** to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63-

is not limited or restricted by ***this Mol.***

_____ is limited or restricted to the extent set out in Part C of Schedule 3 to ***this Mol.***

3.6 **Quorum for *members* meetings**

(1) The quorum requirement for a ***members'*** meetings to begin, or for a matter to be considered are-

_____ as set out in section 64(1) without variation.

as set out in section 64(1) subject to a minimum of 10 % in substitution for the 25 % required by that section.

(2) The time periods allowed in section 64(4) and (5)-

_____ apply to ***the Company*** without variation.

apply to ***the Company***, subject to the variations set out in Part D of Schedule 3 to ***this Mol.***

(3) The authority of a meeting to continue to consider a matter, as set out in section 64(9)-

is not limited or restricted by **this Mol.**

is limited or restricted to the extent set out in Part D of Schedule 3 to **this Mol.**

3.7 Adjournment of *members* meetings

The maximum period allowable for an adjournment of a *members'* meeting is-

as set out in section 64(13), without variation.

as set out in section 64(13), subject to the variations set out in Part E of Schedule 3 to **this Mol.**

3.8 *Members* resolutions

(1) For an ordinary resolution to be adopted at a *members'* meeting, it must be supported by at least-

50 % plus 1 of **the members** who voted on the resolution, as provided in section 65(7).

10 % of **the members** who voted on the resolution, despite section 65(7).

the minimum percentage of **members** voting on the resolution, as set out in Part F of Schedule 3 to **this Mol.**

(2) For a special resolution to be adopted at a *members'* meeting, it must be supported by at least-

75 % of **the members** who voted on the resolution, as provided in section 65(7).

_____ % of **the members** who voted on the resolution, despite section 65(9).

the minimum percentage of **members** voting on the resolution, as set out in Part F of Schedule 3 to **this Mol.**

(3) A special resolution adopted at a *members'* meeting is-

not required for a matter to be determined by *the Company*, except those matters set out in section 65(11).

required, in addition to the matters set out in section 65(11), for the matters set out in Part F of Schedule 3 to *this Mol*.

Article 4 – Directors and Officers

4.1 Composition of *the board of directors*

(1) *The board of directors* of *the Company* comprises 6 (six) directors, and 6 (six) alternate *directors* each of whom-

(a) 3 (three) of whom is to be elected in the manner set out in Part A of Schedule 4 to *this Mol*; and

(b) serves for a term of one year.

(2) In addition to the elected *directors*-

there are no appointed or *ex officio directors* of *the Company*, as contemplated in section 66(4).

there are 3 (three) appointed; and no *ex officio directors* of *the Company*, as contemplated in section 66(4), to be designated in the manner specified in Part B of Schedule 4 to *this Mol*.

(3) In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a *director* of *the Company*, a person-

need not satisfy any further eligibility requirements or qualifications.

must satisfy the additional eligibility requirements and qualifications set out in Part B of Schedule 2 to *this Mol*.

4.2 **Authority of the Board of Directors**

The authority of *the Company's board of directors* to manage and direct the business and affairs of *the Company*, as set out in section 66(1)-

is not limited or restricted by *this Mol.*

is limited or restricted to the extent set out in Part C of Schedule 2 to *this Mol.*

4.3 **Board of directors meetings**

(1) The authority of *the Company's board of directors* consider a matter other than at a meeting, as set out in section 74-

is not limited or restricted by *this Mol.*

is limited or restricted to the extent set out in Part E of Schedule 4 to *this Mol.*

(2) The right of *the Company's directors* to requisition a meeting of *the board*, as set out in section 73(1), may be exercised by-

at least 25 % of *the directors*, as provided in that section.

at least 50 % of *the directors*, despite the provisions of that section.

(3) The authority of *the Company's board of directors* to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 73(3)-

is not limited or restricted by *this Mol.*

is limited or restricted to the extent set out in Part F of Schedule 4 to *this Mol.*

(4) The authority of *the Company's board of directors* to determine the manner and form of providing notice of its meetings, as set out in section 73(4)-

√ is not limited or restricted by **this Mol.**

 is limited or restricted to the extent set out in Part F of Schedule 4 to **this Mol.**

- (5) The authority of **the Company's board of directors** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73(5)-

 √ is not limited or restricted by **this Mol.**

 is limited or restricted to the extent set out in Part F of Schedule 4 to **this Mol.**

- (6) The quorum requirement for a **directors'** meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are-

 √ as set out in section 73(5)(b).

 as set out in section 73(5), subject to the variations set out in Part F of Schedule 4 to **this Mol.**

4.4 Indemnification of Directors

- (1) The authority of **the Company's board of directors** to advance expenses to a **director**, or indemnify a **director**, in respect of the defence of legal proceedings, as set out in section 78(3)-

 √ is not limited or restricted by **this Mol.**

 is limited or restricted to the extent set out in Part G of Schedule 4 to **this Mol.**

- (2) The authority of **the Company's board of directors** to indemnify a **director** in respect of liability, as set out in section 78(5)-

 √ is not limited or restricted by **this Mol.**

 is limited or restricted to the extent set out in Part G of Schedule 4 to **this Mol.**

(3) The authority of **the Company's board of directors** to purchase insurance to protect **the Company, or a director**, as set out in section 78(7)-

is not limited or restricted by **this Mol.**

is limited or restricted to the extent set out in Part G of Schedule 4 to **this Mol.**

4.5 Officers and Committees

(1) **The board of directors** may appoint any officers it considers necessary to better achieve the objects of **the Company**.

(2) The authority of **the Company's board of directors** 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), or to include in any such committee person who are not **directors**, as set out in section 73(2)(a)-

is not limited or restricted by **this Mol.**

is limited or restricted to the extent set out in Part H of Schedule 4 to **this Mol.**

(3) The authority of a committee appointed by **the Company's board**, as set out in section 72(2)(b) and (c)-

is not limited or restricted by **this Mol.**

is limited or restricted to the extent set out in Part H of Schedule 4 to **this Mol.**

Article 5 – General Provisions

5.1 Purpose describing the main business

The main business which **the Company** will be entitled to carry on is:

- 5.1.1 to achieve its objective and in doing so, to establish, provide, expand and maintain internal services to **the private properties** in **the township**, required by a dwelling in an upmarket suburban residential township in any of the major centers in the Republic of South Africa;
- 5.1.2 to adopt and amend **Management- and Conduct Rules**, with regard to the improvement, use and enjoyment of **the common property** and **private properties** in **the township** by **members**, and their invitees; and
- 5.1.3 to approve various **developments options** for **private properties** and to approve amendments thereto subject to the essential requirements of maintaining a holistic complimentary and visually pleasing and in keeping with a rural atmosphere where nature and the developed environment is in respectful harmony;
- 5.1.4 to adopt and amend **Landscaping Guidelines** and building standards, as well as **Conduct Rules For Builders** for purposes of improving **private properties** in keeping with a rural atmosphere where nature and the developed environment is in respectful harmony.

5.2 **Ancillary objects and general powers of the Negester HOA (RF)**

5.2.1 It is recorded and agreed by all persons becoming **members** that it is the intention of **the developer**, all **members** and **the Negester HOA (RF)** that **the township** shall be developed as a homogenous retirement township in which the bouquet of rights encompassed in ownership of **private property** is restricted by means of agreed limitations imposed for the common good of all, where individual rights are sub-ordinate to the overarching rights of **members** exercised through **the Negester HOA (RF)**, its board of directors and **the Constitution of the Negester HOA (RF)**, with a result that notwithstanding the fact that **members** hold title to their own **private properties**, **the Negester HOA (RF)**, through its **board of directors**, is authorised in general to do all such things as may be necessary to accomplish the fulfilment of such objective in terms of the powers specifically provided for in **the Constitution of the Negester HOA (RF)**.

5.2.2 The general powers of **the board of directors** of **the Negester HOA (RF)** shall be:

5.2.2.1 to promote the common interests of **the members** in **the township** in whatever manner **the directors** may consider advisable;

- 5.2.2.2 to take transfer of *the common property* and *the internal services* in the name of *the Negester HOA (RF)*, from *the developer*, for the benefit of *members*, by way of assignment of existing rights and obligations;
- 5.2.2.3 to grant or acquire servitudes for the benefit of *the township* from any adjacent private property owner or development;
- 5.2.2.4 to promote and conserve the fauna and flora, and wildlife, if any, in *the township*;
- 5.2.2.5 to maintain general security in *the township*;
- 5.2.2.6 to represent *members* in negotiations with any organ of state, development tribunals, NGO's or other authorities, and the public generally, in regard to any matter concerning *the township*;
- 5.2.2.7 to support or oppose legislation or other administrative measures which may be introduced, and could adversely affect the use and enjoyment of *private property* in *the township*;
- 5.2.2.8 to adopt and amend *the Rules* to achieve the objects and ancillary object of *the Negester HOA (RF)* and to effectively exercise those general powers;
- 5.2.2.9 to publish *the Rules* or any amendment thereto, as they deem fit and appropriate to achieve its main business and ancillary object;
- 5.2.2.10 to administer and enforce *the Rules*;
- 5.2.2.11 to impose penalties for any failure by a *member* to comply with *the Rules*.
- 5.2.3 As a result of the fact that *the board of directors* of *the Negester HOA (RF)* may only do something if authorised by its *Constitution*, this clause constitutes authority to *the board of directors* to do whatever *the Negester HOA (RF)* is authorised to do in terms of *the Constitution of the Negester HOA (RF)*.
- 5.2.4 Without limiting the powers conferred in terms of clauses 5.2.2.1 to 5.2.2.11 and 5.2.3 above, *the board of directors* of *the Negester HOA (RF)* shall have the following specific powers and functions:

- 5.2.4.1 the authority and responsibility to charge and collect levies and impose fines for non-compliance with ***the Constitution of the Negester HOA (RF)*** and to delegate such authority to any committee or person;
- 5.2.4.2 the authority and responsibility to maintain, repair, improve and keep in good order and condition ***the internal services*** and ***the common property***;
- 5.2.4.3 the authority and responsibility for the payment of all rates and taxes, all service charges and other taxes and / or levies charged and payable to the relevant local- or provincial governments or any other statutory authority that may have jurisdiction over ***the township***;
- 5.2.4.4 the authority and responsibility for payment of the salaries and / or wages of the employees of ***the Negester HOA (RF)***; and
- 5.2.4.5 the authority and responsibility for the payment of all expenses necessarily or reasonably incurred in connection with the management of ***the Negester HOA (RF)***, and the affairs of ***the Negester HOA (RF)***, and / or in achieving the main business and ancillary objects of ***the Negester HOA (RF)***, or the pursuit of its objective;
- 5.2.4.6 to appoint ***the ATKV*** as ***the estate manager*** or ***managing agent*** on terms which they deem fit;
- 5.2.4.7 to enter into service level contracts with ***the ATKV*** and third parties to render ***the internal services***, or other essential services to ***the township*** on terms which they deem fit;
- 5.2.4.8 to appoint an architect and such other professional consultants to assist ***the Negester HOA (RF)*** to achieve and maintain a monogamous visually pleasing architectural design theme and esthetica in ***the township*** in keeping with a rural atmosphere, with regard to all improvements on ***private- or common properties***.
- 5.2.5 The responsibility for the management and control of ***the common property*** shall be transferred from ***the developer*** to ***the Negester HOA (RF)*** upon completion of ***the internal services*** in respect of a phase or phases of ***the township*** to the satisfaction of the local authority or regulatory body, or when transfer of such responsibility is tendered to ***the Negester HOA (RF)*** by ***the developer*** whichever is

the earlier. **The developer** will however remain obliged and responsible to complete the development programme in accordance with the conditions of approval imposed by the relevant authorities.

5.3 Levies

5.3.1 **The board of directors** shall from time to time determine the levies payable by **the members** to defray all the expenses of **the Negester HOA (RF)**:

5.3.1.1 to achieve its main business and ancillary objects as recorded in **the Constitution of the Negester HOA (RF)**;

5.3.1.2 with regard to the control, management and administration of **the township**;

5.3.1.3 in acquiring the provision of **internal services** for **the common property**, and the individual **private properties** in **the township**;

5.3.1.4 as bulk supplier to **the township** of **the internal services**;

5.3.1.5 in maintaining **the internal services** and **the common property**;

5.3.1.6 necessary or reasonably incurred in connection with the administration and management of **the Negester HOA (RF)**;

5.3.1.7 the costs of the provision of security to **the township**;

5.3.1.8 the costs of fulfilling any of the obligations of **the Negester HOA (RF)** in general, to its **members**.

5.3.2 **The directors** shall, not less than 60 (sixty) days prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every **member**, at the address appearing in the register of **members**, a notice containing:

5.3.2.1 estimates in sufficient detail, of the amount which shall be required by **the Negester HOA (RF)** to meet the expenses, reasonably anticipated in the next financial year:

5.3.2.2 likely to result from a shortfall from the current financial year;

- 5.3.2.3 to provide essential services referred to in clause 5.2.4.7;
- 5.3.2.4 to provide optional services, not included in *this Mol*;
- 5.3.2.5 the pro-rata contribution payable by *members* as an annual levy to defray such expenses.
- 5.3.3 *The directors* may include in such estimates an amount to be held in reserve to meet non-recurring anticipated expenditure in the next financial year.
- 5.3.4 Annual levies shall be payable in equal monthly instalments, in advance on the first day of every month in each financial year, by way of an irrevocable debit order signed by each *member* in favour of *the Negester HOA (RF)*.
- 5.3.5 In the event of *the directors* for any reason whatsoever failing to prepare, and timeously serve the notice referred to in clause 5.3.2, every *member* shall continue to pay the annual levy for the previous year increased by the weighted average of the consumer price index for the pervious twelve months, until *the members* receive notification of the new annual levy, whereafter *the members* shall pay the annual levy specified in the notice, in the manner specified in such notice.
- 5.3.6 *The directors* may impose special levies upon *the members* in respect of all expenses of *the Negester HOA (RF)* not included in the estimates prepared in terms of clause 5.3.2, and may, in imposing such levies, determine the terms of payment thereof.
- 5.3.7 *The Negester HOA (RF)* shall not be entitled to undertake on behalf of its *members* any permanent works of major capital nature without the sanction of a resolution of *the members* adopted during a *general meeting* of *members*. In this sub-clause "*works of a major capital nature*" means works that will cost more than R100 000,00 (one hundred thousand rand) excluding value added tax. It is recorded that *directors* are authorised to adjust the limit of R100 000,00 (one hundred thousand rand) from time to time to make provision for the effect of inflation.
- 5.3.8 *The Negester HOA (RF)* may repay *the developer* for on-going costs or expenses incurred by *the developer* for the provision of *internal services* to *the private properties* or *the common property*, on behalf of *the Negester HOA (RF)*.

- 5.3.9 **The board of directors** may enter into an agreement or agreements with **the developer** for the provision of a capital sum and / or the transfer of land in **the township** and / or making available equipment to **the Negester HOA (RF)**, in lieu of payment or repayment of levies.
- 5.3.10 Should any dispute arise at any time between **the members** and **the board of directors** in regard to the determination or calculation of the levies, the decision of **the auditors** for the time being of **the Negester HOA (RF)** (acting as experts and not as arbitrators) in respect of such dispute shall be final and binding on **the members** and **the board of directors**.
- 5.3.11 In the event of any dispute arising in regard to the determination or calculation of any levy, every **member** shall, until the determination of such dispute, continue to pay the levies determined by **the directors**.
- 5.3.12 Notwithstanding anything to the contrary in **this Mol**, it is recorded that the levies will be payable by **members** as "registered owners" of **private properties**, including **the developer**, in respect of **private properties** held by it which are registerable in the Deeds Office, but remains unsold.
- 5.3.13 In addition to such other rights as **the Negester HOA (RF)** may in law have against **members**, **the board of directors** shall determine the rate of interest to be charged from time to time on arrear levies; provided that such rate of interest shall not exceed the statutory prescribed default interest rate published in terms of the Prescribed Rate of Interest Act, 1975.
- 5.3.14 Any levy due by a **member** but unpaid; together with interest thereon, shall be a liquidated debt due by him or her or it to **the Negester HOA (RF)**, payable without demand.
- 5.3.15 If any **member** fails to make payment on due date of levies and / or other amounts payable by such **member** including interest, **the Negester HOA (RF)** may give notice to such **member** requiring him or her or it to remedy such failure within such period as **the Negester HOA (RF)** may determine, and should he, she or it fail timeously to make such payments, **the Negester HOA (RF)** may disconnect and / or discontinue any **internal services** to the **private property** of such **member** and institute legal proceedings against such **member** in its own name without further notice, and such **member** will be liable for and shall pay all legal costs on the scale as between attorney and own client, together with collection commission, as

reflected in tax invoices rendered to **the Negester HOA (RF)** by its legal representatives without the need to have such amount taxed or assessed, together with all other expenses and charges reasonably incurred by **the Negester HOA (RF)** in recovering the amount due.

5.3.16 No **member** shall (unless otherwise determined by **the directors**) be entitled to any of the privileges of membership of **the Negester HOA (RF)** including:

5.3.16.1 his or her or its right of access to and use of any of the facilities on **the common property**;

5.3.16.2 his or her or its right to vote,

until he, she or it shall have paid every levy and interest thereon, if applicable, and any other amount which may be due and payable by him to **the Negester HOA (RF)**, as a fine or penalty imposed in terms of clause 5.2.2.11.

5.3.17 The obligation of a **member** to pay levies shall cease upon **the member** ceasing to be a **member**, provided that **the Negester HOA (RF)** has the right to refuse to issue a levy clearance certificate consenting and authorising transfer of a **private property** in the Deeds Office, until all arrear levies plus interest at the agreed rate, plus any amount payable in terms of clause 5.2.2.11, have been paid.

5.3.18 No levy or interest or fine by way of penalty paid by a **member**, is repayable under any circumstances.

5.3.19 A **member's** successor in title to any **private property** and membership of **the Negester HOA (RF)**, shall be liable to pay the levies, interest and fines, if any, due in respect of that **private property**, from the date upon which he, she or it becomes a **member** pursuant to the transfer of that **private property**; provided that such successor in title shall have a right or recourse against **the member** who transferred **the private property** to the successor in title.

5.3.20 No **private property** shall be capable of being transferred without a levy clearance certificate first being obtained from **the Negester HOA (RF)** confirming that all levies, interest and fines, if any, have been paid up to and including the date of registration of transfer of such **private property**, or 90 (ninety) days from the date of the certificate, whichever is the later.

5.4 **Undertaking**

5.4.1 Every *member* undertakes to assist *the board of directors* to further the objects and interests of *the Negester HOA (RF)* to the best of his, her or its ability.

5.4.2 *The members* jointly and severally undertake that they will not vote for, or propose any motion or resolution in terms of which the said *Negester HOA (RF)* is dissolved.

5.5 **Township Manager**

5.5.1 *The developer* shall for the duration of *the development period*, and thereafter *the managing agent*, be entitled to appoint a township manager to control, manage and administer *the township* and *the common property* and to exercise such powers and duties as may be entrusted to *the managing agent*, including the right to collect levies.

5.5.2 The terms and conditions of the appointment of the township manager shall be in the discretion of *the developer* or *the managing agent* as the case may be.

5.6 **Secretariat**

If *the directors* so decide, they shall appoint a secretariat for *the Negester HOA (RF)* and *the board of directors* for such term, at such remuneration, and upon such conditions, as they may think fit, and *the directors* may dismiss any person appointed to such secretariat.

5.7 **Financial Records**

5.7.1 *The directors* shall cause to be kept such accounting records as are prescribed by *the 2008-Companies Act* and in particular such accounting records as are necessary fairly to present the state of affairs and business of *the Negester HOA (RF)* and to explain the transactions and financial position of *Negester HOA (RF)*.

5.7.2 *The Negester HOA (RF)*'s accounting records shall be kept at the registered office, or such other place or places as *the directors* think fit and shall at all reasonable times be open to inspection by *the directors*, and by past *directors*, but in the case of the latter, only in respect of the period during which they held office as *directors*.

5.7.3 **The directors** shall from time to time determine whether, to what extent and at what times and places and under what conditions or regulations the accounting records of **the Negester HOA (RF)**, or any of them, may be open for inspection by **members** not being **directors**, and no **member** (not being a **director**) shall have any right to inspect any accounting record or documents of **the Negester HOA (RF)** except as conferred by **the 2008-Companies Act**, or except as authorised by **the directors**, or by **the members** in **general meeting**.

5.7.4 **The directors** shall from time to time and in accordance with the provisions of **the 2008-Companies Act**, cause audited annual financial statements to be prepared and laid before **the members** at **the annual general meeting**.

5.7.5 A copy of any annual financial statements which are to be laid before **the members** at the **annual general meeting** shall not less than 21 (twenty one) days before the date of that meeting, be sent to every **member**, and where required by **the 2008-Companies Act**, also to the Registrar. The provisions of this clause shall not require a copy of the said documents to be sent to any person who has not furnished an address to **the Negester HOA (RF)**.

5.7.6 An **auditor** shall be appointed in accordance with the provisions of **the 2008-Companies Act**.

5.8 Authentication of documents

5.8.1 Any **director** or the secretary or any person appointed by **the directors** for this purpose shall have the power to authenticate:

5.8.1.1 **the Mol;**

5.8.1.2 any resolution passed by **the Negester HOA (RF)** or **the directors** or **annual general meeting;**

5.8.1.3 any books, record, documents and accounts relating to the business of **the Negester HOA (RF)**,

and to certify copies thereof, or extracts there from, as true copies or extracts.

5.8.2 Where any books, records, documents or accounts are kept elsewhere than at the office of **the township manager** or **managing agent** or registered office of **the**

Company, such other person having the custody thereof shall be deemed to be a person duly appointed by **the directors** for the abovementioned purpose.

5.8.3 Subject to the provisions of **the 2008-Companies Act**, a **member** shall not be entitled to demand that:

5.8.3.1 any book, document or record be shown to him, her or it;

5.8.3.2 any information concerning **the Negester HOA (RF)** affairs be disclosed to him, her or it,

if the **directors** in their sole and absolute discretion (which may not be disputed) consider that it is not in **the Negester HOA (RF)**'s interest to show that book, document or record to **the member**, or to disclose that information to him, her or it.

5.9 Indemnity

5.9.1 Every **director**, manager and officer of **the Negester HOA (RF)** and every other person (whether an officer of **the Negester HOA (RF)** or not) employed by **the Negester HOA (RF)**, and **the auditor**, shall be indemnified out of the funds of **the Negester HOA (RF)** against all liability incurred by her / him / them in defending any proceedings, whether civil or criminal, and in which judgment is given in her / his / their favour, or in which she / he / they is / are acquitted, or in connection with any application under section 78(4) of **the 2008-Companies Act** in which relief is granted to her / him / them by a court of law.

5.9.2 **The members** acknowledge that although by becoming **members**, they are investing in land which forms part of a security estate, such fact does not indemnify them against loss or damage to private property or protect them against loss of life or injury to their person or their private property or person of their families, invitee's and guests, and that they have to take the necessary personal precautions to protect such private property and life against loss, damage or harm, and that they purchase **private property** entirely at their own risk, and indemnify and hold **the Negester HOA (RF)** and their **directors** harmless against any claims of whatsoever nature, in this regard.

5.10 **General Provisions**

5.10.1 **This Mol** and **the Rules**, as amended by agreement in terms of clause 5.2.2.8, regulate the rights and obligations of **members** regarding the acquisition, ownership, development, maintenance, use and enjoyment of their **private property**, between **members**, and *vis-à-vis* **the Negester HOA (RF)**.

5.10.2 After registration of ownership of a **private property** into the name of any person, the provisions of **this Mol**, **the Rules** and the conditions of title shall limit and regulate the rights and obligations of **members**, in respect of ownership in **private properties**.

5.10.3 A **member** by taking transfer of the ownership of a **private property** is deemed to:

5.10.3.1 have read **this Mol** and **the Rules** and to have become a **member** subject to the terms thereof;

5.10.3.2 understand his / her / its various rights, performance obligations, duties and remedies, and more specifically that a **member** shall not be entitled to attack the applicability of **the Constitution of the Negester HOA (RF)** to the ownership of his / her / its **private property**.

5.10.4 No indulgence by **the board of directors** for the non-compliance of any obligation by a **member** in terms of **the Constitution of the Negester HOA (RF)** shall operate as a waiver of any rights of **the Negester HOA (RF)**, or as a novation of the rights of a **member**.

5.11 **Domicilia & Notices**

5.11.1 Any notice and / or process issued in terms of **this Mol** shall be served, delivered or sent to **the developer**, **the Negester HOA (RF)**, **the board of directors** or **the members** at the following addresses:

PARTY	PHYSICAL ADDRESS	POSTAL ADDRESS	TELEFAX
a. <i>The Negester HOA (RF)</i> b. <i>Board of directors</i> c. <i>Developer</i>	The registered address from time to time as recorded on the data base of the Registrar of Companies of <i>the Negester HOA (RF)</i>	The postal address from time to time as recorded on the data base of the Registrar of Companies of <i>the Negester HOA (RF)</i>	Not applicable

<i>The members</i>	The physical address of the property owned by <i>the member</i>	The address recorded in the register of members	Not applicable
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5.11.2 *The members* may not during their membership of *the Negester HOA (RF)* change their chosen addresses in clause 5.11.1 above.

5.11.3 Any notice which *the developer, the Negester HOA (RF)*, any director or *member* gives in terms of *this Mol*:

5.11.3.1 must be in writing and addressed and sent by prepaid registered mail, or delivered by hand to one of the addresses referred to in clause 5.11.1 above; and

5.11.3.2 shall be deemed to have been given properly and to have come to the notice of the addressee on the 3rd (third) business day after the day on which the notice was sent by pre-paid registered post, if posted, or on the date of acknowledgement of receipt on the notice, or deposited to in an affidavit by the person delivering the notice if delivered by hand.

5.11.4 A certificate issued by or on behalf of *the Negester HOA (RF)* by a *director* is proof, until the contrary has been proved by a *member*, that notice was given, of the date upon which such notice was given, and of the date upon which the notice is deemed to have come to the notice of *the member*.

5.11.5 *The member* receiving the notice shall have the obligation to rebut, beyond any doubt, the fact that notice was properly given and received.

5.12 Dispute Resolution

5.12.1 In this clause 5.12 unless the context clearly indicates a contrary meaning:

5.12.1.1 "**Arbitration Rules**" mean Rules for the Conduct of Arbitrations issued by the Association of Arbitrators (Southern Africa), Fifth Edition 2005;

5.12.1.2 "**arbitrator**" means a senior junior advocate or attorney appointed by agreement between *the disputing parties* and failing agreement by the Chairperson of the Brooklyn Chambers of the Pretoria Bar Association, at the request of any of *the disputing parties*;

5.12.1.3 "Claimant" means *the disputing party* at whose request *the dispute* is referred to arbitration;

5.12.1.4 "*dispute*" means the dispute between *the Claimant* and *the Respondent* as formulated in the statement of claim, defence, and counter claim defence to the counter claim if applicable;

5.12.1.5 "*disputing parties*" mean *the Claimant* and *the Respondent*;

5.12.1.6 "*Respondent*" means *the disputing party* other than *the Claimant*.

5.12.2 Anyone of *the disputing parties* shall be entitled to refer a dispute which arises between them in terms of *the Constitution of the Negester HOA (RF)* including the interpretation of any of its agreed terms, or the performance obligations, of a *disputing party*, or the enforcement of any available remedy, for resolution in terms of the agreed processes recorded below.

5.12.3 Good Faith Negotiation and Mediation

5.12.3.1 Any *member* who alleges or claims that a dispute as contemplated in clause 5.12.2 has arisen in respect of the interpretation or implementation of any term of *the Constitution of the Negester HOA (RF)* ("*the Claimant*"), shall formulate the dispute in writing and give notice of such dispute to *the board of directors*, and the person against whom the complaint is laid, which notice is hereafter referred to as "*the statement of claim*".

5.12.3.2 In the event of a dispute between *members*, they shall first endeavour to resolve the dispute by good faith negotiations, failing which the dispute shall be referred to facilitation by the chairperson of *the board of directors*.

5.12.3.3 The township manager shall:

(a) advise the chairperson of *the board of directors* of the nature of *the statement of claim*; and

(b) afford the other party to the dispute 5 (five) days from the deemed receipt of *the statement of claim*, to respond thereto by recording his / her / its / their response in writing ("*the statement of defence*");

provided that in the event of the disputing parties failing to clearly define the dispute in **the statement of claim** or **statement of defence**, then the chairperson shall formulate the dispute in writing and give notice thereof to the disputing parties.

5.12.3.4 If the disputing parties are unable to resolve their dispute despite the facilitation of the chairperson of **the board of directors**, within 5 (five) days of the formulation of the dispute in terms of clause 5.12.3.3, then the dispute shall be referred for private commercial arbitration in terms of clause 5.12.4.

5.12.4 Private Commercial Arbitration

5.12.4.1 The nature of the proceedings and the process to be followed shall be determined by **the arbitrator**, and failing any determination, **the Arbitration Rules** shall apply.

5.12.4.2 The cost of the arbitration proceedings, both in respect of interim and final cost orders, shall be in the sole discretion of **the arbitrator**, which costs shall by agreement between **the disputing parties** be taxed or determined by an attorney who practise as specialist cost consultant in Pretoria, or any other private legal costs consultant nominated by **the arbitrator**, and shall be borne by **the disputing party** against whom a costs order is made by **the arbitrator**.

5.12.4.3 The arbitration process shall be treated as confidential and be respected as such by all **disputing parties** concerned.

5.12.4.4 The award of **the arbitrator** shall be final and binding on both **disputing parties**; provided that any one of **the members** shall be entitled to make the award an order of court by way of an *ex parte* urgent application in terms of Rule 6 of the Uniform Rules of the High Court, and that **the disputing parties** shall have a right of review in terms of the limited grounds of section 22(1) of the Arbitration Act, 1965.

5.13 Sales Office

Notwithstanding anything to the contrary contained in **the Constitution of the Negester HOA (RF)**:

5.13.1 ***the developer***, or its duly appointed sales agent may operate a sales office on ***private property*** owned by ***the developer***, for as long as ***the developer*** owns any ***private property*** in ***the township***;

5.13.2 ***the developer*** may also elect to erect a sales office for itself or its sales agent on any ***common property*** in ***the township*** for its own use, for such a period as it may require to sell ***private properties*** in ***the township***.